

# **INVITATION TO TENDER DOCUMENT**

## **OPEN PROCEDURE**

**Service Contract for the Provision of a Loyalty Scheme to HRI Racecourses Ltd**

**(MAXIMUM POTENTIAL DURATION: 5 YEARS)**

**DEADLINE DATE FOR RECEIPT OF TENDERS: 25<sup>th</sup> September 2026 AT 12:00 Noon (LOCAL TIME)**

## 1. DISCLAIMERS

All information contained in this Invitation to Tender (hereinafter "ITT") document is provided in the strictest confidence and has been made available solely for the purpose of facilitating the production and submission of tenders. No party may disclose the contents of this document without the express permission of Horse Racing Ireland (hereinafter the "Contracting Authority").

Tenderers are recommended to read the ITT document thoroughly. While all reasonable steps have been taken to ensure that the information set out in this document is factually correct, no representation or warranty, express or implied, is or will be made or given in relation to the accuracy or the completeness of any information contained in this document or otherwise provided by or on behalf of the Contracting Authority, in writing or otherwise, to any interested party or its advisers.

No responsibility or liability for any loss or damage arising as a result of reliance on this document, or for the information contained in this document, or for any omission, is or will be accepted by the Contracting Authority or by any of its officers, employees, agents or professional advisers. No officer, employee, agent, or professional adviser of the Contracting Authority has any authority to give or make any representation or warranty, express or implied, in relation to such information. The Contracting Authority's officers, employees, agents and professional advisers expressly disclaim any and all liability arising out of such documentation or information and any errors or omissions in or from the documents and information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this ITT and may wish to consult their legal advisers.

The Contracting Authority does not bind itself to accept the lowest priced or any Tender.

This ITT does not constitute an offer or commitment to enter into a Service Contract Agreement.

No contractual rights in relation to the Contracting Authority will exist unless and until a formal written Service Contract Agreement has been executed by or on behalf of the Contracting Authority.

Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the tenderer.

The Contracting Authority reserves the right to discontinue the procurement process at any time.

The award of a Service Contract Agreement does not confer exclusivity on the successful tenderer.

This ITT supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and tenderers, and tenderers should place no reliance on such previous documentation and correspondence.

**Without prejudice to the principle of equal treatment, the Contracting Authority is not obliged to engage in a clarification process in respect of tender submissions with missing or incomplete information. Therefore, tenderers are advised to ensure that they return comprehensive tender submissions in order to avoid the risk of elimination from the competition.**

**Please note in relation to this ITT document; where reference is made to a particular make, source, process, trademark, type or patent that this is not to be regarded as a de facto requirement. In all such cases it should be understood that the reference in question is accompanied by the words "or equivalent".**

## 2. CHECKLIST FOR TENDER SUBMISSIONS

In order to allow the Contracting Authority to fully evaluate completed tender submissions, tenderers are advised to ensure that their responses include all of the following information:

|    |                                                                                |                          |
|----|--------------------------------------------------------------------------------|--------------------------|
| 1. | All information required under the Award Criteria (Section 6 of the document). | <input type="checkbox"/> |
| 2. | The completed and signed Form of Tender (Appendix 1 of this document).         | <input type="checkbox"/> |
| 3. | All other information required by this ITT document.                           | <input type="checkbox"/> |

**This checklist has been provided for guidance purposes only and the Contracting Authority accepts no responsibility for omissions of any description. Tenderers are advised to read this ITT document and its appendices in full in order to provide a comprehensive and compliant response.**

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### 3. ABOUT THE CONTRACTING AUTHORITY

#### 3.1 About the Contracting Authority

Horse Racing Ireland (“HRI”) was established by the Irish Government under the Horse and Greyhound Racing Act 2001. It is a commercial semi-state body that took over the functions previously carried out by the Irish Horse Racing Authority. HRI is responsible for the administration, promotion, and development of Horse Racing in Ireland. HRI subsidiaries include Irish Thoroughbred Marketing Ltd (“ITM”), Tote Ireland and HRI Racecourses Ltd (Leopardstown Racecourse, Leopardstown Golf Centre, Fairyhouse Racecourse, Navan Racecourse & Tipperary Racecourse). Cork Racecourse Mallow and Curragh Racecourse, while not subsidiaries of HRI, are closely affiliated with HRI.

In the first instance it is envisaged that HRI Racecourses Ltd will have requirements under the Service Contract. However, this Service Contract will remain open to all other HRI subsidiaries or indeed any other organisations that have a funding or governance relationship with HRI, including but not limited to Cork and The Curragh Racecourses. The Contracting Authority reserves the right to use this Service Contract for any other industry body in which it is involved.

#### 3.2 The Open Procedure

The Contracting Authority is employing the open procedure to award this Service Contract Agreement under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the “Regulations”). In accordance with the provisions governing the conduct of the open procedure, any interested economic operator may submit a tender in response to this ITT.

In the first instance, the self-declaration form (Appendix 3 – *Form of Self Declaration*) will be reviewed for its completeness. Tenderers meeting this requirement will then be assessed against the award criteria, rules and weightings contained in Section 6 – *Specification Requirements* of this document in order to identify the most economically advantageous tender. The tenderer with the most economically advantageous tender will be requested to submit evidence in order to be validated against the eligibility criteria and rules contained in section 4 of this document.

#### Duration

This Service Contract will have a maximum potential duration of five (5) years. In the first instance, it is anticipated that there will be an initial period of two (2) years duration, with an option to extend up yearly to a maximum of five (5) years entered into with the successful tenderer emerging from this competitive process. Following the expiry of the initial period, matters such as the successful tenderer’s performance and the continued strategic appropriateness of the Service Contract will be assessed by the Contracting Authority in determining whether or not subsequent contracts will be placed over the lifetime of the Service Contract. It is envisaged that any extension awarded will be for a period of at least one year, however the precise duration of any extension will depend upon the nature of the Contracting Authority’s requirements at that point in time. The Contracting Authority confirms that the period of any contracts awarded under the Service Contract may extend beyond the date of expiry of the Service Contract.

The maximum potential duration of the Service Contract is five (5) years. However, each contract may be terminated at any point in time in accordance with HRI terms and conditions of the Service Contract, a draft version of which is contained at Appendix 4 – *Terms & Conditions* of this ITT document.

Admission to the Service Contract will be conditional upon acceptance of the Contracting Authority’s Service Contract Terms & Conditions, as appended at Appendix 4 of this ITT document. Tenderers are required to confirm their acceptance of the Terms and Conditions of the Service Contract by signing the Tenderer’s Statement at Appendix 1 – *Form of Tender*. Tenderers may not amend the Service Contract.

#### Award to Runner-Up



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In the event that, following the award of this Service Contract, the successful tenderer cannot, for whatever reason, deliver the required supplies / services to the satisfaction of the Contracting Authority, the Contracting Authority reserves the right to award the Service Contract to the next highest-ranked tenderer emerging from this competition, at any time during the tender validity period. This shall be without prejudice to the right of the Contracting Authority to terminate the Service Contract and commence a new competition at any time.

#### Termination

Once established, there is no obligation upon the Contracting Authority to make use of this Service Contract. Notwithstanding this fact, the Service Contract may be terminated in accordance with the Service Contract Terms and Conditions, a draft version of which is contained in Appendix 4 – *Terms & Conditions* of this ITT document.

#### Consortia and Prime / Subcontractors

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit a tender in response to this ITT document, the Contracting Authority will deal with all matters relating to this competition through a single nominated entity authorised to represent all members of the group of undertakings. The tenderer must provide details of all members of the group of undertakings and their role in the tender submission, and clearly set out the contact details including name, title, telephone number, postal address, and e-mail address of the nominated entity authorised to represent the tenderer and to whom all communications shall be directed and accepted until this competition has been completed or terminated. Correspondence from any other person will NOT be accepted, acknowledged or responded to.

Prior to and as a condition of award of the Service Contract, the successful tenderer shall be required to designate a single entity who will carry overall responsibility for the Service Contract (the "Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the "Subcontractor").

## 4. GENERAL SPECIFICATION OF REQUIREMENTS

### 4.1 Objective

Horse Racing Ireland introduced a Loyalty Scheme for Irish Racing incorporating racecourses, ticketing and commercial partners. This scheme has delivered many benefits to HRI Racecourses including customer retention and acquisition and increased engagement through digital channels using loyalty offers. It also provided valuable insights through enhanced data collection and ultimately allowed HRI Racecourses further understanding of customer behaviour.

Therefore, HRI Racecourses plans to appoint an established and experienced provider of a seamless turnkey solution to continue the provision of a customer loyalty scheme to HRI Racecourses which rewards customers for the purchase of all HRI Racecourse products, including tickets, hospitality, membership & merchandise.

### 4.2 Overview HRI Racecourses

#### Leopardstown Racecourse (The Leopardstown Club Ltd)

Leopardstown Racecourse is located six miles due south of Dublin City Centre. It stages approximately 23 race meetings throughout the year, including the Christmas Festival, the Dublin Racing Festival, the Irish Champion Stakes and a series of evening meetings throughout the summer months. For further information please see <https://www.leopardstown.com/>

#### Fairyhouse Racecourse (Fairyhouse Club Ltd)

Fairyhouse Racecourse is located outside Ratoath, Co. Meath, 13 miles from Dublin and ten minutes from Blanchardstown Shopping Centre. It is home of the Boylesports Irish Grand National and has attendances of up to 75,000 per annum. 21 meetings in 2019. For further information please see <https://www.fairyhouse.ie/>

#### Navan Racecourse (Navan Races Ltd)

Navan Racecourse is located just outside Navan Town, Co. Meath and hosts a number of highly prestigious race meetings including the Troytown Chase. 18 race meetings in 2019. For further information please see <https://www.navanracecourse.ie/>

Tipperary Racecourse (The Tipperary Race Company plc)

Tipperary Racecourse is located on the main Limerick to Waterford road (N24), approximately two miles from Tipperary town. High profile events include the Abergwaun Stakes and the Irish Stallion Farms European Breeders Fund Fairy Bridge Stakes. 11 meeting in 2019. For further information please see <https://www.tipperaryraces.ie/>

4.3 Specification of Requirements

A full specification of requirements is included in Appendix 6. In summary, the loyalty scheme must include the following:

- A customer loyalty scheme to HRI Racecourses which rewards customers for the purchase of all HRI Racecourse products, including tickets, hospitality, membership & merchandise.
- A loyalty scheme that facilitates the customer to spend collected rewards and to be applied to purchases through HRI Racecourse channels. This includes ticketing (admission, hospitality & membership) & merchandise.
- Ability to integrate with existing HRI Racecourse Ticketing System (Future Ticketing) and HRI Data Warehouse (Two Circles), as well as future integration with any potential HRI Mobile App that may be established.
- Allow customers to collect and redeem loyalty rewards from third party agencies in different sectors.
- Inclusion of CRM functionality that allows HRI Racecourse marketing teams have access to contact members of the loyalty scheme, either directly or indirectly; and
- The ability to report on all customer details, purchase details and account activity/behaviour for all members of loyalty scheme. Reporting should include the ability to report financially on all transactions, both collecting and spending rewards, through the loyalty scheme.

4.4 Timelines

The current agreement in place is due to expire 3<sup>rd</sup> December 2026. Therefore, it is anticipated that the new agreement will commence on or around the week commencing 16<sup>th</sup> November 2026 in order to allow for any potential setups to ensure continuity of service.

4.5 Contract Management Requirements

The successful company will be required to nominate a sufficiently senior individual to act as the contract manager for the duration of the contract. The contract manager will:

- Be primarily responsible for ensuring that the service provider's operational staff enjoys a good working relationship with HRI.
- Facilitate regular progress meetings with the Contracting Authority.
- Will monitor general performance under the contract and will assume overall responsibility for the effective and efficient delivery of all services provided.
- Will act as liaison with HRI and Procurement on going contract management, facilitation of KPIs and ongoing reporting.
- Ongoing communication about development roadmaps and market updates.

4.6 Detailed Specification of Requirements

A detailed specification of requirements is contained in the spreadsheet located at Appendix 6. Tenderers are required to complete this spreadsheet in full, ensuring that sufficient information is provided under each heading to allow the evaluation team to fully assess the functionality and fitness for purpose of the solution proposed.

4.7 Security

The successful tenderer must take all steps necessary to ensure the security and privacy of all data collected. Access to data collected by the proposed system must be restricted, with strong security protocols for access by the Contracting Authority's staff. The precise levels of access required will be agreed with the successful



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tenderer. It is anticipated that the system will include an audit trail to track user interaction. Security requirements relating to password and login security will apply. The system must implement Chinese walls with regard to user groups and interfaces to external systems. Full compliance is required with current GDPR legislation.

- The system uses SSL (secured socket layer) in all transactions that include any confidential customer information.
- The system must automatically log out all customers after a period of inactivity.
- The system should not leave any cookies on the customer's computer containing the user's password.
- The system's back-end servers shall only be accessible to authenticated administrators.
- Sensitive data will be encrypted before being sent over insecure connections like the internet.

#### Reliability

The reliability of the overall program depends on the reliability of the separate components. The main pillar of the reliability of the system is the backup of the database which is continuously maintained and updated to reflect the most recent changes.

Therefore, the overall stability of the system depends on the stability of container and its underlying operating system.

#### Availability

The system should always be available, meaning the user can access it using a web browser, only restricted by the downtime of the server on which the system runs. In case of an of a hardware failure or database corruption, a replacement page will be shown. In case of a hardware failure or database corruption, backups of the database should be retrieved from the server and saved by the administrator. Then the service will be restarted. This means 24 X 7 availability.

#### Maintainability

A commercial database is used for maintaining the database and the application server takes care of the site. In case of a failure, a re-initialization of the program will be done. Also, the software design is being done with modularity in mind so that maintainability can be done efficiently.

#### Portability

The application is HTML and scripting language based so the end-user part is fully portable and any system using any web browser should be able to use the features of the system, including any hardware platform that is available or will be available in the future.

An end-user is using this system on any OS; either it is Windows or Linux.

The system shall run on PC, Laptops, Mobile Device and PDA etc with maximum page load speed.

#### Accessibility

- The system will be a web-based application it is going to be accessible on the web browser.
- The system shall provide handicap access.

#### Back-up

The successful tenderer shall maintain regular backups of all system data to ensure that data can be restored and made accessible to authorised administrators and users in the event of data loss or system failure.

### 4.8 Integrations

- **Ticketing System:** HRI currently uses Future Ticketing to operate as its ticketing system for all current HRI Racecourses, with option to expand to include Cork & the Curragh Racecourse. This system sells tickets and merchandise in all areas of the racecourse – general admission, bundles, restaurants, hospitality, and memberships. The loyalty scheme procured will need to integrate in real time with the ticketing system solution via an application program interface (API).

- **Data Warehouse:** HRI has an existing bespoke data warehouse solution to incorporate all existing customer data sources – ticketing, Wi-Fi at racecourses, ezines, social media. This data warehouse is maintained by Two



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Circles and includes the following marketing tools, DotDigital, Survey Alchemer and a suite of data insight dashboards utilised by HRI and HRI Racecourse marketing teams. A new in-house data warehouse being developed by HRI and will need API (application program interface) integration with any loyalty scheme.

- **Mobile App:** (The loyalty scheme procured will need to integrate in real time with any potential HRI Mobile App via an application program interface (API) that may be implemented in the future.

#### 4.9 Training Requirements

The successful tenderer will be required to provide training to relevant individuals. All associated training material must be provided, in both hard and soft copy, by the successful tenderer.

## 5. INSTRUCTIONS TO TENDERERS

### 5.1 Compliance With Instructions To Tenderers

Tenderers are required to comply with these Instructions to Tenderers when preparing their tender submissions. By submitting a tender, each tenderer acknowledges and agrees to be bound fully by these Instructions to Tenderers. Non-compliance with these instructions may, and in stated circumstances shall, invalidate the submitted tender, subject always to the discretion of the Contracting Authority. The decision of the Contracting Authority in relation to compliance with these Instructions to Tenderers is final and binding.

### 5.2 Ambiguities, Discrepancies, Errors Or Omissions In The ITT Document

If you consider that you are missing any documents or information, the absence of which would preclude you from submitting a comprehensive tender, or should you become aware of any ambiguity, discrepancy, error or omission in this ITT document, please raise the matter via the messaging portal via eTenders as soon as possible.

A tenderer who has not provided a complete response in accordance with the requirements of this ITT document may be eliminated from the competition unless the Contracting Authority considers, in its reasonable opinion, that the incompleteness or lack of compliance is clerical, administrative or otherwise minor in nature. The Contracting Authority reserves the right to allow tenderers to complete their response in these circumstances.

### 5.3 Queries

All queries regarding this competition should be submitted through the eTenders website ([www.etenders.gov.ie](http://www.etenders.gov.ie)). Queries submitted by any other means may be ignored by the Contracting Authority at its discretion. All responses to queries will be posted on the eTenders website ([www.etenders.gov.ie](http://www.etenders.gov.ie)). The closing date for receipt of such queries is 12.00 (noon) on **11<sup>th</sup> September 2026**. Any queries submitted after the closing date for such queries may be ignored by the Contracting Authority at its discretion. In all circumstances, the Contracting Authority reserves the right to issue clarification responses to all tenderers at any stage when it believes, at its sole discretion, that the clarification should be issued to all tenderers. The following additional conditions govern the submission of queries:

- (a) No approach of any kind should be made to any other person within, or associated with, the Contracting Authority in connection with this ITT document. Any such approach may, at the absolute discretion of the Contracting Authority, result in the elimination of the tenderer in question from this competition.
- (b) The Contracting Authority will endeavour to respond to all reasonable queries received but does not undertake to respond to all queries indiscriminately. In particular, queries seeking interpretation of this ITT document may not result in a response.
- (c) In the event that a tenderer considers a query confidential or commercially sensitive, it must mark the query accordingly. If the Contracting Authority considers, at its absolute discretion, that the query or related response should be properly regarded as confidential or commercially sensitive, the nature of the query and its response will be held as confidential, subject to the Contracting Authority's obligations under law.
- (d) If the Contracting Authority is of the opinion that it would be inappropriate to answer the query on a confidential basis, it will notify the tenderer accordingly and require the tenderer to either withdraw the query or agree to its release, accompanied by a response, to all tenderers.

### 5.4 Qualification Of Tenderers

Please note that qualifications to a tender submission may render the tender submission invalid.

### 5.5 Tender Submission



#### Invitation To Tender

The deadline date and time for receipt of tenders is 25<sup>th</sup> September 2026 at 12.00 Noon (local time). The completed tender submission, which is to include all information identified in the Checklist for Tender Submissions at the outset of this document, can be submitted via the electronic post-box available on [www.etenders.gov.ie](http://www.etenders.gov.ie). Please note for tender submissions, the tenderer can upload a total of 500MB of files, with any individual file being up to 250MB. Tenderers are advised to allow for upload time. The Contracting Authority is not responsible for the corruption in electronic documents. It is the tenderer's responsibility to ensure that the submitted electronic documents are not corrupt. Please be advised that hard copy tender submissions will not be permitted at this time.

**The tenderer is fully responsible for the safe and timely delivery of the tender submission to the correct address. E-mailed, faxed, posted or late tenders will not be considered unless exceptional circumstances allow for it.**

**Tenderers must use the Form of Tender which is appended at Appendix 1 – Form of Tender of this ITT document.**

Tenderers are prohibited from amending any text or content of forms or declarations or templates provided as part of this competition in their tender submission. Where amendments have been identified, the Contracting Authority may at its discretion eliminate the tenderer from further consideration. Likewise, failure to use the template documentation provided particularly in relation to costing / pricing may result in tenders being eliminated.

#### 5.6 Extension Of Tender Period

The Contracting Authority reserves the right, at its sole discretion, to revise the deadline date for receipt of tender submissions by giving notice in writing to tenderers at any point up to deadline date contained in this ITT document.

#### 5.7 Notice Of Addenda

The Contracting Authority reserves the right to update or alter the information contained in this document at any time, but not later than seven (7) days before the deadline date for the receipt of tender submissions. Any such notification will automatically become part of this ITT document.

#### 5.8 Modifications To Tenders (Prior to Deadline Date for Receipt of Tenders)

Modifications to tender submissions will be accepted in the form of supplementary information and/or addenda, provided they are submitted via eTenders website before the deadline date for the receipt of tender submissions.

#### 5.9 Cost Of Preparation Of Tender Submissions

The Contracting Authority will not be liable for any costs incurred by tenderers in the preparation and submission of tenders and/or any associated work effort or costs (legal or otherwise) arising as a result of participation in this competition, regardless of the outcome or conduct of the competitive process.

#### 5.10 Clarification Of Abnormally Low Tenders

In the event that the Contracting Authority considers the tender submission to be commercially unsustainable or otherwise problematic in light of the tendered price or any other financial matter, the tenderer shall be invited to provide clarification to the Contracting Authority in respect of all elements of the tender submission that the Contracting Authority deems relevant. Any failure to satisfactorily comply with such a request, or to satisfactorily address the Contracting Authority's concerns, may, at the discretion of the Contracting Authority, result in the elimination of the tender submission in question.

#### 5.11 Tender Validity Period



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To allow sufficient time for tender assessment, a tender validity period of twelve months is required, commencing on the deadline date for receipt of tender submissions.

#### 5.12 Currency

Tender prices and any other financial information must be submitted in Euro (€) only. All invoices and payments will be in Euro (€) only and shall be in accordance with the terms agreed with the Contracting Authority. All pricing under the Service Contract shall be quoted exclusive of VAT.

#### 5.13 Confidentiality

The distribution of this ITT document is for the sole purpose of obtaining tender submissions as referred to therein. The distribution of this ITT document does not grant permission or licence to use the documents for any other purpose. Tenderers are required to treat the details of all documentation provided in connection with this competition as private and confidential. All documentation, data, statistics, drawings, information, patterns, samples or materials disclosed or furnished by the Contracting Authority must be returned immediately to the Contracting Authority upon cancellation or completion of this competition if so requested by the Contracting Authority. Similarly, the Contracting Authority undertakes to use all reasonable endeavours to ensure that any confidential information received from tenderers is not disclosed to third parties, subject always to its obligations under law and the applicable provisions of the Freedom of Information Acts.

In this regard, tenderers are asked to consider if any of the information supplied by them in response to this ITT document should not be disclosed because of its sensitivity. Tenderers must specify the precise information that is sensitive and the reasons for its sensitivity. Tenderers are advised that it is not sufficient to merely include a statement of confidentiality encompassing all information contained in a tender submission.

The Contracting Authority cannot guarantee that any information provided by tenderers, either in response to this ITT document or in the course of any Service Contract awarded as a result thereof, will not be released pursuant to the Contracting Authority's obligations under law, including the Freedom of Information Act 2014, European Procurement Directives and all Irish procurement legislation and guidance. The Contracting Authority accepts no liability whatsoever in respect of any information provided that is subsequently released or in respect of any consequential damage suffered as a result of such obligations.

#### 5.14 Conflict Of Interest

Any conflict of interest involving a tenderer must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. Any registrable interest involving the tenderer and the Contracting Authority, or employees of the Contracting Authority or their relatives, must be fully disclosed in the tender submission. In the event that the tenderer becomes aware of the conflict of interest only after a tender submission has been made, the conflict of interest must be immediately disclosed to the Contracting Authority. The terms 'registrable interest' and 'relative' will be interpreted in accordance with Section 2 of the Ethics in Public Office Act, 1995. Failure to disclose a conflict of interest may disqualify a tenderer or invalidate the award of any Service Contract, depending upon when the conflict of interest is made known to the Contracting Authority.

#### 5.15 Tax Compliance

The award of any Service Contract resulting from this competition will be contingent upon the successful tenderer's compliance with all EU and Irish tax law. The continued operation of any Service Contract entered into as a result of this competition will be contingent upon the successful tenderer maintaining tax compliance for the entire duration of the Service Contract. Prior to the award of a Service Contract, the successful tenderer is required to supply its Tax Reference Number and Access Number to facilitate online verification of its tax status by the Contracting Authority. By supplying these Tax numbers, the successful tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful tenderer to verify its tax clearance position online. Alternatively, a valid tax clearance cert may be provided to the Contracting Authority for verification purposes.

#### 5.16 Insurances

The award of any Service Contract resulting from this -competition will be contingent upon the successful tenderer's implementation of the forms and levels of insurance specified in the qualification questionnaire contained in this ITT document. The continued operation of any Service Contract entered into as a result of this competition will be contingent upon the successful tenderer maintaining the required forms and levels of insurance for the entire duration of the Service Contract. A formal confirmation of the tenderer's Insurance company or broker will be requested from the successful tenderer(s) prior to the award of (and shall be a condition of) any Service Contract.

The successful tenderer will during the term of the Service Contract, be required to:

- (a) Immediately advise the Contracting Authority of any material change to its insured status
- (b) Produce proof of current premiums paid upon request
- (c) Produce valid certificates of insurance upon request

#### 5.17 National Legislation

Tenderers are advised that national and EU legislation applies in respect of matters such as employment, working hours, official secrets, data protection and health and safety. Tenderers must have regard to statutory terms relating to minimum pay and to legally binding industrial or sectorial agreements in preparing tender submissions. Moreover, tenderers are advised that the laws of Ireland will govern this competition. Both this competition and any resulting Service Contract will be subject to the exclusive jurisdiction of the Irish courts.

#### 5.18 Determination Of Responsiveness

After opening tender submissions, the Contracting Authority will determine whether each tender submission is substantially responsive to the requirements of this ITT document. If a material deviation exists that limits in any substantial way the Contracting Authority's rights or the tenderer's obligations under any Service Contract to be awarded, the tender submission shall be rejected.

#### 5.19 Clarification Of Tenders

To assist in the evaluation and associated comparison of tender submissions, the Contracting Authority may ask tenderers to clarify and supplement certain aspects of their tender submissions, including financial proposals. A request for such clarifications should not be construed as an indication of success in the competition.

#### 5.20 Payment

The Contracting Authority operates in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012. The method of payment used by the Contracting Authority is Electronic Funds Transfer. Therefore, in order to be set up on the Contracting Authorities payment system the winning tenderer must provide bank details on bank headed paper, dated within the previous 3 months, detailing the following: Account name and address, Account IBAN and BIC. Electronic screen shots will not be considered. By submitting a tender, the tenderer agrees to provide this information on request if successful.

#### 5.21 Award To Runner-Up

If, having entered into a Service Contract as a result of this competition, the Contracting Authority deems that the successful tenderer cannot adequately deliver the required products, the Contracting Authority reserves the right to award the Service Contract to the next highest-scoring tenderer identified through the evaluation of tender submissions. This shall be without prejudice to the right of the Contracting Authority to terminate this competition at any time or to terminate any Service Contract awarded as a result of this competition in accordance with agreed terms.

## 5.22 Interference

Any effort by a tenderer to unduly influence the Contracting Authority, its personnel or any other relevant persons or bodies regarding the process of examination, clarification, evaluation and comparison of tender responses and any decisions concerning the award of the Service Contract shall result in the elimination of said tenderer's tender submission. In accordance with Section 14 of the Criminal Justice (Corruption Offences) Act 2018, a presumption that any gift, consideration or advantage paid by tenderers has been paid corruptly (unless the contrary is proven) may apply.

## 5.23 Prohibition On Canvassing

Any tenderer who, in connection with this competition –

- (a) offers any inducement, fee or reward to any member, officer or employee of the Contracting Authority or any person acting as an advisor to the Contracting Authority in connection with the competition; or
- (b) takes any step constituting a breach of the Prevention of Criminal Justice (Corruption Offences) Act 2018; or
- (c) canvasses any of the persons referred to in paragraph (a) above in connection with the competition; or
- (d) contacts any officer or employee of the Contracting Authority prior to the Service Contract being awarded about any aspect of the competition in manner not permitted by this ITT document,

May be eliminated from the competition, without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability such conduct by a tenderer may attract.

## 5.24 Prohibition On Collusion

Any tenderer who, in connection with this competition,

- (a) fixes or adjusts the amount or terms of their tender submission by or in accordance with any agreement or arrangement with any other tenderer (other than a member of his own grouping or consortium)
- (b) enters into any agreement or arrangement with any other tenderer that he/she shall refrain from tendering or as to the amount or terms of any tender to be submitted
- (c) causes or induces any person to enter into such an agreement or arrangement as referred to in paragraphs (a) or (b) above
- (d) informs any tenderer of the amount, approximate amount or terms of any rival tender
- (e) canvasses any other tenderer in connection with this competition
- (f) offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration directly or indirectly to any person for any information in connection with any rival tender submission
- (g) communicates to any person other than the Contracting Authority the amount or approximate amount or terms of the proposed tender submission (except in the event that such disclosure is made in confidence and is necessary for the preparation of the tender submission)
- (h) contacts any officer or employee of the Contracting Authority prior to the Service Contract being awarded about any aspect of the competition in manner not permitted by this ITT document,

May be eliminated from the competition, without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability such conduct by a tenderer may attract.

Tenderers' attention is drawn in particular to the provisions of the Competition Act 2002, which makes it a criminal offence for tenderers to collude on prices or terms in a public tendering competition. Please note that, should the Contracting Authority become aware of direct or indirect communications (through trade associations or otherwise) between tenderers relating to this competition and that may facilitate collusion, the Contracting Authority may, at its discretion, eliminate the tenderers in question and notify the Competition Authority of the matter, recommending that action be taken against the tenderers in question.

## 5.25 Format Of Response



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Tender responses to this ITT document will be evaluated solely on the quality of the content of the proposal. In the event that the tenderer has previously been involved in the provision of services to the Contracting Authority, they should not assume that the Contracting Authority is aware of their ability to carry out the work set out in this ITT document. No recognition will be given to information previously submitted.

#### **5.26 Notification Of Tender Evaluations**

All tenderers will be informed in writing of the outcome of this competition following the completion of the evaluation of tender submissions.

#### **5.27 Changes In Law**

As a condition of award, it shall be the sole responsibility of the tenderer (in the event of success in this competition) to fulfil the obligations under the Service Contract, notwithstanding any changes in circulars, laws, regulations, taxation, duties or other factors which might arise following the withdrawal of the United Kingdom from membership of the EU.

#### **5.28 Replacement Personnel**

Notification must be sent in writing as soon as possible to the Contracting Authority on any proposed change of nominated personnel, such change is to be subject to the written approval of the Contracting Authority.

Replacement personnel must be of equal or better standing than the existing personnel in terms of qualifications and experience. The Contracting Authority shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

#### **5.29 Media**

No media releases, public announcements or public disclosures relating to this competition or resulting Service Contract or its subject matter, including but not limited to promotional or marketing material, shall be made by the tenderer without the prior written consent of the Contracting Authority.

#### **5.30 Credit Review**

The Contracting Authority reserves the right to conduct a credit review of successful tenderer(s) (if a grouping or partnership), prior to formal appointment.

#### **5.31 Environmental Aspects**

The Contracting Authority is committed to the principles of environmental management in its activities, and it encourages the implementation of sustainability principles in its procurement practices. Tenderers should make all reasonable efforts to minimise adverse environmental impact in the methods of services delivery and in materials used.

#### **5.32 Copyright**

The Contracting Authority will have copyright ownership of any material developed for use by the Contracting Authority under the terms of this ITT document. The tenderer may have a non-exclusive license to use such material but only for its own purposes (to be agreed with the successful tenderer).

#### **5.33 Health & Safety**



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With respect to the jurisdiction where the supply of goods or services will be provided, the successful tenderer must comply with the following health and safety legislation as applicable:

The Safety, Health and Welfare at Work Acts 2005-2014

#### 5.34 Freedom Of Information

All responses to this ITT document will be treated in confidence and no information contained therein will be communicated to any third party without the written permission of the tenderer except insofar as is specifically required for the consideration and evaluation of the response or as may be required under law, including, but not limited to, the Freedom of Information Act 2014, EU and Irish procurement procedures, or in response to questions, debates or other parliamentary procedures in or of the Oireachtas (the Irish Parliament).

Tenderers are asked to consider if any of the information supplied by them in response to this request for tenders should not be disclosed because of its sensitivity. If this is the case, tenderers should specify the information that is sensitive and the reasons for its sensitivity. The Contracting Authority cannot guarantee that any information provided by tenderers, either in response to this tender or in the course of any Service Contract or contract awarded as a result thereof, will not be released pursuant to the Contracting Authority's obligations under law, including the Freedom of Information Act 2014, or to those under EU and Irish government procurement rules. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released, or in respect of any consequential damage suffered as a result of such disclosure.

#### 5.35 Transfer Of Undertaking and Protection of Employees (TUPE)

Tenderers shall take sole responsibility and undertake to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the member states relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003 European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (TUPE Regulations) and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the TUPE Regulations.

#### 5.36 Standstill Period

In circumstances where the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010), as amended by the European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory Instrument 192 of 2015) and the European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulation 2017 (Statutory Instrument 327 of 2017) apply, no Service Contract can or will be executed or take effect until at least fourteen (14) calendar days after the day on which the tenderers have been sent a notice informing them of the result of this competition ("Standstill Period") if such notice is sent by electronic means. The Standstill Period shall be sixteen (16) calendar days if such notice is sent by other means. The successful tenderer will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.

Tenderers should note that the Contracting Authority may, when notifying tenderers of the results of this competition, include the scores obtained by the tenderer concerned and the scores obtained by the successful tenderer in respect of each award criterion assessed by the Contracting Authority.

#### 5.37 Professional Services Withholding Tax ("PSWT") / Relevant Contracts Tax ("RCT")

For the purpose of PSWT, the Contracting Authority are deemed as "accountable persons" for certain professional services. In accordance with revenue rules, accountable persons must deduct PSWT at the rate of



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20% net of VAT from payments made to qualifying professional services and submit a PSWT returns and payment to Revenue. For full details and qualifying professional services please refer to [www.revenue.ie](http://www.revenue.ie).

For RCT, the Contracting Authority are deemed "Principal Contractors" for certain construction activities and relevant contracts. In accordance with RCT legislation, Principal Contractors must deduct RCT based on the rates as authorised by Revenue, exclusive of VAT from qualifying relevant contracts and submit a RCT return and payment to Revenue. For further details and guidance and qualifying relevant contract activity please refer to Part 18-02-04 - Relevant Contracts Tax for Principal Contractors ([www.revenue.ie](http://www.revenue.ie)).

## 6. ELIGIBILITY AND AWARD CRITERIA

### 6.1 Eligibility Criteria and Associated Rules

The Contracting Authority is using the Open Procedure. In the first instance, tenderers are requested to review the Selection Criteria and confirm using the self-declaration sheet attached at Appendix 3 – *Form Of Self Declaration* that they meet the minimum rules as set out below. This Selection Criteria will be assessed on a pass/fail basis. In the case of a grouping, this requirement will need to be completed by all group members.

The tenderer with the most economically advantageous tender will be requested to submit evidence in order to be validated against the Eligibility Criteria and rules contained in this Section 6 of the ITT document. Failure to achieve the required 'pass' mark on any of the Eligibility Criteria will result in the tenderer's elimination from the competition. In the event that this verification process reveals that misleading or inaccurate information has been provided, the tender in question will be rejected from further consideration. Moreover, tenderers may be precluded, at the discretion of the Contracting Authority, from participating in future competitions. In the event that, following a request from the Contracting Authority, tenderers are not in a position to provide the required evidence within three (3) working days, their tender submission will be eliminated from further consideration.

**For the avoidance of doubt, there is no requirement to complete Section 4.1 of the ITT document at this stage. Tenderers are requested to review the selection criteria and confirm using the self-declaration sheet attached at Appendix 3 – *Form of Self Declaration* that they meet the minimum rules as set out in below.**

**Alternatively, tenderers can avail of the option of submitting the European Single Procurement Document (ESPD) Article 59, confirming they meet the minimum rules as set out below.**

| ELIGIBILITY CRITERIA |                           | MARKING SCHEME       |
|----------------------|---------------------------|----------------------|
| 4.1 (a)              | Contact Details           | For information only |
| 4.1 (b)              | Insurances                | Pass / Fail          |
| 4.1 (c)              | Financial Capacity        | Pass / Fail          |
| 4.1 (d)              | Tax Compliancy            | Pass / Fail          |
| 4.1 (e)              | Declaration of Bona Fides | Pass / Fail          |
| 4.1 (f)              | Previous Experience       | Pass / Fail          |
| 4.1 (g)              | Quality Assurance         | Pass / Fail          |

- (a) Please complete the table below, providing contact details for your organisation. The table may be expanded as required.

| 4.1(a) – CONTACT DETAILS    |  |
|-----------------------------|--|
| Name of Organisation        |  |
| Company Registration Number |  |
| Date of Establishment       |  |
| Address of Organisation     |  |



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|                                                                   |  |
|-------------------------------------------------------------------|--|
| Contact Person                                                    |  |
| Position of Contact Person                                        |  |
| Telephone Number                                                  |  |
| E-mail Address                                                    |  |
| Information regarding partnership or subcontracting arrangements. |  |

**RULE:** Tenderers must complete this table. If the tender concerns a grouping or a partnership, each group member or subcontractor must answer each criterion below.

- (b) Please provide evidence (e.g., certificates of insurance) indicating that you possess the forms and levels of insurance specified. Alternatively, please provide a broker's letter indicating that the forms and levels of insurance specified can be put in place if you are successful in this competition.

| 4.1(b) – INSURANCES                                                                                                                              |                                                                |                                        |
|--------------------------------------------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------|----------------------------------------|
| INSURANCE                                                                                                                                        | LEVEL                                                          | APPENDIX AT WHICH EVIDENCE IS ATTACHED |
| Employer's Liability                                                                                                                             | €13m in any one occurrence                                     | <i>Insert</i>                          |
| Public / Product Liability                                                                                                                       | €6.5m in any one occurrence                                    | <i>Insert</i>                          |
| Cyber Risk insurance including Third Party Liability*                                                                                            | Please state if in place and specify limits currently arranged | <i>Insert</i>                          |
| ALTERNATIVELY                                                                                                                                    |                                                                |                                        |
| Broker's letter indicating that the forms and levels of insurance required can be put in place if the tenderer is successful in this competition |                                                                | <i>Insert</i>                          |

**\*Liability policies should extend to provide a specific indemnity to the Contracting Authority, including each individual subsidiary.**

**RULE:** Tenderers must provide evidence that they possess the forms and levels of insurance specified. Alternatively, tenderers must provide a broker's letter indicating that the forms and levels of insurance specified can be put in place if the tenderer is successful in this competition.

- (c) Please provide appropriate certified evidence defining your turnover for each of the three previous financial years (2023, 2024, and 2025 if available).

| 4.1(c) – FINANCIAL CAPACITY         |                                        |
|-------------------------------------|----------------------------------------|
| TYPE OF CERTIFIED EVIDENCE PROVIDED | APPENDIX AT WHICH EVIDENCE IS ATTACHED |
| <i>Insert</i>                       | <i>Insert</i>                          |



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**RULE:** Tenderers must provide evidence that they attained a turnover of at least **€40,000** in any one of the three (3) previous financial years.

- (d) Please provide your companies Tax Reference number and Access number for the Contracting Authority to verify your tax compliancy through Revenue's online facility (ROS).

| 4.1(d) – TAX COMPLIANCE                                                               |        |
|---------------------------------------------------------------------------------------|--------|
| Tax Reference Number                                                                  | Insert |
| Access Number                                                                         | Insert |
| Do you grant the Contracting Authority permission to verify your tax position online? | Insert |
| Signature                                                                             | Insert |

Alternatively, attach a current and valid Tax Clearance Certificate to your submission, specifying here the Appendix number or page at which it is contained:

|                     |  |
|---------------------|--|
| Appendix No. / Page |  |
|---------------------|--|

**RULE:** Tenderers must demonstrate that they are fully tax compliant.

- (e) Please complete and sign the Declaration of Bona Fides contained in Appendix 2 – *Declaration Of Bona Fides* of this ITT document.

**RULE:** Tenderers must complete, date and sign this declaration. Provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in this and future competitions.

Any -tenderer that cannot meet the requirements as prescribed in Appendix 2 – *Declaration Of Bona Fides* may provide evidence to the effect that measures taken by the tenderer are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion.

- (f) Please provide information regarding your previous experience by completing the tables below. The tables may be expanded as necessary.

**RULE:** Tenderers must detail two (2) projects delivered during the previous three (3) years that are of comparable nature and scale to the Contracting Authority's requirements under this competition. Tenderers are advised that the projects listed must demonstrate capability to deliver the various supply / service aspects to meet the Contracting Authority's requirements.

| 4.1(f) – PREVIOUS EXPERIENCE – PROJECT ONE |                        |  |
|--------------------------------------------|------------------------|--|
| Client Name                                |                        |  |
| Client contact details                     | Contact name           |  |
|                                            | Contact e-mail address |  |



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|                                                                                                |                          |          |
|------------------------------------------------------------------------------------------------|--------------------------|----------|
|                                                                                                | Contact telephone number |          |
| Approx. annual value                                                                           |                          |          |
| Start date                                                                                     |                          | End date |
| 1. Please outline the range of services carried out over the course of this contract.          |                          |          |
| <p><i>Insert, expanding this table as necessary</i></p>                                        |                          |          |
| 2. Please indicate how the contract is comparable with the subject matter of this competition. |                          |          |
| <p><i>Insert, expanding this table as necessary.</i></p>                                       |                          |          |
| 3. Please detail how any urgent requests were dealt with.                                      |                          |          |
| <p><i>Insert, expanding this table as necessary.</i></p>                                       |                          |          |

|                                                                                       |                          |          |
|---------------------------------------------------------------------------------------|--------------------------|----------|
| 4.1(f) – PREVIOUS EXPERIENCE – PROJECT TWO                                            |                          |          |
| Client Name                                                                           |                          |          |
| Client contact details                                                                | Contact name             |          |
|                                                                                       | Contact e-mail address   |          |
|                                                                                       | Contact telephone number |          |
| Approx. annual value                                                                  |                          |          |
| Start date                                                                            |                          | End date |
| 1. Please outline the range of services carried out over the course of this contract. |                          |          |

*Insert, expanding this table as necessary*

2. Please indicate how the contract is comparable with the subject matter of this competition.

*Insert, expanding this table as necessary.*

3. Please detail how any urgent requests were dealt with.

*Insert, expanding this table as necessary.*

## 6.2 Quality Assurance

Please outline your organisations quality assurance policy. Tenderers must detail their methodology for ensuring quality and must provide details of any Quality Management System that they have in place.

If your organisation has any third-party accreditations, please provide details below:

|                                                   |  |
|---------------------------------------------------|--|
| Date of original accreditation                    |  |
| Date of most recent audit                         |  |
| Scheduled date for next audit                     |  |
| Name of accreditation body                        |  |
| Scope of accreditation                            |  |
| Name of person responsible for quality management |  |

|                  |  |
|------------------|--|
| Certification    |  |
| Tick if attached |  |
| Appendix number  |  |

## 6.3 Award Criteria and Weightings

A Service Contract will be established with the tenderer submitting the most economically advantageous tender, identified following application of the Award Criteria and weightings detailed hereunder. It is emphasised that the Contracting Authority is not bound to accepting the most economically advantageous



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tender or any tender submissions received and reserves the right to accept or reject in whole or in part any or all tender submissions received.

| Award Criteria                                 | Percentage | Max. points available | Min. points required |
|------------------------------------------------|------------|-----------------------|----------------------|
| (A) Ultimate Cost                              | 25%        | 2,500                 | N/A                  |
| (B) Proposed Methodology for Service Delivery  | 45%        | 4,500                 | 2, 250               |
| (C) Technical Merit of Human Resources Offered | 20%        | 2,000                 | 1,000                |
| (D) Environmental and Social Considerations    | 10%        | 1,000                 | 500                  |
| Totals                                         | 100%       |                       |                      |

**NB:** Tenderers should ensure in their submissions that they provide detailed information in respect of all aspects of the Award Criteria as stated below. Failure to provide detailed responses to the Award Criteria may result in elimination from the competition.

### Criterion A – Ultimate Cost (25%)

Tenderers are required to complete in full the Form Of Tender contained in Appendix 1 – *Form Of Tender*. The lowest notional ultimate cost tender submission that also meets all minimum requirements described in this document will attain the highest score available under this criterion. The scores of all other valid tender submissions will be calculated as follows:

*Points awarded = (the maximum score achievable) multiplied by (the cost of the lowest-cost valid tender) divided by (the cost of the valid tender in question).*

Prices shall be fixed for the first two (2) years of the Service Contract. Any price changes for subsequent years of the Service Contract must be detailed and confirmed in writing to the Contracting Authority's Contract Manager / Procurement Manager for review and discussion at least three (3) months prior to any acceptance.

#### 6.4 Minimum Qualitative Score Required

Tenderers should note that they must achieve a minimum rating of "minimum mark" or 50% of the total marks available, the qualitative Criterion B,C and D to avoid elimination from the competition.

#### 6.5 Verification And Clarification Meetings

Meetings for the purpose of verification / clarification may be carried out with appropriate tenderers as a facet of the evaluation process in order to identify the most economically advantageous tender submission, prior to the establishment of the Service Contract. Such meetings may be required in order to verify the scores achieved by tenderers in respect of their tender submissions. For the avoidance of doubt, tenderers should note that mere performance at interview will not of itself be evaluated. In the event that such meetings are required, information regarding location and times will be communicated to the chosen tenderers. In order to ensure the optimum effectiveness of such meetings, it is strongly recommended that the key personnel proposed to manage this Service Contract on the part of the tenderer in question should attend.

If necessary, please complete the separate sheet and return it with your tender submission.

### Criterion B – Proposed Methodology for Service Delivery (45%)

Tenderers must respond to all requirements specified at section 2 of this document along with Appendix 6, demonstrating that their proposed methodology satisfies all of the Contracting Authority's requirements in respect of this tender requirement.

Please provide a detailed timeline from appointment right through to deployment and training.

As part of your proposal please provide a full overview of your commercial model and where applicable include example scenarios to show loyalty scheme in operation.

Please detail the current size of your marketable audience.

Provide details of other partners/brands using the loyalty scheme and how this will be made available to HRI customers, how will this enhance the HRI customer experience.

Provide detail of the number of customers by country currently using your Loyalty Scheme.

Provide details on how customers will collect loyalty i.e., via ticket purchases, retailers, social media engagement, broadcast & streaming platforms.

Provide detail on how the loyalty scheme would support HRI in engaging customers via email automation & targeted reactivation campaigns.

Provide details on how the loyalty scheme would support HRI sponsors & partners.

Expand as required.

If necessary, please complete the separate sheet and return it with your tender submission.

#### Criterion C – Technical Merit of Human Resources Offered

Tenderers are required to detail the proposed personnel responsible for the delivery of this service. Comprehensive curricula vitae must be provided for all staff members listed demonstrating previous experience of comparable nature to HRI and Subsidiaries requirements. Scores will be apportioned under this criterion on the basis of the expertise and qualifications of the individuals proposed. Resource Allocation (Appendix 4) to be completed as part of the response to this criterion. The exact roles and responsibilities of each individual proposed to be detailed in full.

Expand as required.

#### Criterion C – Environmental and Social Considerations

Tenderers are asked to provide any certificates, policies, practices and considerations relevant to the requirement that integrate principles of Green and Socially Responsible Public Procurement, that outline any of the following that contribute to the reduction of the Tenderer's Carbon Footprint and promoting fair working conditions and community engagement (this list is not exhaustive):

- climate action commitments made / planned;
- Any commitment to the ethical and responsible sourcing of labour and materials within the supply chain associated with this competition;
- Energy management policies, and any metrics used to track and benchmark sustainability performance of the supply chain associated with this requirement;

Tenderers should outline how these practices are applied and managed throughout the end-to-end supply chain.

Expand as required.

If necessary, please complete the separate sheet and return it with your tender submission.

## APPENDIX 1 – FORM OF TENDER

This Form of Tender must be completed, signed and returned by tenderers. Any amendment to the structure of this document, or any qualification of financial offers, may, at the sole discretion of the Contracting Authority, result in the elimination of the tender submission in question.

**Contracting Authority:** HRI Racecourses Ltd

**Competition:** Service Contract for the Provision of a Loyalty Scheme to HRI Racecourses Ltd

**From (Tenderer):**

The cost proposals must be inclusive of all out-of-pocket expenses, travel, subsistence and ancillary expenses or costs of every description, including costs relating to the production of documentation, production of quotes and any administrative and assembly supervision surcharges or expenses.

The Contracting Authority reserves the right to request a breakdown of the above prices.

I/We, having read the full ITT Document and associated Appendices, do hereby offer to provide the whole of the supplies / services described all to the entire satisfaction of the Contracting Authority, for the above prices, and enter into a Service Contract accordingly.

**I/We confirm that I/we:**

1. Understand the nature and extent of the Supplies / Services required to be delivered as described the ITT document.
2. Accept all of the Terms and Conditions of the ITT document and the Service Contract and agree if awarded a Service Contract to execute the Service Contract appended at Appendix 4 – *Terms & Conditions* to the ITT document.
3. Agree to provide the Contracting Authority with the Services / Supplies in accordance with the ITT document and our tender submission.
4. Have examined the ITT documentation and hereby offer to provide the Supplies / Services above in accordance with the specification and terms set out in the ITT document.
5. Will keep this offer open for acceptance by the Contracting Authority for a period of twelve (12) months from the date of deadline for submission of tender.
6. Agree that the Contracting Authority are not bound to accept the most economically advantageous tender submission or any tender submission that may be received by the Contracting Authority.
7. Have read and thoroughly examined the ITT document and fully understand the ITT document and the Contracting Authority's requirements.
8. Undertake to perform and complete the Supplies / Services in accordance with the terms and conditions of the ITT document General Specification Of Requirements (Section 4).
9. Acknowledge that all costs and expenses incurred by us in producing and submitting this tender submission will be borne by us in full.
10. Certify that the information provided in this tender submission is accurate and complete to the best of our knowledge and belief.



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11. Understand that the provision of inaccurate or misleading information in this Form of Tender may lead to my organisation being excluded from participation in this and future competitions.
12. Undertake to treat the details of this ITT document, the resulting tender submission and any subsequent clarifications as private and confidential.
13. Acknowledge that acceptance by the Contracting Authority of a tender submission will not constitute a binding and enforceable agreement and that a legally enforceable agreement will not exist until and unless the Service Contract has been established by the Contracting Authority;
14. Have availed of all offers for additional information or have otherwise satisfied ourselves as to conditions that may in any manner affect the performance of the Service Contract awarded under it.
15. Have included everything necessary for the performance of the Supplies / Services required under the Service Contract which are either expressly stated in the ITT document or contained in any supplementary information or which could reasonably be inferred therefrom.
16. Have found no errors, omissions, conflicts or ambiguities in the ITT document, except those which I/We have brought to the attention of the Contracting Authority before the latest date for submitting queries.
17. Have included for compliance with all statutory requirements applicable in the Republic of Ireland and those applicable in any country where parts of the contract may be performed that are in force seven (7) days prior to the deadline for receipt of tender responses.
18. Will not, if awarded a Service Contract, employ labour in a manner that is discriminatory in relation to gender, race, religious beliefs, age, etc., or source any part of any Service Contract awarded in countries subject to official international trading sanctions.
19. Understand the nature and extent of the requirements as described in Section 4 – *General Specification of Requirements* of this ITT document.
20. Have reviewed Appendix 4 – *Terms and Conditions* of the ITT document and Service Contract and either (a) have no queries / issues and if awarded will execute the requirements to these terms OR (b) confirm that we have submitted our queries relating to these Terms and Conditions either via the ITT clarification question and answer process or along with our tender submission.
21. Accept all the Eligibility and Award Criteria as set out in the ITT document.
22. Agree to execute the requirements to the Contracting Authority in accordance with the ITT document and our tender submission.
23. Agree that, if awarded any Service Contract, we shall, in the performance of such, comply with all applicable obligations in the field of environmental, social and labour law.
24. Confirm that we have complied with all requirements as set out in Section 5 – *Instructions to Tenderers* within this ITT document.



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25. Confirm that all prices quoted in our tender submission will remain valid for the period of time commencing from the ITT Deadline, as specified within at Clause 5.11 of this ITT document.
26. Shall, if awarded any Service Contract under this competition, have in place on the Effective Date of the Service Contract, all insurances (if any) as required, outlined in Section 6 – *Eligibility Criteria*.
27. Confirm that all Data Subjects whose Personal Data is provided in our tender submission have consented to the processing of such Personal Data by us, the Contracting Authority, the Evaluation Team and the supplier of the [www.etenders.gov.ie](http://www.etenders.gov.ie) website, for the purposes of our participation in this competition, or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request

|           |          |       |          |
|-----------|----------|-------|----------|
| SIGNATURE | (Insert) | Date  | (Insert) |
| Name      | (Insert) | Phone | (Insert) |
| Position  | (Insert) | Email | (Insert) |

**A Tenderer's failure to sign and date this Form of Tender and to complete all sections will invalidate the tender submission.**

## APPENDIX 2 - DECLARATION OF BONA FIDES

I, having been duly authorised by the economic operator, sincerely declare that itself or any person who has is a member of the administrative, management or supervisory body of the economic operator or has powers of representation, decision or control in the economic operator:

- a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Service Contract Decision 2008/841/JHA.
- b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Service Contract Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority.
- c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
- d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Service Contract Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Service Contract Decision.
- e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
- f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.
- g) Is not in breach of its obligations relating to the payment of taxes or social security contributions.
- h) Has, in the performance of all public contracts, complied with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the services provided, that have been established by EU law, national law, collective agreements or 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).
- i) Is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.
- j) Is not guilty of grave professional misconduct.
- k) Has not entered into agreements with other economic operators aimed at distorting competition.
- l) Is not aware of any conflict of interest due to its participation in the Competition.



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- m) Has not had any prior involvement in the preparation of the Competition.
- n) Is not guilty of significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
- o) Is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).
- p) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.
- q) I understand and acknowledge that the provision of inaccurate or misleading information in this declaration may lead to my business/firm/company/partnership being excluded from participation in this or future tenders, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1938. This declaration is made for the benefit of the Contracting Authority.

**THIS FORM MUST BE COMPLETED AND SIGNED BY A DULY AUTHORISED OFFICER OF THE TENDERER**

**I certify that the information provided above is accurate and complete to the best of my knowledge and belief.**

**I understand that the provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in this and future competitions.**

|                  |          |              |          |
|------------------|----------|--------------|----------|
| <b>SIGNATURE</b> | (Insert) | <b>Date</b>  | (Insert) |
| <b>Name</b>      | (Insert) | <b>Phone</b> | (Insert) |
| <b>Position</b>  | (Insert) | <b>Email</b> | (Insert) |

| APPENDIX 3 – SELF DECLARATION                                                                                                                                                                                                                                                                                                                                                                                                                                           |                                                                                |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------|
| SELF DECLARATION – SELECTION CRITERIA                                                                                                                                                                                                                                                                                                                                                                                                                                   |                                                                                |
| To                                                                                                                                                                                                                                                                                                                                                                                                                                                                      | The Contracting Authority                                                      |
| Competition                                                                                                                                                                                                                                                                                                                                                                                                                                                             | Service Contract for the Provision of a Loyalty Scheme for HRI Racecourses Ltd |
| Name of Organisation                                                                                                                                                                                                                                                                                                                                                                                                                                                    | Insert                                                                         |
| Address of Organisation                                                                                                                                                                                                                                                                                                                                                                                                                                                 | Insert                                                                         |
| Contact Person and Position:                                                                                                                                                                                                                                                                                                                                                                                                                                            | Insert                                                                         |
| Telephone Number                                                                                                                                                                                                                                                                                                                                                                                                                                                        | Insert                                                                         |
| E-mail Address                                                                                                                                                                                                                                                                                                                                                                                                                                                          | Insert                                                                         |
| Information regarding partnership or subcontracting arrangements.                                                                                                                                                                                                                                                                                                                                                                                                       | Insert                                                                         |
| <b>4.1 (b) Insurances</b>                                                                                                                                                                                                                                                                                                                                                                                                                                               | <b>Please confirm</b>                                                          |
| I confirm possession of the required forms and levels of insurance and will provide insurance certificates as evidence of this fact promptly following receipt of a request from the Contracting Authority <b>or</b> I undertake to put the required forms and levels of insurance in place if successful in the competition and will provide a broker's letter indicating my capacity to do so promptly following receipt of a request from the Contracting Authority. | (Insert)                                                                       |
| <b>4.1 (c) Financial Capacity</b>                                                                                                                                                                                                                                                                                                                                                                                                                                       | <b>Please confirm</b>                                                          |
| I confirm that I have adequate financial capacity to meet the turnover requirements specified in respect of Eligibility Criterion 4.1(c) and will provide appropriate evidence to this effect promptly following receipt of a request from the Contracting Authority.                                                                                                                                                                                                   | (Insert)                                                                       |
| <b>4.1 (d) Tax Clearance</b>                                                                                                                                                                                                                                                                                                                                                                                                                                            | <b>Please confirm</b>                                                          |
| I confirm that my tax affairs are up to date and that I am fully tax compliant, <b>or</b> I confirm that I have applied for a Tax Clearance Certificate, which will be made available promptly following receipt of a request from the Contracting Authority.                                                                                                                                                                                                           | (Insert)                                                                       |
| <b>4.1 (e) Declaration of Bona Fides</b>                                                                                                                                                                                                                                                                                                                                                                                                                                | <b>Please confirm</b>                                                          |
| I confirm that I fully meet the requirements as set out the Declaration of Bona Fides as set out in Appendix 2 – Declaration Of Bona Fides and will promptly supply a signed copy following receipt of a request from the Contracting Authority.                                                                                                                                                                                                                        | (Insert)                                                                       |
| <b>4.1 (f) Previous Experience</b>                                                                                                                                                                                                                                                                                                                                                                                                                                      | <b>Please confirm</b>                                                          |
| I confirm that I have delivered two (2) projects of a similar nature and scale within the past three (3) years and will promptly supply sufficiently annotated details following receipt of a request from the Contracting Authority.                                                                                                                                                                                                                                   | (Insert)                                                                       |
| <b>4.1 (g) Quality Assurance</b>                                                                                                                                                                                                                                                                                                                                                                                                                                        | <b>Please confirm</b>                                                          |
| I confirm that I have a Quality Assurance Policy / Quality Management System / Quality Accreditation in place, and will promptly provide evidence of such following receipt of a request from the Contracting Authority.                                                                                                                                                                                                                                                | (Insert)                                                                       |



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I certify that the information provided above is accurate and complete to the best of my knowledge and belief.  
I understand that the provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in this and future competitions.

**THIS FORM MUST BE COMPLETED AND SIGNED BY A DULY AUTHORISED OFFICER OF THE TENDERER'S ORGANISATION**

|                  |                 |              |                 |
|------------------|-----------------|--------------|-----------------|
| <b>SIGNATURE</b> | <i>(Insert)</i> | <b>Date</b>  | <i>(Insert)</i> |
| <b>Name</b>      | <i>(Insert)</i> | <b>Phone</b> | <i>(Insert)</i> |
| <b>Position</b>  | <i>(Insert)</i> | <b>Email</b> | <i>(Insert)</i> |

#### APPENDIX 4 - TERMS AND CONDITIONS

The following terms are those intended to be signed with the successful tenderer(s) arising from this competition. Tenderers are not requested to sign these terms as part of their tender submission, but tenderers are required to carefully review, and any queries / areas of concern MUST be submitted prior to the deadline for queries as outlined in 5.3 of this ITT document.

#### Terms and Conditions of Service/Supply Contract for the Provision of [XXXX]

##### Parties

- (1) Horse Racing Ireland and any of its Affiliates (Hereinafter referred to as the 'Contracting Authority')
- (2) [insert contractor name] (the "Contractor")

##### Definitions

"*Affiliate*", any entity that directly or indirectly controls, is controlled by, or is under common control with another entity;

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

"*Charges*", the Charges as set out in Schedule 2 which are, except where agreed in writing by the Contracting Authority, inclusive of all costs of administration, packaging, delivery, insurance, transportation, taxes, tariffs, customs charges and all other costs and expenses;

"*Commencement Date*", [insert date];

"*Confidential Information*", any information of a confidential or proprietary nature, including (but not limited to) any material information concerning any matters affecting or relating to the business of either Party including, without limitation to the generality of the foregoing, the names of any of its customers, products, financial records, services, research, databases, trade secrets, secret or confidential operations/processes, computer software and source/object code, business or marketing plans, the prices it obtains or has obtained or at which it sells or has sold its Services;

"*Contract*", this Contract which follows together with any schedule or other annexed material signed by the Parties;



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"*Data Protection Legislation*", means all laws relating to the processing of personal data, privacy and security, including, without limitation, the EU Data Protection Directive 95/46/EC, the Irish Data Protection Acts, 1988 to 2018 (as may be amended from time to time), the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. No 336 of 2011) and the General Data Protection Regulations (EU) 2016/679 ("GDPR") together with equivalent legislation of any other applicable jurisdiction, delegated legislation of other national data protection legislation, and all other applicable law, regulations and approved codes of conduct, certifications, seals or marks in any relevant jurisdiction relating to the processing of personal data including the opinions, guidance, advice, directions, orders and codes of practice issued or approved by a data supervisory authority or the Article 29 Working Party or the European Data Protection Board, in each case as amended, supplemented or substituted from time to time;

"*Deliverables*", the deliverables agreed to between and by the Parties at the commencement of this Contract in respect of the Services as may be set out in Schedule 1;

"*Extended Term*", shall have the meaning ascribed to it in clause 0;

"*Initial Term*", shall have the meaning ascribed to it in clause 0;

"*IPR*", all intellectual property rights including without limitation patents, (including utility models and inventions), trade marks (including service marks, trade names and business names), design rights, copyright and related rights (including rights in respect of software), internet designations (including domain names), moral rights and database rights, (whether or not any of these is registered and including any application for registration of any such rights), know-how, Confidential Information and trade secrets for the full term of such rights and including any extension to or renewal of the terms of such rights and all rights or forms of protection of a similar nature or having similar effect to any of these which may exist anywhere in the world;

"*Services*", the services to be provided by the Contractor to the Contracting Authority in accordance with this Contract, as described in Schedule 1;

"*Specifications*", the specifications as set out in Schedule 3;

"*Tender Documentation*", the RFT and Contractor's Form of Tender as may be set out in Schedule 4;

"*Term*", the Initial Term and any Extended Term (as the case may be) of the Contract as set out in clause 3;

## General<sup>1</sup>

The Contracting Authority has conducted a tender competition for the award of a competition for the provision of [insert service].

The competition was advertised on the Irish Government procurement website <http://www.etenders.gov.ie> ([insert date] & RFT [XXX]).

The open procedure was used and an Invitation to Tender document was issued with a tender submission deadline of [insert date] as set out in Schedule 4.

Following evaluation of the Tender Documentation, the Contractor is hereby appointed to provide the Services described in Schedule 1. In turn, the Contracting Authority undertakes to pay the Charges in accordance with clause 7.

This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:

This Agreement and Schedules hereto;

[The Service Contract;]

The [ITT/RFT];

The [Tender/Submission]

## Duration

This Contract shall commence from the Commencement Date, and unless terminated earlier in accordance with clause 0 (Termination) or this clause, this Contract shall continue until [insert date] ("Initial Term") and shall automatically extend for one year ("Extended Term") at the end of the Initial Term and at the end of each Extended Term. The Parties may agree in writing, not later than 90 days before the end of the Initial Term or the relevant Extended Term, to terminate this Contract at the end of the Initial Term or the relevant Extended Term, as the case may be.

Clause 0 is subject to the duration as set out in Schedule 1 of this contract.

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<sup>1</sup> These provisions will need to be tailored / removed if the Services are not subject to a tender procedure and/or if the contract was awarded on foot of a SRFT under the Service Contract.

## Contractor's Obligations

The Contractor undertakes to perform all obligations arising from this Contract with due care, skill and diligence. The Contractor shall require any agents and subcontractors (where permitted) to exercise due care, skill and diligence in the carrying out of obligations allocated by the Contractor under the terms of this Contract.

In consideration of the payments in accordance with clause 0 (Payment), the Contractor shall:

provide the Services in accordance with the provisions of Schedule 1, the ITT, the Contracting Authority's instructions and the terms of this Contract;

comply with and implement any policies, guidelines and/or any project governance protocols issued by the Contracting Authority from time to time and notified to the Contractor in writing;

comply with all local security and health and safety arrangements as notified to it by the Contracting Authority; and

Deliver the Agreement 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.

The Contractor undertakes to perform all obligations arising from this Contract in accordance with good industry practice and will comply with all applicable laws, including, but not limited to, the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the Data Protection Legislation, the Freedom of Information Act 2014 and employment legislation.

The Contractor will be responsible for compliance with all statutory requirements of an employer, all legally binding sectoral agreements 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 Contract.



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The Contractor is deemed to be the prime contractor under this Contract, will assume full responsibility for the execution of the Contract and will assume all the duties, responsibilities and obligations associated with the position of prime contractor. In this regard, the Contractor hereby assumes liability for any subcontractors (where permitted) and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Contract to the extent that it or they are retained by the Contractor. The Contractor shall notify the Contracting Authority as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.

During the course of this Contract, the Contractor shall be an independent contractor and not the employee of the Contracting Authority. The officers, employees or agents of the Contractor are not and shall not hold themselves to be (and shall not be held by the Contractor to be) servants or agents of the Contracting Authority for any purposes whatsoever.

The Contractor agrees that any information relating to this Contract and / or the performance of this Agreement may be passed by the Contracting Authority 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.

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 "Regulations") and failure to so comply shall constitute a material breach of this Contract. The Contractor shall indemnify, save harmless and keep the Contracting Authority indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Contracting Authority under the Regulations by any affected employees. Affected employees shall mean those employees in respect of whom the Regulations may be deemed to apply in connection with this Contract.

The Contractor will not (and will procure that its employees, contractors, and agents do not) use any AI Solution in the provision of the Services, whether via the input or use of Contracting Authority Data as training data or in any instruction, prompt, question, request or otherwise, without the prior written consent of the Contracting Authority, which is at the absolute discretion of the Contracting Authority. The consent of the contracting Authority shall be subject to such conditions for the utilisation of such AI Solution in the provision of the Services as the Contracting Authority deems appropriate.

"AI Solution" any system, model, tool or program based upon or utilising artificial intelligence, including but not limited to any solution using generative artificial intelligence;



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"Contracting Authority Data" means all information, data and content which is provided by the Contracting Authority to the Contractor when accessing, using or receiving the Services or otherwise in connection with this Agreement, information, data and content which is generated by the Contracting Authority in the use of the Services, personal data (as defined in Data Protection Legislation) of the Contracting Authority or Confidential Information of the Contracting Authority;

### **Delivery of the Required Services**

The Contractor shall provide the Services at the time(s), to the location(s) and on the date(s) specified in Schedule 1 or otherwise agreed in writing between the Parties.

### **Key Personnel**

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel (as may be specified in the Tender Documentation (if any) or otherwise in writing) shall be available for the Term. The Contractor acknowledges and undertakes that it shall immediately notify the Contracting Authority in writing of any proposed change to the nominated personnel, requesting the approval of the Contracting Authority prior to implementing the change.

### **Payment**

Subject to the provisions of this clause 0, the Contracting Authority shall pay the Contractor the Charges in accordance with any invoicing arrangements as set out in Schedule 2.

Payment of the Charges is strictly subject to:

Compliance by the Contractor with the provisions of this Contract and any milestones, schedules or deadlines agreed between the Parties from time-to-time;

Successful completion of any acceptance tests (where applicable) pursuant to clause 8;

The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Contracting Authority from time-to-time;

The Contracting Authority being in possession of the Contractor's current Tax Clearance Certificate;

The Contractor's compliance with all EU and domestic taxation law and requirements.

The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2012



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shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

Remuneration will be made subject to the retention by the Contracting Authority in accordance with clause 523 of the Taxes Consolidation Act, 1997 of any withholding taxes 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.

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.

#### **Acceptance Testing<sup>2</sup>**

The Contracting Authority shall undertake any acceptance tests and all other necessary and agreed commissioning tests for any Deliverables for the purposes of demonstrating to the Contracting Authority that the relevant Specifications, as set out in Schedule 3, have been met in full. The Contractor shall follow good industry practice when conducting the acceptance tests.

The acceptance tests will require the Contractor to demonstrate that the Deliverables meet all of the requirements set out in the Specification and that the Deliverables are capable of continuing to meet those requirements for the duration of the Term.

The Contracting Authority and Affiliates shall either:

accept that the said test results meet the requirements in the relevant Specifications confirm acceptance; or

notify the Contractor in writing that the test results (and/or data), whether in whole or in part, are not in accordance with the Specifications, and shall formally reject same and require the Contractor to remedy the same. In the event that the Contracting Authority has not, within [thirty (30) Business Days] as aforesaid, provided the Contractor with its acceptance or written notice that the same has been rejected, then the Services (as appropriate) shall be deemed to be accepted.

In the event that the Contracting Authority invokes the above clause, the Contracting Authority notice shall specify in what respects it considers that the test results and/or data are defective or otherwise non-compliant with the Specification. The Contractor shall forthwith remedy any defect or non-compliance, and re-submit for testing as soon

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<sup>2</sup> This may not be required in all circumstances. The provisions here are relatively standard acceptance testing provisions. Where acceptance testing is required, this clause should be carefully reviewed to ensure it is suitable. We have proposed the possibility of "deemed acceptance" (clause 0); this should only be used where relevant.



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as possible and in any case no later than 10 Business Days from receipt of notice from the Contracting Authority for Contracting Authority testing and acceptance. Any and all costs associated with the acceptance tests foregoing where it results from the default or error of the Contractor shall be for the account of the Contractor.

For the avoidance of doubt, acceptance of any part of the Services (as appropriate) by the Contracting Authority shall (with the exception of the deemed acceptance provisions in clause 0) only be deemed to have taken place upon the Contracting Authority issuance of written confirmation of acceptance.

### **Warranties, Representations and Undertakings**

The Contractor warrants, represents and undertakes that:

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;

It is entering into this Contract with a full understanding of its material terms and risks and is capable of assuming those risks;

It is entering into this Contract with a full understanding of its obligations with regard to taxation, employment, data protection and environmental protection and is capable of assuming and fulfilling those obligations;

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/Supplies as they apply to the Contractor;

It has taken all and any action necessary to ensure that it has the power to execute and enter into this Contract;

The status declared in its Declaration of Bona Fides, which concerns Article 57 of Directive 2014/24/EU, remains unchanged;

it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 11 below) that are necessary for the performance of its obligations under this Contract and for the Contracting Authority to obtain the benefit of the Services for its business purposes;

It retains and shall maintain for the term of this Contract the forms and levels of insurance specified in any Tender Documentation or Qualification Questionnaire associated with any competition leading to the award of this Contract;



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the Contracting Authority shall be under no obligation to purchase any minimum number or value of Services.

The Contractor undertakes to notify the Contracting Authority forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at clause 0 and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of this Contract

#### **Remedies**

The Contractor shall indemnify and keep indemnified the Contracting Authority against all liabilities, costs, expenses, damages and losses (including any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal and other reasonable professional costs and expenses) suffered or incurred by the Contracting Authority arising out of or in connection with the Contractor's breach of this Contract howsoever arising or any wilful or negligent act or omission of the Contractor, its officers, employees, contractors or agents, including all such liabilities, costs, expenses, damages and losses arising out of or in connection with any of the causes or types of breach referred to in clause 16.1 or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 4. The terms of this clause 0 shall survive termination of this Contract for any reason.

Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, 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.

Should the Contracting Authority find itself obliged to acquire Service otherwise than from the Contractor in consequence of the failure of the Contractor to execute any aspect of the Contract, the Contracting Authority shall be entitled to recover from the Contractor any excess prices which have been paid by the Contracting Authority.

Except as otherwise expressly provided by this Contract, all remedies available to either Party for breach of this Contract 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.

### Intellectual Property<sup>3</sup>

All IPRs in any Deliverables produced for the purposes of this Contract shall vest in the Contracting Authority and the Contractor so acknowledges and confirms.

The Contracting Authority and its licensors shall retain ownership of all the Contracting Authority's IPRs.

To the extent that any IPRs do not vest in the Contracting Authority pursuant to clause 0 the Contractor grants the Contracting Authority a perpetual fully paid-up, worldwide, non-exclusive, transferable, royalty-free, sub-licensable licence to copy and modify the Contractor's IPRs for the purpose of receiving and using the Services.

The Contractor shall indemnify the Contracting Authority against all 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 Contracting Authority arising out of or in connection with any claim brought against the Contracting Authority for actual or alleged infringement of a third party's rights (including any IPRs) arising out of, or in connection with, the receipt, use or onward supply of the Services by the Contracting Authority. This clause 0 shall survive termination of the Contract.

Upon the termination of this Contract for whatever reason, the Contractor shall immediately deliver up to the Contracting Authority all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason. "Materials" for the purposes of this clause means all "reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Contract".

### Confidentiality

Each Party may be given access to Confidential Information from the other Party in order to perform its obligations under this Contract. A party's Confidential Information shall not be deemed to include information that:

is or becomes publicly known other than through any act or omission of the receiving Party;

was in the other Party's lawful possession before the disclosure;

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<sup>3</sup> Intellectual Property provisions should always be carefully considered depending on the Services provided.



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is lawfully disclosed to the receiving Party by a third party without restriction on disclosure.

Subject to clause 0, each Party shall hold the other's Confidential Information in confidence and not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Contract.

Each Party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this Contract.

A Party may disclose Confidential Information to the extent such Confidential Information is required to be disclosed by law, by any governmental or other regulatory authority or by a court or other authority of competent jurisdiction, provided that, to the extent it is legally permitted to do so, it gives the other Party as much notice of such disclosure as possible and, where notice of disclosure is not prohibited and is given in accordance with this clause 0, it takes into account the reasonable requests of the other Party in relation to the content of such disclosure.

Neither Party shall be responsible for any loss, destruction, alteration or disclosure of Confidential Information caused by any third party.

The Contractor acknowledges that details of the Services, and the results of any performance tests of the Services, constitute the Contracting Authority's Confidential Information.

No Party shall make, or permit any person to make, any public announcement concerning this Contract or refer to this Contract in any publicity or advertising material without the prior written consent of the other Party, except as required by law, any governmental or regulatory authority (including, without limitation, any relevant securities exchange), any court or other authority of competent jurisdiction.

Each Party shall notify the other Party if any of its staff connected with the provision or receipt of the Services become aware of any unauthorised disclosure of any Confidential Information and shall afford reasonable assistance to the other Party, in connection with any enforcement proceedings which that other Party may elect to bring against any person.

The Contractor shall, promptly (and in any event within 7 days of the termination or expiry of this Contract), deliver up to the Contracting Authority all documents and other materials in the possession, custody or control of the Contractor that bear or incorporate any part of the Contracting Authority's Confidential Information.

Subject to clause 0 each of the Parties agrees to hold Confidential Information received, provided or obtained arising from their participation in this Contract and shall not disclose same to any



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third party except to its employees, officers or professional advisers for the purposes of carrying out obligations under the Contract, or as may be required by law.

In circumstances where the Contracting Authority is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Contracting Authority receiving a request for information related to this Agreement, the Contracting Authority 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 Contracting Authority will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations..

The above provisions of this clause 0 shall survive termination, expiry or completion of this Contract, however arising.

#### **Data Protection**

All terms in this clause 0 (Data Protection) including "data controller", "data processor", "data protection impact assessment", "data subject", "data subject request", "data supervisory authority", "processing", "personal data", and "personal data breach" have the meaning given to them in the GDPR.

With respect to the rights and obligations of each Party under this Contract, the Parties agree that, to the extent the Contracting Authority is the data controller and the Contractor is the data processor of the personal data the provisions of this clause 13.2 apply. The particulars of the processing are set out in Schedule 5.

Both Parties shall comply with all applicable requirements of the Data Protection Legislation.

This clause 02 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.

To the extent that the performance of the Services by the Contractor involve the processing of personal data, the Contractor agrees and warrants that:

it shall only process personal data for the purposes of performing this Contract in accordance with the written instructions of the Contracting Authority or as otherwise notified by the Contracting Authority to the Contractor from time to time;



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it shall ensure that persons authorised to process personal data are subject to obligations of confidentiality, no less strict than the provisions of clause 12, in relation to such personal data;

it complies with and will continue to comply with its obligations as a data processor and its obligations in respect of personal data under this Contract;

it will not do or permit anything to be done which might cause the Contracting Authority to be in breach of the Data Protection Legislation;

as personal data are confidential in nature, it shall, unless otherwise directed in writing by the Contracting Authority:

process personal data on behalf of the Contracting Authority exclusively for the performance of the Services and the provisions of this Contract but for no other purposes whatsoever;

take reasonable steps to ensure that neither the Contractor nor any of its employees, agents or temporary contractors or any sub-processor (where permitted) alter, copy, store, publish, disclose or divulge personal data except as necessary for the performance by the Contractor of its obligations under this Contract or as directed in writing to do so by the Contracting Authority;

ensure (and procure that its employees, agents and temporary contractors and any sub-processor ensure) that the processing of personal data takes place exclusively in the EEA or in a jurisdiction or territory providing "adequate" data protection as approved by the European Commission in a decision taken in accordance with Article 45 of the GDPR and that no transfer or access to or other processing of personal data to/from any other jurisdiction or territory occurs or is permitted without the prior written and explicit authorisation of the Contracting Authority (in each case) and then only in a manner which is compliant with Data Protection Legislation applicable to the Contracting Authority;

assist the Contracting Authority as reasonably required in a timely manner where the Contracting Authority conducts a data protection impact assessment and, where necessary, assist the Contracting Authority with any prior consultations, investigations or audits conducted by a data supervisory authority or any other



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applicable regulatory authority to the extent necessary (including, without limitation, the preparation or provision of supporting documentation to be submitted to the relevant data supervisory authority);

immediately and without undue delay (but in any event within twenty-four (24) hours of becoming aware of it) notify the Contracting Authority in writing of any suspected, potential or actual data incidents, including any suspected, alleged, potential or actual unauthorised disclosure, loss, destruction, compromise, damage, alteration, access or theft of personal data or any incident or set of events which may give rise to a personal data breach.

The Contractor shall (and shall procure that its employees, agents and/or temporary contractors and any sub-processor (where permitted) shall):

promptly notify and assist the Contracting Authority in relation to any legally binding request for disclosure of personal data by a law enforcement or other applicable authority unless otherwise prohibited by the applicable laws and regulations;

promptly notify and assist the Contracting Authority in fulfilling its obligations to all data subject requests by notifying the Contracting Authority about any data subject requests received directly from, or rights exercised by, data subjects without responding to that request;

assist the Contracting Authority in taking any actions deemed necessary or appropriate to deal with complaints or allegations of or in connection with a failure to comply with the Data Protection Legislation; and

promptly notify the Contracting Authority prior to carrying out any instruction from the Contracting Authority if, in the Contractor's opinion, such instruction is likely to result in processing that is in breach of the Data Protection Legislation;

upon giving the Contractor reasonable notice, allow the Contracting Authority to carry out an audit or inspection in relation to the processing of personal data by the Contractor in order to satisfy itself that the Contractor is complying with the Data Protection Legislation in respect of the Services.

The Contractor agrees that, having regard to the state of the art and the costs of implementation and the nature, scope context and purposes of processing as well



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as the risk of varying likelihood and severity for the rights and freedoms of the data subjects, the Contractor shall implement appropriate security, technical and organisational measures to ensure a level of security appropriate to the then current risk to personal data, including access controls, confidentiality requests, technical and organisational controls, and back-up. Upon the Contracting Authority's request, the Contractor shall provide to the Contracting Authority a written description of the security, technical and organisational measures employed by the Contractor under this clause 0.

The Contractor shall not subcontract its processing obligations performed on behalf of the Contracting Authority under this Contract to a sub-processor without the prior written consent of the Contracting Authority. The Contracting Authority shall have the right to object on reasonable grounds to the use or replacement of any sub-processor within fourteen (14) days of the Contractor notifying the Contracting Authority of the change. Where the Contracting Authority objects to the use of the proposed sub-processor, the Contractor shall use reasonable endeavours to find an alternative solution to enable the Contracting Authority to continue to use the Services and shall ensure that no personal data is processed by any unauthorised sub-processor until such time as an acceptable solution is put in place. In the event that no alternative solution can be arranged to the Contracting Authority's satisfaction, the Contracting Authority shall have the right to terminate the Contract or part or all of the Services. Any authorised sub-processor, shall be engaged under a binding written contract containing the same data protection obligations as apply to the Contractor under the Contract.

On termination or expiry of this Contract, return or delete, at the election of the Contracting Authority, all Contracting Authority personal data and all copies save to the extent the Contractor is required by European Union or European Union member state law to retain Contracting Authority personal data.

With respect to the rights and obligations of each Party under this Contract, the Parties agree that, to the extent that both the Contracting Authority and the Contractor are independent controllers of the personal data, the provisions of this clause 13.3 shall apply.

The Parties agree that any personal data shared under this Contract will be processed only as necessary in order to provide the Services.

The Contractor shall:

comply with all obligations as required under Data Protection Legislation;



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ensure that transfers of personal data to an appointed sub-processor are subject to written contractual obligations concerning personal (including obligations of confidentiality) which are no less onerous than those imposed by this Contract; and

at the written direction of the Contracting Authority, delete or return personal data shared under this Contract and copies thereof to the Contracting Authority on termination of this Contract unless required by law to store the personal data.

### **Conflict**

If there is an inconsistency between any of the provisions of this Contract and the provisions of the Tender Documentation (if any), the provisions of this Contract shall prevail.

The Contracting Authority shall notify the party immediately if any conflict or potential conflict of interest arises. In the event that a conflict arises, the Contracting Authority shall have the right to terminate this Contract immediately and without liability for compensation or damages.

### **Force Majeure**

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 8B 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.

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:

the nature of the Force Majeure Event;

the anticipated delay in the performance of obligations;

the action proposed to minimise the impact of the Force Majeure Event;



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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.

If the Force Majeure Event continues for 180 calendar days either Party may terminate at 14 days' notice.

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.

#### Termination

Either Party shall have the right (in addition to any other rights which it has at law) to terminate this Contract immediately and without liability for compensation or damages on the happening of any of the following:

If the other Party commits any serious breach or a series of breaches of any provision of this Contract and fails to remedy such breach(es) within 30 days after receipt of a request in writing from the other Party; and/or

If the other Party becomes insolvent, becomes bankrupt, 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.

The Contracting Authority shall have the right, in addition to any other rights which it has at law, to terminate this Contract immediately and without liability for compensation or damages should it become aware that any of the excluding circumstances listed in Article 57 of Directive 2014/24/EU apply to the Contractor or if 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).

On completion or termination of this Contract, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Contractor which is in its possession.

If requested, the Contractor shall, upon the termination of this Contract for any reason or prior to the expiration of the Term, promptly furnish such anonymised information relating to the terms



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and conditions of the employment of all persons providing the Services as may be required by the Contracting Authority. The Contractor agrees to the Contracting Authority releasing any such anonymised information to third party tenderers for the purposes of any future procurement competitions.

#### Not Used

#### Contract Management

The Contracting Authority and the Contractor shall liaise on a regular basis to address any issues arising that may impact on the performance of this Contract and to agree milestones, compliance schedules and operational protocols as required from time-to-time.

The Contractor agrees to:

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;

maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;

Furnish the Client with update insurance certificates, Tax Clearance and Health and Safety Statement as and when they become available.

comply with all reasonable directions of the Client; and

comply with the service levels and performance indicators set out in Schedule [•]<sup>4</sup>.

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.

#### Disputes

Subject to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Contract, amicably. The Parties may agree procedures and protocols for dispute resolution from time-to-time.

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<sup>4</sup> If applicable.

## **Severance**

If any provision or part-provision of the Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the Contract.

If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## **Counterparts**

This Contract may be executed in any number of counterparts, each of which when executed shall constitute a duplicate original, but all the counterparts shall together constitute the one Contract. Each of the Parties to this Contract confirms that this Contract is executed by their duly authorised officers.

## **Change Control**

The Contracting Authority may, by giving written notice at any time during the Contract request a change to the Services.

Within 10 Business Days of receipt of such notice, the Contractor shall, at its rates specified in the tender response, prepare a written quote for any increase or decrease in the price and the effect that the requested change would have on any project plan or completion date.

Within 14 Business Days of receipt of the written quote referred to above, the Contracting Authority shall inform the Contractor in writing whether or not the Contracting Authority wishes the requested change to be made.

Without prejudice to the provisions of clause 15.1, if at any time during the Term any event or circumstance, including (but not limited to) a change of law, regulation or taxation causes any delay in the delivery of the Services or the Deliverables or otherwise negatively impacts the performance by the Contractor of the Contract, the Contracting Authority may by written notice to the Contractor require the Contractor to enter into good faith negotiations with a view to agreeing an amendment to the Contract to address and alleviate any such impact. Each Party shall conduct such negotiations in good faith and in accordance with any timelines agreed between the Parties.



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In the event that an amendment to the Contract is not agreed between the Parties within sixty (60) days' following the written notice to enter into negotiations, the Contracting Authority shall be entitled to terminate the Contract, immediately and without liability.

## Notices

Any notice or other document to be given under this Contract shall be in writing and shall be deemed to have been duly given if left at or sent:

by hand; or

delivered by personal delivery or reputable commercial courier (e.g. FedEx); or

electronic mail, confirmed by personal delivery or reputable commercial courier (e.g. FedEx).

The address, e-mail address, facsimile and telephone numbers of the Parties for the purpose of the giving of notices under this Contract are as follows:

For the Contracting Authority:

Address:

Email: [Procure@HRI.ie](mailto:Procure@HRI.ie)

Tel: [XXX]

For the Contractor:

Address: [XXX]

Email: [XXX]

Tel: [XXX]

Notices sent by personal delivery or reputable commercial courier (e.g. FedEx), shall be deemed given when actually received or, if earlier, three (3) Business Days after the deposit with a reputable commercial courier. Notices sent by electronic mail, where such is an established means of communication between the Parties, shall be deemed to be served on the day of transmission if transmitted before 4pm in a Business Day but otherwise on the next Business Day. In all other cases, notices and other communications will be deemed to have been served on the Business Day they are actually received.

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

## Assignment and Subcontract

The Contractor is prohibited from assigning any rights or obligations arising from the Contract.

**Non-exclusivity**

No aspect of this Contract shall preclude the Contracting Authority from purchasing the services/supplies constituting the subject-matter of this Contract from a third party at any time during the Term.

**Governing Law, Choice of Jurisdiction and Execution**

This Contract and any dispute in relation to this Contract or its subject matter or formation (including any non-contractual disputes or claims) shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes or claims arising out of or in connection with this Contract, its subject matter or formation (including non-contractual disputes or claims).

IN WITNESS whereof the Parties hereto have executed this Contract the day and year first herein WRITTEN

**SIGNATURES**

SIGNED for and on behalf of the Contractor by:

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

SIGNED for and on behalf of the Contracting Authority by:

Signed: \_\_\_\_\_

Date: \_\_\_\_\_

Witnessed by: \_\_\_\_\_

## SCHEDULE 1

### The Services

1. Services

The Services shall include but are not limited to:

[Contracting Authority to provide list of Services expected to be provided]<sup>5</sup>

2. [Time Commitment

The Contractor shall ensure that it performs the Services for at least [insert number] days [per year] during the term of this Contract.]<sup>6</sup>

## SCHEDULE 2

### The Charges

The fees payable to the Contractor shall be [XXXX] [per month/yearly], exclusive of VAT<sup>7</sup>.

Invoice payable under the Contract shall be payable within 30 Business Days of receipt of same.

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<sup>5</sup> To be confirmed

<sup>6</sup> To be deleted/amended as appropriate

<sup>7</sup> Fees and payment conditions to be confirmed

### **SCHEDULE 3**

#### Specifications of Requirements

#### **SCHEDULE 4**

RFT and Contractor's Form of Tender

## **SCHEDULE 5**

Data Processing Details

## APPENDIX 5 – SERVICE LEVEL AGREEMENT

[insert Service Level Agreement]

## APPENDIX 6 – DATA PROCESSING AGREEMENT

**[DETAILS TO BE INCLUDED AS REQUIRED WHERE THE SERVICE PROVIDER IS APPOINTED AS PROCESSOR ON BEHALF OF HORSE RACING IRELAND]**

THIS AGREEMENT is dated [ ] (the “Agreement”)

### PARTIES

- (1) [HRI RACECOURSES LIMITED], a company incorporated in Ireland [with company number [ ] and having its registered office at [Ballymany, The Curragh, County Kildare, R56 XE37, Ireland] (“HRI”); and
- (2) [ ] with company number [ ] and having its registered office at [ ] (“Processor”),  
(each a “Party”, together the “Parties”).

Commented [ZD1]: Details to be confirmed/provided.

### BACKGROUND

- (A) HRI has appointed Processor to carry out [ ] (the “Services”)
- (B) The Parties have agreed the following terms and conditions in order to ensure compliance with Article 28 of the GDPR.

### AGREED TERMS

The Parties agree the following:

#### 1. DEFINITIONS & INTERPRETATION

##### 1.1 Definitions

In this Agreement, the following terms shall have the following meanings:

- (a) “**Adequacy Decision**” means a decision adopted by the European Commission that a relevant third country, territory or one or more specified sectors within such third country or international organisation ensures an adequate level of protection within the meaning of Article 45 of the GDPR;
- (b) “**Appropriate Safeguards**” the appropriate safeguards provided for in Article 46 of the GDPR;
- (c) “**Appropriate Technical and Organisational Measures**” the appropriate technical and organisational measures referred to in Data Protection Law (including, as appropriate, the measures referred to in Article 32(1) of the GDPR);
- (d) “**Applicable Data Protection Law**” means any law and regulatory requirements relating to the Processing of Personal Data and to privacy as such may be supplemented, amended, revised or replaced from time to time:
  - (i) the Irish Data Protection Acts 1988 to 2018,
  - (ii) the Directive (EU) 2016/680,



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- (iii) the General Data Protection Regulation (EU) 2016/679 (the “**GDPR**”),
  - (iv) the Directive on privacy and electronic communications 2002/58/EC,
  - (v) any successor or replacement to the laws set out above, and
  - (vi) all other industry guidelines (whether statutory or non-statutory) or applicable codes of practice and guidance notes relating to the processing of Personal Data or privacy issued from time to time by a relevant supervisory authority, such as the DPC, and which are applicable to a party;
- (e) “**Authorised Person(s)**” the persons specified in Schedule 1, as amended from time to time in accordance with this Agreement;
- (f) “**Business Day**” means a day other than a Saturday, Sunday or public holiday in Ireland;
- (g) “**Delete**” to remove or obliterate personal data such that it cannot be recovered or reconstructed;
- (h) “**DPC**” means the supervisory authority in Ireland for the purposes of Article 51 of the GDPR whose principal administrative offices are at 21 Fitzwilliam Square South, Dublin 2, D02 RD28, Ireland, or any replacement supervisory authority under the Applicable Data Protection Law, appointed from time to time in Ireland;
- (i) “**EEA**” means the European Economic Area, comprised of those states that are contracting Parties to the Agreement on the European Economic Area from time to time;
- (j) “**Losses**” has the meaning given to such term in Clause 13.1;
- (k) “**Normal Business Hours**” means 9.00 am to 5.00 pm Irish Standard Time on a Business Day;
- (l) “**Personal Data**” has the meaning given to such term in Article 4(1) of the GDPR and means any information relating to an identified or identifiable natural person (the “**Data Subject**”); and relates only to personal data, or any part of such personal data, in respect of which HRI is the controller, and in respect of which Processor is the processor under this Agreement;
- (m) “**Personal Data Breach**” means any “personal data breach” as defined in the GDPR including a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed;
- (n) “**Personnel**” means the employees, agents and/or contractors of Processor;
- (o) “**process**”, “**processed**” or “**processing**” means any operation or set of operations which is performed on Personal Data or on sets of Personal Data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction;
- (p) “**Restricted Transfer**” any transfer of Personal Data to countries outside of the EEA which are not subject to an Adequacy Decision, where such transfer would be prohibited by Data Protection Law;
- (q) “**Security Features**” any security feature, including any encryption, pseudonymisation, key, PIN, password, token or smartcard;



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- (r) **“Sensitive Data”** means personal data set out in Articles 9(1) and 10 of the GDPR such as personal data revealing racial or ethnic origin, political opinions, religious or philosophical beliefs, or trade union membership, genetic data or biometric data for the purpose of uniquely identifying a natural person, data concerning health or a person’s sex life or sexual orientation, or data relating to criminal convictions and offences;<sup>8</sup>
- (s) **“Services”** has the meaning given to that term in Recital (A), in the course of which the Processing of Personal Data as described in Schedule 1 shall occur;<sup>9</sup>
- (t) **“Standard Contractual Clauses”** means the contractual clauses dealing with the transfer of Personal Data to a Third Country, which have been approved by (i) the European Commission under Applicable Data Protection law, or (ii) by the DPC or an equivalent competent authority under Data Protection Law;
- (u) **“Specific Instructions”** has the meaning given to that term in Clause 2.2;
- (v) **“Sub-processor”** has the meaning given to that term in Clause 9; and
- (w) **“Term”** has the meaning given to that term in Clause 17.1.

## 1.2 Interpretation

- 1.2.1 References to Clauses and Schedules are to the Clauses and Schedules of this Agreement and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.2.2 Clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.2.3 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.
- 1.2.4 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.2.5 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.2.6 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.2.7 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.2.8 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

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<sup>8</sup> **Drafting note:** Special category data and data relating to criminal matters are subject to strict conditions prior to processing. If any Sensitive Data is being processed, please also see Schedule 1 where details of the processing, and safeguards applicable are to be described.

<sup>9</sup> **Drafting note:** Complete in accordance with the definition of “Services” in the Agreement. Please also see Schedule 1 where details of the processing are to be described (subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data and categories of data subjects involved).



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- 1.2.9 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.2.10 Any words following the terms “including”, “include”, “in particular” or “for example” or any similar phrase shall be construed as illustrative and shall not limit the generality of the related general words.
- 1.2.11 For the avoidance of doubt, in the event of any conflict or ambiguity between the provisions of this Agreement and/or the Standard Contractual Clauses (if applicable), the following order of precedence shall apply:
- (a) the Standard Contractual Clauses (if applicable); and
  - (b) this Agreement.

## 2. SERVICES

- 2.1 Processor agrees that to the extent that it processes Personal Data for or on behalf of HRI, it is subject to, and agrees to comply fully with Applicable Data Protection Law.
- 2.2 Processor shall not act on any Specific Instructions given by HRI from time to time for the duration of the Term in respect of Processing unless they are:
- 2.2.1 in writing (including by electronic means); and
  - 2.2.2 given by an Authorised Person.
- 2.3 Processor shall Process the Personal Data for the performance of the Services only and in compliance with HRI’s instructions from time to time, which may be:
- 2.3.1 Specific Instructions; or
  - 2.3.2 the general instructions set out in this Agreement.
- unless required to do otherwise by law, in which case, where legally permitted, Processor shall inform HRI of such legal requirement before Processing.
- 2.4 Processor shall cooperate with HRI and take all reasonable steps requested by HRI where required for HRI to comply with any notification or other obligations applicable to HRI under Applicable Data Protection Law.

## 3. PROCESSOR’S OBLIGATIONS

- 3.1 Processor shall:
- 3.1.1 only make copies of the Personal Data to the extent reasonably necessary for the performance of its obligations under this Agreement (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Personal Data);
  - 3.1.2 not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Personal Data other than for the performance of its obligations under this Agreement;
  - 3.1.3 At HRI’s request, provide to HRI such information and such assistance as the it may reasonably require, and within the timescales reasonably specified by HRI, to allow HRI to comply with its



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obligations under Applicable Data Protection Laws, including but not limited to assisting HRI to (i) comply with its own security obligations with respect to the Personal Data; (ii) discharge its obligations to respond to requests for exercising Data Subjects' rights with respect to the Personal Data; (iii) comply with its obligations to inform Data Subjects about serious Personal Data Breaches; (iv) carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Personal Data; and (v) consult with the DPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Personal Data would result in a high risk to Data Subjects;

- 3.1.4 notify HRI immediately if it receives any complaint, notice or communication which relates directly or indirectly to the processing of Personal Data or to either party's compliance with Applicable Data Protection Law and provide HRI with full co-operation and assistance in relation to any such complaint, notice or communication;
- 3.1.5 not do anything that may materially damage the reputation of HRI;
- 3.1.6 notify HRI in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of the Processor to Process the Personal Data as set out in this Agreement;
- 3.1.7 promptly comply with any request from HRI requiring the Processor to amend, transfer or Delete any of the Personal Data;
- 3.1.8 at HRI's request, provide HRI with a copy of all Personal Data held by the Processor in the format and on the media reasonably specified by HRI; and
- 3.1.9 adhere to the terms of any approved code of conduct under Article 40 of the GDPR or any approved certification mechanism under Article 42 of the GDPR, where applicable.
- 3.2 Processor shall notify HRI in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of Processor to Process the Personal Data as set out in this Agreement.
- 3.3 At HRI's request, Processor shall provide to HRI a copy of all Personal Data held by Processor in the format and on the media reasonably specified by HRI.
- 3.4 At HRI's request, Processor shall provide to HRI such information and such assistance as HRI may reasonably require, and within the timescales reasonably specified by HRI, to allow HRI to comply with its obligations under Applicable Data Protection Law, including but not limited to assisting HRI to:
  - 3.4.1 comply with its own security obligations with respect to the Personal Data;
  - 3.4.2 discharge its obligations to respond to requests for exercising Data Subjects' rights with respect to the Personal Data;
  - 3.4.3 comply with its obligations to inform Data Subjects about serious Personal Data Breaches;
  - 3.4.4 carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Personal Data; and
  - 3.4.5 consult with the DPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Personal Data would result in a high risk to Data Subjects.



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- 3.5 Any proposal by Processor to in any way use or make available the Personal Data other than as provided for pursuant to this Agreement shall be subject to prior written approval of HRI.

**4. DATA SUBJECT RIGHTS**

- 4.1 Processor shall co-operate with and assist HRI, including but not limited to employing Appropriate Technical and Organisational Measures and with any assessment, enquiry, notice or investigation under Applicable Data Protection Law, in respect of the fulfilment of HRI's obligations to respond to requests from a Data Subject exercising his/her rights under Applicable Data Protection Law.
- 4.2 Processor shall notify HRI within twenty four (24) hours if it receives:
- 4.2.1 a request from a Data Subject for access to that person's Personal Data;
- 4.2.2 any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Applicable Data Protection Law in respect of the Personal Data; or
- 4.2.3 any complaint or any claim for compensation arising from or relating to the Processing of the Personal Data.
- 4.3 Processor shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of HRI or as provided for in this Agreement, or as required by law, in which case Processor shall to the extent permitted by law inform HRI of that legal requirement before Processor discloses the Personal Data to any Data Subject or third party.
- 4.4 Processor shall not respond to any request from a Data Subject except on the documented instructions of HRI or Authorised Person or as required by law, in which case Processor shall to the extent permitted by law inform HRI of that legal requirement before Processor responds to the request.

**5. AUDIT**

- 5.1 HRI shall have the right to examine and review the use by Processor of the Personal Data provided to Processor by HRI for the purposes of ascertaining that such Personal Data has been used and Processed in accordance with the terms of this Agreement.
- 5.2 Processor shall grant to HRI (or Authorised Representatives of HRI) on reasonable advance notice a right of access to Processor's premises during Normal Business Hours for the purposes of such examination and review, and Processor shall give all necessary assistance to the conduct of such examinations/audits during the Term. The requirement to give reasonable advance notice will not apply if HRI believes that Processor is in breach of any of its obligations under this Agreement.
- 5.3 The examination and review by HRI of the use by Processor of the Personal Data may include, but shall not be limited to, a review of the existing internal compliance regime of Processor in relation to:
- 5.3.1 business processes and nature of interactions with customers;
- 5.3.2 existing audit procedures on business activities and financial reporting, and the governance of such procedures;
- 5.3.3 staff vetting, hiring and training procedures;
- 5.3.4 data access requests and the purpose/duration for which Personal Data is Processed/kept; and

5.3.5 reporting of data breaches.

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

5.5 In the event that the audit process determines that Processor is non-compliant with the provisions of this Agreement, HRI may, by notice in writing, deny further access to the Personal Data and the provisions of Clause 17 (Term and Termination) may, by notice in writing, be invoked.

5.6 Without prejudice to HRI's right of audit under this Clause, to the extent permitted under Applicable Data Protection Law, Processor may demonstrate its and, if applicable its Sub-processors', compliance with its obligations under this Agreement through its compliance with a certification scheme or code of conduct approved under Applicable Data Protection Law.

## 6. PROCESSOR'S PERSONNEL

6.1 Processor shall ensure that access to Personal Data is limited to: (a) those Personnel strictly necessary to meet Processor's obligations under the Agreement; and (b) in the case of any access by any Personnel, such part or parts of the Personal Data as is strictly necessary for performance of such Personnel's duties; and ensure that all Personnel: (x) are informed of the confidential nature of the Personal Data being processed for or on behalf of HRI; (y) have undertaken training in the laws relating to handling of Personal Data; and (z) are aware both of Processor's duties and their personal duties and obligations as Processors under such laws and the Agreement.

6.2 Processor shall have in place procedures so that personnel of Processor, will respect and maintain the confidentiality and security of the Personal Data. Any person acting under the authority of Processor shall be obligated to process the Personal Data only on instructions from Processor. This provision does not apply to persons authorised or required by law or regulation to have access to the Personal Data.

6.3 Processor shall ensure that all personnel that have access to the Personal Data:

6.3.1 are informed of the confidential nature of the Personal 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 Personal Data;

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

6.3.3 are aware both of Processor's duties and their personal duties and obligations under Applicable Data Protection Law and this Agreement.

6.4 Processor shall take reasonable steps to ensure the reliability of any of Processor's employees (or approved agents/contractors) who have access to the Personal Data.

## 7. RECORDS

7.1 Processor shall keep at its normal place of business detailed, accurate and up-to-date records (including in electronic form) to demonstrate compliance with this Agreement and relating to all categories of Processing activities carried out on behalf of HRI containing:

7.1.1 details of the purposes of such processing;



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- 7.1.2 a general description of the security measures taken in respect of the Personal Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;
- 7.1.3 the name and contact details of Processor; any sub-processor; where applicable, Processor's representatives; and where applicable any Data Protection Officer appointed by Processor;
- 7.1.4 the categories of Data Subjects and categories of Personal Data Processed by Processor on behalf of HRI;
- 7.1.5 the time limits for erasure of the Personal Data; and
- 7.1.6 details of any Restricted Transfers, and the safeguards in place in respect of such transfers.

#### 8. DATA PROTECTION OFFICER

Each Party shall appoint a Data Protection Officer, if required to do so pursuant to Applicable Data Protection Law, and provide the other Party with the contact details of such Data Protection Officer.

#### 9. SUB-PROCESSORS

- 9.1 Processor may only authorize a third party (including any third party, affiliate or contractor of Processor, but excluding Processor employees) (a "**Sub-processor**") to process the Personal Data being processed for or on behalf of HRI with the prior written consent of HRI and provided that:
  - 9.1.1 Processor shall provide reasonable notice to HRI of any intended changes concerning the addition or replacement of other Sub-processors, thereby giving HRI the opportunity to revoke its consent in respect of such changes. The list of Sub-Processors authorised pursuant to this Clause 9.1 as at the date of this Agreement are detailed in Schedule 2.
  - 9.1.2 the Sub-processor's contract is on terms which are substantially the same as those set out in this 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 Law);
  - 9.1.3 the Sub-processor will be subject to the same obligations as those which Processor is subject to under this Agreement; and
  - 9.1.4 the Sub-processor's contract will terminate automatically on termination of the Agreement for any reason.
- 9.2 With respect to each approved Sub-processor, Processor shall, before the Sub-processor first Processes Personal Data, carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Personal Data required by this Agreement.
- 9.3 Where Processor appoints or otherwise uses the services of a Sub-processor, Processor shall be fully liable to HRI for the performance, acts and omissions of Sub-processor. Nothing in this Agreement shall relieve Processor of any liability for the acts or omissions of its staff, employees or contractors in relation to the Personal Data.

#### 10. SECURITY

- 10.1 Processor shall at all times have Appropriate Technical and Organizational Measures, including any Security Features, in place to protect and secure any Personal Data which it holds for or on behalf of HRI against accidental or unlawful destruction or accidental loss, alteration,



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unauthorized disclosure or access, and that having regard to the state of technological development and the cost of implementing any measures, such measures shall provide a level of security appropriate to the risk represented by the processing and the nature of the Personal Data to be protected. Processor shall, at the request of HRI, provide a detailed, written explanation and full details of the Appropriate Technical and Organizational Measures taken by or on behalf of Processor to demonstrate compliance with Applicable Data Protection Law.

- 10.2 Processor agrees and warrants that the Appropriate Technical and Organisational Measures referred to in this Agreement are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the Personal Data to be protected having regard to the state of the art.
- 10.3 Processor shall ensure that the Personal Data provided by HRI can only be accessed by persons and systems that are authorised by Processor and necessary to provide the Services, and that all equipment used by Processor for the Processing of Personal Data shall be maintained by Processor in a physically secure environment.
- 10.4 Processor further agrees and warrants that the processing of the Personal Data has been and will continue to be carried out in accordance with the Applicable Data Protection Law.

#### **11. BREACH REPORTING**

- 11.1 Processor shall promptly inform HRI if any Personal 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 Personal Data. In such case, HRI will restore such Personal Data at its own expense, and will comply with all of its obligations under Data Protection Laws in this regard.
- 11.2 Processor must inform HRI 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 HRI 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. Processor shall co-operate with HRI and take such reasonable commercial steps as are directed by HRI to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
- 11.3 In the event of a Personal Data Breach or any data breach involving the Services, Processor shall not make any announcement to the media in respect of such breach without first consulting with HRI.
- 11.4 Processor agrees not to use any Personal Data which it processes on behalf of HRI for direct marketing purposes without the prior written authorisation of HRI.

## 12. <sup>10</sup>RESTRICTED TRANSFERS

- 12.1 A Restricted Transfer may not be made by Processor without the prior written consent of HRI, and if such consent has been obtained, such Restricted Transfer may only be made where there are Appropriate Safeguards in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, binding corporate rules, or any other model clauses or transfer mechanism approved by the DPC).
- 12.2 Any Party which is entering into the Appropriate Safeguards with a data importer shall comply with the guidance of any relevant regulatory authority, such as the DPC, on Restricted Transfers in particular with respect to the use of Standard Contractual Clauses and any additional or supplementary measures required to be taken in the context of any such Restricted Transfers, including but not limited to the requirement to carry out risk assessments and to adopt supplementary measures to ensure essentially equivalent protection for Data Subjects in the jurisdiction of the data importer.
- 12.3 Clauses 12.1 or 12.2 shall not apply to a Restricted Transfer if other compliance steps (which may include, but shall not be limited to, obtaining explicit consents from Data Subjects) have been taken to allow the relevant Restricted Transfer to take place without breach of Applicable Data Protection Law.

## 13. <sup>11</sup>LIABILITY AND INDEMNITY

- 13.1 Processor shall immediately notify HRI of any breach of its data protection obligations under this Agreement and/or any Applicable Data Protection Law. Processor hereby indemnifies HRI 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 HRI arising out of or in connection with any breach by Processor of any terms of this Agreement or the Processing of the Personal Data by Processor, its employees or agents in breach of this Agreement, contrary to the instructions of HRI or in contravention of Applicable Data Protection Law (including but not limited to claims by Data Subjects relating to loss of control over Personal Data or limitation of rights, discrimination, financial loss, damage to reputation, loss of confidentiality of Personal Data and any other significant economic or social disadvantage) (the **Losses**).
- 13.2 This Clause 13 is intended to apply to the allocation of liability for losses relating to Data Protection Law as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Law to the contrary, except:
- 13.2.1 to the extent not permitted by applicable law (including Data Protection Law); and
- 13.2.2 that it does not affect the liability of either Party to any Data Subject.

<sup>10</sup> **Drafting note:** This Agreement is intended for intra-EEA transfers only. Where the personal data processing requires access to/transfers of personal data outside the EEA to countries not subject to an adequacy decision under Article 45 of the GDPR then further measures are required in order to ensure compliance with Chapter V of the GDPR (such as Standard Contractual Clauses).

<sup>11</sup> **Drafting note:** This processor indemnity is not mandated by the GDPR, but should be sought by HRI where possible to obtain from its third party processors.



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- 13.3 Where requested by HRI, Processor shall provide the other party with evidence of financial resources to confirm it has sufficient such resources to fulfil its responsibilities under Clause 13.1 as appropriate (which may include proof of insurance cover).

#### 14. LIMITATION OF LIABILITY

- 14.1 To the extent permitted by law, HRI shall not under any circumstances be liable to Processor for any costs or losses of Processor relating to this Agreement.
- 14.2 Unless required to do so by the DPC or any other competent supervisory authority, Processor 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 Personal Data, without the prior written agreement of HRI.

#### 15. WARRANTIES

- 15.1 Processor warrants, represents and undertakes to HRI that:
- 15.1.1 Processor will Process Personal Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including Applicable Data Protection Law);
- 15.1.2 Processor will maintain Appropriate Technical and Organisational Measures against the unauthorised or unlawful Processing of Personal Data and against the accidental loss or destruction of, or damage to, Personal Data; and
- 15.1.3 Processor will discharge its obligations under this Agreement with all due skill, care and diligence.
- 15.2 HRI does not warrant that the Personal 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 Processor or any third party; or
- 15.2.3 will be suitable for or be capable of being used by Processor or any third party.

#### 16. RIGHTS AND REMEDIES

Except as expressly provided in this Agreement, HRI's rights and remedies provided under this Agreement are in addition to, and not exclusive of, any rights or remedies provided by law (including Applicable Data Protection Law).

#### 17. TERM AND TERMINATION

- 17.1 This Agreement shall commence on [the date at the beginning of this Agreement]<sup>12</sup> and, subject to Clauses 17.2 and 17.4, shall continue in force until the earlier of the date on which the Parties have discharged their obligations under or the termination of the Agreement (the "Term").
- 17.2 This Agreement may be terminated by written agreement of both Parties.

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<sup>12</sup> **Drafting note:** If the commencement date differs, delete the text between the brackets and insert the specified date.



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- 17.3 Without prejudice to Applicable Data Protection Law, in the event that Processor is in breach of its obligations under this Agreement, HRI may instruct Processor to suspend the Processing of Personal Data until Processor rectifies the breach of the Agreement. Processor shall within twenty four (24) hours inform HRI in case it is unable to comply with these Clauses, for whatever reason.
- 17.4 HRI shall be entitled to terminate this Agreement insofar as it concerns Processing of Personal Data in accordance with this Agreement if:
- 17.4.1 the Processing of Personal Data by Processor has been suspended by HRI pursuant to Clause 17.1 and if compliance with this Agreement is not restored within a reasonable time and in any event within one (1) month following suspension;
- 17.4.2 Processor is in substantial or persistent breach of this Agreement or its obligations under Applicable Data Protection Law; or
- 17.4.3 Processor fails to comply with a binding decision of a competent court or the DPC regarding its obligations pursuant to this Agreement or to Applicable Data Protection Law.
- 17.5 Upon termination or expiry of this Agreement, Processor shall, at the choice of HRI, Delete all Personal Data processed on behalf of HRI and certify to HRI that it has done so, or, return all the Personal Data to HRI and Delete existing copies unless legally required/entitled to retain the Personal Data for a period of time.
- 18. ALLOCATION OF COST**
- Each Party shall perform its obligations under this Agreement at its own cost.
- 19. VARIATION**
- No variation of this Agreement shall be effective unless it is in writing and signed by the Parties (or their authorised representatives).
- 20. WAIVER**
- A failure to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy.
- 21. SEVERANCE**
- 21.1 If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed Deleted. Any modification to or deletion of a provision or part-provision under this Clause 21 shall not affect the validity and enforceability of the rest of this Agreement.
- 21.2 If any provision or part-provision of this Agreement is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

## 22. CHANGES IN LAW

If during the Term, Applicable Data Protection Law and/or other applicable laws change in a way that the Agreement is no longer adequate for the purpose of governing lawful data sharing exercises, the Parties agree to negotiate in good faith to review the Agreement in light of the new legislation.

## 23. RELATIONSHIP OF THE PARTIES

Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between the Parties, constitute any Party the agent of another Party, or authorise any Party to make or enter into any commitments for or on behalf of any other Party.

## 24. [ENTIRE AGREEMENT]

This Agreement constitute[s] 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.<sup>13</sup>

## 25. FURTHER ASSURANCE

At its own expense, each Party shall, and shall use all reasonable endeavours to procure that any necessary third party shall, execute and deliver such documents and perform such acts as may be required for the purpose of giving full effect to this Agreement.

## 26. DISPUTE RESOLUTION<sup>14</sup>

- 26.1 If any dispute arises in connection with this Agreement, the Parties (or directors or other senior representatives of the Parties with authority to settle the dispute) will, within fourteen (14) days of a written request from one Party to the other Party, meet in a good faith effort to resolve the dispute.
- 26.2 If the dispute is not resolved at the meeting referred to in Clause 26.1, the Parties will attempt to settle it by mediation in accordance with the CEDR Model Mediation Procedure. The Parties shall submit the dispute to mediation by a person agreed by the Parties, or in the event that they are unable to agree on a mediator, the mediator shall be nominated by CEDR Ireland. To initiate the mediation, a Party must give notice in writing (“**ADR Notice**”) to the other Party requesting a mediation. The mediation will start not later than thirty (30) days after the date of the ADR Notice.
- 26.3 No Party may commence any court proceedings in relation to any dispute arising out of this Agreement until it has attempted to settle the dispute in accordance with this Clause 26, and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay. Nothing in this Clause shall prevent any Party seeking a preliminary injunction or other judicial relief at any time if, in its judgement, such an action is necessary to prevent irreparable damage.

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<sup>13</sup> **Drafting note:** This Clause may need to be amended to the extent that this Data Processing Agreement forms part of a larger contract (e.g. MOU, SLA or service provider agreement).

<sup>14</sup> **Drafting note:** Preferred approach on dispute resolution to be confirmed. This ADR clause can be removed if preferred.



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- 26.4 The Parties agree that in order to make the mediation process as effective as possible, they shall endeavour in good faith to resolve the disagreement through mediation, to abide by all procedural requirements established by the mediator, and to respond to requests by the mediator to appear before him and present arguments and evidence bearing upon and supporting the position of each Party with respect to the particular matter in dispute.

**27. COUNTERPARTS AND ELECTRONIC SIGNATURE**

- 27.1 This Agreement may be executed in any number of counterparts, and by different Parties on separate counterparts, each of which, when executed and delivered will constitute a duplicate original of this Agreement, but all of which together will constitute one and the same instrument.
- 27.2 The Parties consent to the execution by or on behalf of each other Party to the Agreement by electronic signature, provided that such manner of execution is permitted by law and that an executed copy of the Agreement may be retained in electronic form. The Parties acknowledge that such electronic form shall constitute an original of the Agreement and may be relied upon as evidence of the Agreement.

**28. GOVERNING LAW AND JURISDICTION**

- 28.1 This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the laws of Ireland.
- 28.2 Each Party irrevocably agrees that the courts of Ireland shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this Agreement or its subject matter or formation (including non-contractual disputes or claims).

## Description of the Processing

### Authorised Person

- [Details to be inserted]

### Categories of data subjects whose personal data is processed

- [Details to be inserted]

### Purpose(s) for which the personal data is processed on behalf of the controller

- [Details to be inserted]

### Duration of the processing

- [Details to be inserted]

### Categories of personal data processed

- [Details to be inserted]

**Sensitive Data (if applicable)<sup>15</sup> and applied restrictions or safeguards** that fully take into consideration the nature of the data and the risks involved, such as for instance strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures.

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<sup>15</sup> **Drafting note:** Where processing special category data or data relating to criminal prosecutions or convictions (as defined under “Sensitive Data” in Clause 1), consider including description of any restrictions or safeguards in place re the nature of the data and the particular risks involved, e.g. strict purpose limitation, access restrictions (including access only for staff having followed specialised training), keeping a record of access to the data, restrictions for onward transfers or additional security measures).

- [Details to be inserted]

Contact point(s) for data protection enquiries for Processor

*Name:*

*Role:*

*Email Address:*

**Authorised Sub-processors<sup>16</sup>**

| <b>Name of Sub-processor</b> | <b>Address and location</b> | <b>Description of the processing</b> |
|------------------------------|-----------------------------|--------------------------------------|
| [ ]                          |                             |                                      |
| [ ]                          |                             |                                      |

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<sup>16</sup> **Drafting note:** Insert details of sub-processor(s) where relevant.



Invitation To Tender

ENTERED INTO by the parties on the date appearing at the top of page.

SIGNED by

for and on behalf of \_\_\_\_\_

[HRI RACECOURSES LIMITED]<sup>17</sup>

In the presence of:

Witness:

Address:

Date:

SIGNED by [                      ]

for and on behalf of

[                      ] \_\_\_\_\_

In the presence of:

\_\_\_\_\_

<sup>17</sup> Drafting note: Entity to be confirmed/details provided.



Witness:

Address:

Date: