

[SUBJECT TO CONTRACT/CONTRACT DENIED]

APPENDIX 7 - CONTRACT

ROAD SAFETY AUTHORITY

and

[•]

PROVISION OF THE NATIONWIDE ROAD SAFETY EDUCATION SERVICE

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THIS AGREEMENT is made **BETWEEN**

- (A) **THE ROAD SAFETY AUTHORITY** of Moy Valley Business Park, Primrose Hill, Ballina, Co. Mayo (the “**RSA**”, which expression shall include its successors in title, assigns and agents) of the one part; and
- (B) **[NAME OF CONTRACTOR]** whose registered office is at **[insert address]** (the “**Contractor**”) of the other part
- (each a “**Party**” and together “**the Parties**”).

WHEREAS:

- (C) The RSA is the official body charged by statute with responsibility for the promotion of an environment for all Irish road users that maximises safety and provides for efficient use of the Irish road network.
- (D) Following a public tender process the RSA wishes to appoint the Contractor to provide the Services together with any Additional Services that may be required during the Term of this Agreement.

1. Interpretation

- 1.1 In this Agreement the following expressions shall have the following meanings:

“**Additional Services**” means any services in addition to the Services to be carried out by the Contractor as set may be agreed by the Parties in accordance with clause 3.8 and the Change Control Procedure;

“**Agreement**” shall have the meaning set out in clause 1.15 of this Agreement;

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

“**Approval**” means, in respect of any matter subject to RSA approval, an approval given in writing by the RSA, and “**Approved**” shall have a similar meaning;

“**Business Day**” means a day other than a Saturday or Sunday, a public holiday established under the Organisation of Working Time Act, 1997 or Good Friday;

“**Change Control Procedure**” means the change control procedure set out in Schedule 4;

“**Commencement Date**” means **[insert date]**;

“**Confidential Information**” shall have the meaning set out in clause 8.1 of this Agreement;

“**Contract Year**” means each period of twelve (12) consecutive months during the Term of this Agreement, with the first Contract Year commencing on the Commencement Date, and with each subsequent Contract Year commencing on the anniversary of the Commencement Date.

“**Contractor Deputy Relationship Manager**” means **[•]**;

“**Contractor Relationship Manager**” means **[•]**;

“**Data Protection Law**” means the Data Protection Acts 1988 and 2003, as amended, updated, supplemented, repealed or replaced from time to time, and from 25 May 2018 includes the EU General Data Protection Regulation (Regulation 2016/679);

“Exit Management Plan” has the meaning set out in Schedule 5;

“Go-Live Date” means [insert date];

“Holding Company” shall have the meaning given to that term by section 8 of the Companies Act 2014;

“Indemnified Person” shall have the meaning set out in clause 11.1 of this Agreement;

“Intellectual Property Rights” means all intellectual and industrial property rights including copyright, trademarks, service marks, patents, design rights, database rights, utility models, moral rights, performers’ property rights, topography rights, design rights, trade secrets, rights in confidential information, know how, trade or business names, domain names, goodwill associated with the foregoing, whether or not registered or registrable, including registrations and applications and rights to apply for registration of any of these rights, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world;

“Key Personnel” means the Contractor’s employees identified in Schedule 3, as the same may be replaced from time to time in accordance with clause 3.5;

“Key Performance Indicators” means the key performance indicators (KPIs) set out in Schedule 7;

“KPI Holdback” means the specified proportion of the Contractor’s payment that is retained by the RSA and shall become payable to the Contractor upon achievement of the applicable KPI performance targets, as set out in the Schedule 7 of the Contract.

“Materials” means all materials, documents, submissions, reports, records and other items supplied by or on behalf of the Contractor in connection with the Services excluding pre-existing materials and materials developed independently of the Services;

“New Contractor” means any legal entity that is appointed by the RSA to provide part or all of the Services after the expiry or termination of this Agreement and/or, if the RSA commences providing part or all of such services in-house, the RSA;

“PO Number” has the meaning given to it in clause 4.3;

“Relationship Manager” means the RSA Relationship Manager” or the Contractor Relationship Manager”, as the case may be;

“RSA Deputy Relationship Manager” means [•];

“RSA Relationship Manager” means [•];

“RFT” means the request for tenders dated [insert date] and any clarifications as issued by the RSA as part of the public tender process to procure the Services;

“Services” means the services to be provided by the Contractor to the RSA as described in Part 1 of Schedule 1 and any other services which, it is reasonable to assume, the Parties would have considered necessary or desirable at the time of execution of this Agreement for the full and proper performance of such services;

“Subsidiary” shall have the meaning given to that term by section 7 of the Companies Act 2014;

“Tender” means the tender document dated [insert date] submitted by the Contractor to the RSA in response to the RSA’s RFT dated [insert date]; and

“Term” has the meaning given to it in clause 2.

- 1.2 The headings and sub-headings in this Agreement are inserted only for convenience and shall not affect its interpretation or construction.
- 1.3 Where appropriate words denoting a singular number only shall include the plural and vice versa. Words importing a particular gender include all genders.
- 1.4 Save as otherwise provided herein, references to any sections, clauses, paragraphs and schedules are to those contained in this Agreement. The schedules form an integral part of this Agreement and reference to this Agreement includes reference thereto.
- 1.5 Words importing persons shall be construed as a reference to any individual, partnership, firm, trust, body corporate, government, governmental body, authority, emanation, agency or instrumentality, unincorporated body of persons or associations;
- 1.6 References to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, replaced, extended, consolidated or re-enacted by any subsequent enactment, modification, order, regulation or instrument. References to any statute, enactment, order regulation or other similar instrument shall include reference to any regulations made thereunder.
- 1.7 Any words following the terms “including”, “include”, “in particular”, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.
- 1.8 Any performance and compliance obligations imposed on the Contractor include the obligation to meet such obligations at its own cost.
- 1.9 Any obligation on the Parties to keep records, data or information includes the obligation to keep them up to date and accessible.
- 1.10 Any obligation on the Contractor to have systems, procedures or controls includes the obligation to operate them efficiently.
- 1.11 Any reference to “day” shall, unless otherwise stated, mean the period of time which begins at one after midnight and ends with the next.
- 1.12 Any reference to a “month” or “Month” shall, unless otherwise stated, be defined as follows:
 - (a) the start point for each month shall be 00:00 hours on the first day of the month; and
 - (b) the end point for each month shall be 23:59 and 59 seconds on the last day of the month.and any reference to “monthly” or “Monthly”, shall be construed accordingly.
- 1.13 Any reference to a “year” or “Year” shall, unless otherwise stated, be defined as a calendar year and any reference to “yearly” or “Yearly”, shall be construed accordingly.
- 1.14 All references to time of day shall be a reference to whatever time of day shall be in force in Ireland.
- 1.15 The term “**Agreement**” where used herein shall be deemed to include the Tender and the RFT save where the context otherwise requires. In the event of a conflict between a provision of the Tender and/or the RFT and/or any provision of this Agreement, the following order of priority shall apply:

- (a) clauses 1 to 25 of this Agreement;
- (b) the Schedules;
- (c) the RFT; and
- (d) the Tender;

save where the applicable provision of the Tender would result in a higher standard of performance of the Services, in which the applicable provision of the Tender shall prevail and have effect over the applicable provision of this Agreement, the Schedules and/or the RFT.

2. **Term**

- 2.1 This Agreement shall take effect on the Commencement Date and shall continue in full force and effect for a period of thirty-six (36) months from the Go-Live Date (the “**Initial Contract Term**”), unless it is otherwise terminated in accordance with the provisions of this Agreement.
- 2.2 The RSA reserves the right to extend the term of this Agreement beyond the Initial Term, on giving written notice to the Contractor, for a period of up to twenty four (24) months (each an “**Extended Contract Term**”) with a maximum of three (3) such extensions on the same terms and conditions, subject to its obligations at law, up to a maximum Term of one hundred and eight (108) months. (The Initial Term and any Extended Terms shall together constitute the “**Term**”).

3. **Services**

- 3.1 In consideration of the payment by the RSA of the charges to the Contractor in accordance with clause 4 and Schedule 2 (Payment), the Contractor agrees to provide the Services to the RSA in accordance with the terms of this Agreement.
- 3.2 While this Agreement is in force the Contractor shall give the RSA such time and attention as may be necessary for the proper exercise of its duties under this Agreement.
- 3.3 The Contractor shall provide all ancillary or incidental services and/or functions where such services and/or functions are required for the provision of the Services.
- 3.4 The Contractor in carrying out its duties under this Agreement shall comply with all reasonable instructions of the RSA issued in connection with the Services.
- 3.5 The Contractor will allocate suitable personnel with appropriate levels of experience and seniority to perform the Services. In particular but without limitation to the foregoing, the Contractor agrees that the Services shall be performed by the Key Personnel identified in Schedule 3 (Key Account Personnel). Unless the Key Personnel are removed in accordance with clause 3.6 or cease to be employed by or contracted to the Contractor, are taken ill, are injured or are on maternity or paternity leave, no changes in personnel shall be made without the RSA’s prior approval, which shall not be unreasonably withheld. Any proposed replacement (for whatever reason) to the Key Personnel shall be of at least the same standing within the Contractor and shall have the same level of experience and expertise or better. Prior to the removal of any Key Personnel in accordance with this clause, the Contractor shall (where possible in advance of any such removal) furnish the RSA with a copy of the proposed replacement’s curriculum vitae and all details required to enable the RSA to satisfy itself that the employee, servant or agent is appropriately qualified for the provision of the Services.
- 3.6 If in the opinion of the RSA, any of the Contractor’s personnel is not suitable for the provision of the Services, the RSA shall be entitled to require the Contractor to replace such personnel to the reasonable satisfaction of the RSA. Any such replacement shall be made within such a time that it does not disrupt or delay the performance of the Contractor’s duties and obligations under this Agreement.

- 3.7 Without prejudice to any other rights of the RSA, if the RSA is not satisfied with the standard of any part of the Services performed by or on behalf of the Contractor, the RSA shall be entitled to notify the Contractor and the Contractor shall promptly use its best endeavours and dedicate such resources as are required to remedy the standard of such part of the Services without delay. The Contractor shall not be entitled to any remuneration in respect of such remedial work.
- 3.8 It is agreed that the RSA may require the Contractor to perform Additional Services from time to time and any charges arising in respect of such Additional Services shall be based on the rates set out in Part 3 of Schedule 2 (Payment) and agreed pursuant to the Change Control Procedure (Schedule 4).
- 3.9 The Contractor shall, and shall procure that its nominated sub-contractors shall, use best efforts to avoid any trade dispute, dispute with any employee representative body or trade union, or any form of industrial action. The Contractor shall immediately notify the RSA where it, or any of its sub-contractors, is in receipt of any notice of industrial action (whether in respect of the provision of the Services or otherwise). The Contractor shall indemnify the Indemnified Person(s) against all losses, damages, actions, claims, demands, costs, charges and expenses suffered or incurred by an Indemnified Person(s) arising from any strike, work-to-rule, sit-in, go-slow, or any other form of industrial action which shall affect either the provision of the Services, or otherwise arise such that causes direct or indirect loss or damage to reputation to the RSA (including claims by third parties against the RSA arising from such industrial action).
4. **Charges**
- 4.1 The charges payable by the RSA under this Agreement are set out in Schedule 2 (Payment). All charges shall be payable by the RSA within thirty (30) days of receipt of properly due and properly issued invoices in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012.
- 4.2 If either Party fails to pay any non-disputed amount by its due date under this Agreement, the other Party shall be entitled to charge interest at the rate specified in the European Communities (Late Payment in Commercial Transactions) Regulations 2012 on the undisputed amount of the delayed payment for the period of delay.
- 4.3 Each invoice issued by the Contractor to the RSA under this Agreement shall reference a valid purchase order number ("**PO Number**"). If a PO Number has not been issued by the RSA, the Contractor shall request it prior to issuing an invoice to the RSA.
- 4.4 The RSA reserves the right to withhold payment against any invoice which is not submitted in accordance with the terms of this Agreement (including without limitation for non-compliance with clause 4.3) and shall forthwith notify the Contractor in writing of the reasons for withholding payment.
- 4.5 The RSA may make any deduction or withholding on account of tax (including but not limited to professional services withholding tax) from payments to the Contractor required by Applicable Law, Governmental direction or the practice of the Revenue Commissioners of Ireland. If the RSA is required by Applicable Law, Governmental direction or the practice of the Revenue Commissioners of Ireland to deduct or withhold an amount on account of tax from such payment, the RSA shall make that payment to the Revenue Commissioners within the time allowed.
- 4.6 The RSA reserves the right to at any time require the Contractor to:
- (a) supply its Tax Clearance Access Number and Tax Reference Number to facilitate on-line verification of the Contractor's tax status by the RSA. By supplying these numbers the Contractor acknowledges and agrees that the RSA has the permission of the Contractor to verify its tax cleared position online; and

- (b) supply for all [subcontractors] (except individuals employed by the Contractor in connection with the Services) receiving payments in connection with this Agreement exceeding:
 - (i) €650, a record of a Tax Reference Number;
 - (ii) €2,600 in any 12 month period, either: (a) the information set out in paragraph (a) above; or (b) a subcontractor's Notification of Determination issued under Section 530I of the Taxes Consolidation Act 1997 showing a rate of 0% or 20%.
- 4.7 For the avoidance of doubt, the RSA shall have no liability whatsoever to make any payments whatsoever to employees of the Contractor or any sub-contractors, including overtime payments, sick or holiday pay, pension, bonus or other benefits.
- 4.8 If and to the extent that the Contractor is supplying personnel to the RSA, payment may be withheld at any time where evidence requested is not provided by the Contractor to the effect that Irish payroll withholding taxes (including PAYE, USC and PRSI) are being operated in respect of Contractor's personnel, or that Irish payroll withholding taxes need not be operated in line with current published Revenue Commissioners' Statements of Practice and other guidance, or that the Contractor has received permission from the Revenue Commissioners not to operate Irish payroll withholding taxes. This applies whether or not the Contractor or the Contractor's personnel is or are resident in Ireland, including when personnel are sourced from other companies. The Contractor shall provide evidence of registration for Irish payroll withholding taxes and of actual operation of Irish payroll withholding tax obligations in respect of remuneration liable to Irish payroll withholding taxes on an ongoing basis. Without prejudice to the foregoing, any and all taxes payable to the Revenue Commissioners and applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms. The Contractor shall indemnify the RSA and keep the RSA indemnified from and against any liability incurred by the RSA (including interest and penalties) by reason of any claims or demands made by the Revenue Commissioners against the RSA in respect of PAYE obligations and/or payments made by the RSA to the Revenue Commissioners directly arising from the failure of the Contractor to comply with PAYE tax provisions in respect of the Contractor's employees.
- 4.9 Unless otherwise stated, amounts in this Agreement exclude VAT. The RSA shall pay any VAT arising under Applicable Law on the supply (by the Contractor to the RSA) under this Agreement. Where the Contractor is required to account for such VAT to the relevant tax authority, the RSA shall pay such VAT to the Contractor on the production of a valid VAT invoice. Where required by Applicable Law, the RSA shall pay such VAT to the appropriate tax authorities. The Contractor shall refund to the RSA any VAT incorrectly charged immediately upon notification.
- 4.10 Unless otherwise expressly stated in this Agreement, the Contractor bears exclusive liability for payment of all taxes and duties whatsoever and howsoever arising under Applicable Law in connection with the Services and performance of this Agreement.
- 4.11 The Contractor shall not be entitled to retain or set-off any amount due to the Contractor by the RSA against any amounts as properly demonstrated as being due to the RSA by the Contractor. The RSA may retain or set-off any amount due to the RSA by the Contractor under this Agreement, including any Service Credits as are provided for in this Agreement against any amount due to the Contractor by the RSA under this Agreement.
- 5. **Warranties**
- 5.1 The Contractor warrants that:
 - (a) the Services shall be provided by appropriately experienced, qualified and trained personnel and that the Services shall be rendered with all due skill, care and diligence;

- (b) it has the authority and right under law and has taken any necessary action required to lawfully execute and enter into this Agreement and to perform its obligations under this Agreement and that no material conflict of interest shall arise for the Contractor by virtue of the Contractor entering this Agreement;
- (c) it is entering into this Agreement with a full understanding of the material terms and risks and is capable of assuming those risks;
- (d) it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations; all information supplied by the Contractor prior to the date of this Agreement is true and accurate in all respects as at the date of this Agreement, save as otherwise disclosed in writing to the RSA;
- (e) it owns, has obtained or is able to obtain, valid licences for all IPR that are necessary for the performance of its obligations under this Agreement and for the RSA to obtain the benefit of the Services;
- (f) where applicable, the Article 57 Declaration produced by the Contractor in the Tender Proposal remains unchanged and that none of the excluding circumstances listed in Article 57 of EU Directive 2014/24/EU as implemented into Irish law by the European Communities (Award of Public Authorities' Contracts) Regulations, 2016 apply to the Contractor.
- (g) the provision of the Services under this Agreement will not infringe the Intellectual Property Rights of any third party;
- (h) it shall:
 - (i) observe and comply with all Applicable Law to the extent that such laws are relevant to the performance of its obligations under this Agreement; and
 - (ii) obtain at its own risk and expense from the appropriate authorities or any third parties all permits, consents and licences necessary for the proper performance of its obligations under this Agreement.
- (i) if and to the extent that the Contractor is a company, it is a company duly incorporated and validly existing under the laws of [•]; and
- (j) during the Term the Contractor shall not and shall procure that its officers, agents, servants or employees shall not:
 - (i) knowingly do anything directly or indirectly prejudicial to the interests of the RSA or to the contractual relationships of the RSA with any third parties or which shall adversely affect the services, duties and obligations of the Contractor hereunder;
 - (ii) in any way pledge the credit of the RSA; or
 - (iii) make any representation or give any warranty on behalf of the RSA nor hold itself out as the agent thereof in any way, save in pursuance of its duties under this Agreement.

5.2 Without limiting the generality of clause 5.1(j)(i) above, the Contractor shall take all necessary steps to manage any and all conflicts of interest (including the establishment of conflicts policies and screening protocols if not already in place) that may arise during the Term so as to ensure that the performance of the Services are not impaired or compromised as a result of any third party relationships of the Contractor, any Holding Company or Subsidiary of the Contractor or

any Subsidiary of such a Holding Company. In particular (but without limiting the generality of the foregoing) the Contractor hereby undertakes to notify the RSA forthwith in writing of any conflict of interest or potential conflict of interest that may arise from time to time in the provision of the Services.

5.3 The Contractor shall keep the RSA informed of all breaches or infringements or potential breaches or infringements of the RSA's rights in respect of the Services and of any other right title or interest of the RSA of which the Contractor is aware.

5.4 The Contractor undertakes to notify the RSA forthwith of any material change to the status of the Contractor with regard to the warranties set out at Clause 5 and to comply with all reasonable directions of the RSA with regard thereto, which may include termination of this Agreement.

6. **Change Control**

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

7. **Audit**

7.1 Without prejudice to any other rights of audit granted under this Agreement, the RSA (or its authorised representative) may, at reasonable times and on reasonable notice to the Contractor, undertake a review and audit of all or any of the Services being provided by the Contractor under this Agreement and compliance by the Contractor with its obligations under this Agreement, including compliance with applicable quality and health and safety obligations, and the Contractor shall co-operate fully and provide any information or other facility reasonably required by the RSA, for the purpose of undertaking such review or audit, including the Contractor's books and records relating to the Services provided during the Term and for twelve (12) months afterwards. In the event of any disagreement between the Contractor and the RSA in relation to information or facilities required for undertaking such review or audit, following discussion of the matter with the Contractor, the RSA shall decide on the relevancy or otherwise of the request in dispute and such decision of the RSA shall be conclusive.

7.2 Should any such review or audit reveal that the RSA has been overcharged, the Contractor shall reimburse to the RSA the amount of the overcharge within seven (7) Business Days.

7.3 In circumstances where the RSA is subjected to audit by any third party, the Contractor shall co-operate fully and provide any information or other facility reasonably required by the RSA or such third party for the purposes of carrying out the audit, including but not limited to reasonable access to any premises from which the Services are provided or from which the Contractor manages, organises or otherwise directs the provision or use of the Services and access to the Contractor's employees, agents and authorised representatives.

7.4 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 7 (Audit), unless the audit identifies a material breach of the terms of the Agreement by the Contractor in which case the Contractor shall reimburse the RSA for all of the RSA's reasonable costs incurred in the course of that part of the audit that is required to investigate the material breach.

8. **Confidential Information**

8.1 In this Clause 8, "**Confidential Information**" means all information disclosed (whether in writing, orally or by another means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with this Agreement by one party (the "**Disclosing Party**") to another party (the "**Receiving Party**") whether before, on or after the date of this Agreement including information relating to the Disclosing Party's products, services, operations, processes, plans or intentions, product information, know-how, design rights, trade secrets, market opportunities and business

affairs.

8.2 During the Term and after termination or expiration of this Agreement for any reason the Receiving Party:

- (a) will not use Confidential Information for a purpose other than the performance of its obligations or exercise or enforcement of its rights under this Agreement;
- (b) will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clauses 8.3 and 8.4; and
- (c) shall make every reasonable effort to prevent the unauthorised use or disclosure of Confidential Information.

8.3 The Receiving Party may disclose Confidential Information to any of its directors, other officers, employees, agents, service providers and auditors (a "**Recipient**") only to the extent that disclosure is necessary for the purposes of performing its obligations or exercising or enforcing its rights under this Agreement. The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under this Agreement as if the Recipient was a party to this Agreement.

8.4 Each party may disclose Confidential Information if and to the extent that:

- (a) this is required by Applicable Law (including, without limitation, under the Freedom of Information Act 2014) or pursuant to an order of a court of competent jurisdiction;
- (b) the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;
- (c) the information has come into the public domain through no fault of that party;
- (d) the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid; or
- (e) the information was obtained by the Receiving Party from a third party who was free to divulge the same
- (f) in the case of the RSA, where requested by any person or body or authority whose request the RSA or persons associated with the RSA (including but not limited to the Oireachtas and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

PROVIDED THAT any such information disclosed pursuant to Clause 8.4(a) shall be disclosed only after notice to the other party, where reasonably practicable.

8.5 The obligations of each party as to disclosure and confidentiality shall continue in force notwithstanding the termination or expiration of this Agreement.

8.6 Notwithstanding Clause 8.1, the Receiving Party shall be entitled to retain Confidential Information which it is required by Applicable Laws to retain for compliance purposes only, provided that any such retention shall not be for any period longer than that required by such Applicable Laws and also that any such Confidential Information retained shall remain subject to the duties of confidentiality in relation to such Confidential Information contained in this Agreement.

8.7 The RSA is subject to the Freedom of Information Act, 2014 and accordingly, the Contractor should consider whether any information that it provides to the RSA under this Agreement is commercially sensitive and/or confidential in nature and advise the RSA of same and shall state

the reasons why it considers the information is commercially sensitive and/or confidential. The RSA shall take the nature of the information provided by the Contractor into account when considering any request for access to such information under the Freedom of Information Act, 2014. The statutory requirements of the Freedom of Information Act, 2014 will, in all circumstances, take priority over any requirements of the Contractor.

9. Termination

- 9.1 This Agreement may be terminated in whole or in part by the RSA upon ninety (90) days' written notice to the Contractor at any time.
- 9.2 The RSA may terminate this Agreement with immediate effect on written notice if a receiver, examiner or administrator is appointed of the whole or any part of the Contractor's assets or the Contractor is struck off the Register of Companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for the winding up the Contractor (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the Contractor as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Agreement) or if anything analogous to the foregoing occurs in any applicable jurisdiction.
- 9.3 This Agreement may be terminated immediately by either Party on written notice if the other Party is in material breach of the terms of the Agreement and, in the event of a breach capable of being remedied, fails to remedy the breach within twenty (20) Business Days of receipt of notice in writing of such breach.
- 9.4 If this Agreement is terminated for any reason, the Contractor shall only be entitled to payment directly attributable to the proportion of the Services properly completed in accordance with this Agreement, prior to such termination of this Agreement. Any prepaid fees for the Services to be completed after such termination shall forthwith, upon termination, be refunded to the RSA.
- 9.5 Termination of this Agreement shall be without prejudice to the rights and remedies of either Party in relation to any negligence, omission or default of the other Party prior to termination.
- 9.6 Termination of this Agreement shall not prejudice any rights of either Party which may have arisen on or before the date of termination or any provision explicitly or impliedly intended to survive termination of this Agreement.
- 9.7 The parties shall develop an Exit Management Plan in accordance with the provisions of Schedule 5 (Exit Management Plan). On termination of this Agreement for any reason, the provisions of the Exit Management Plan shall apply or, if no such plan has been developed, the Contractor shall, at its own expense, take all steps necessary to ensure an orderly handover of the Services to any New Contractor.

10. Return of Material

- 10.1 If requested by the RSA, at the end of the Term or on the earlier termination of this Agreement pursuant to clause 9, the Contractor shall forthwith deliver up to the RSA, at the Contractor's sole expense, all Confidential Information, Materials, anything whatsoever purchased or created by the Contractor and all other material generated by the Contractor or its employees or third parties under this Agreement. Without prejudice to clause 17, the Contractor may only engage a third party (who is not an employee of the Contractor) to do work in connection with the performance of the Contractor's duties under this Agreement where it is a condition of the contract between the Contractor and that third party that the third party shall undertake to comply with this clause 10.1
- 10.2 All such documents, Materials, matters and things shall upon their purchase or creation become the property of the RSA.

11. **Limitation of Liability**

- 11.1 The Contractor shall indemnify the RSA and its officers, directors, employees and agents (each an "**Indemnified Person**") against all losses, damages, actions, claims, demands, costs, charges and expenses suffered or incurred by an Indemnified Person(s) arising from any default, negligence, act or omission by the Contractor or the Contractor's employees, sub-contractors, agents or representatives in connection with the provisions of the Services and/or any breach by the Contractor of this Agreement.
- 11.2 Save in respect of: (i) death or personal injury caused by negligence; (ii) fraud or wilful default; (iii) liability under the Intellectual Property Indemnity in clause 13.7; or (iv) breach by the Contractor of clause 8 (Confidential Information) or clause 15 (Data Protection), the Contractor's liability whether in contract, tort (including negligence) or otherwise, arising out of or in connection with this Agreement, shall in no case exceed 200% of the amounts paid and payable by the RSA under this Agreement; in respect of any event or series of connected events.
- 11.3 Save in respect of: (i) death or personal injury caused by negligence; or (ii) fraud or wilful default; the RSA's liability whether in contract, tort (including negligence) or otherwise, arising out of or in connection with this Agreement, shall in no case exceed the amounts paid or payable by the RSA under this Agreement in the aggregate.
- 11.4 In no event shall either Party be liable for any loss of time, loss of production, loss of profit, loss of anticipated savings, loss of revenue, loss of business, loss of goodwill, financing costs, increased operating costs or any special, incidental, indirect or consequential loss or damages of any kind whatsoever and howsoever caused even if such Party has been advised of their possibility.

12. **Insurance**

- 12.1 The Contractor shall maintain in force during the Term, and for a period of two (2) years thereafter, such levels of insurance with a reputable insurer licenced to underwrite business in the European Union and acceptable to the RSA (acting reasonably), as may be required to cover any potential liability of the RSA under this Agreement.
- 12.2 Without prejudice to the generality of clause 12.1, the Contractor shall, as a minimum, carry the levels and types of insurance set out below under forms of policy which are acceptable to the RSA, acting reasonably:
- (a) employers liability insurance to a limit no less than €12,700,000 (twelve million seven hundred thousand euro) for any one claim or series of claims arising out of a single occurrence;
 - (b) public liability insurance to a limit no less than €6,500,000 (six million five hundred thousand euro) for any one claim or series of claims arising out of a single occurrence;
 - (c) professional indemnity insurance of €1,000,000 (one million euro) in the aggregate.
- 12.3 The Contractor shall notify the RSA immediately in the event that any of the insurances described in clause 12.2 ceases to be available or maintained.
- 12.4 Where permitted under the relevant terms and conditions, the insurance policies described in clause 12.2 shall include an indemnity to principals clause specifically indemnifying the RSA. None of the policies described in clause 12.2 shall include any terms or conditions to the effect that the RSA must discharge any liability before being able to recover from the insurers.
- 12.5 The Contractor shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to in clause 12.2 in the event of a claim under any of the policies.

- 12.6 The Contractor shall provide to the RSA copies of such policies and up-to-date certificates of insurance together with evidence that all relevant premiums have been paid. For the avoidance of doubt, neither inspection nor receipt of such copies shall constitute acceptance by RSA of the terms thereof or waiver of the Contractor's responsibility hereunder.
- 12.7 The Contractor shall notify the insurer of the RSA's interest and shall cause such interest to be noted on such insurance policies together with a provision to the effect that, if any claim is brought or made by the RSA against the Contractor in respect of which the Contractor would be entitled to receive indemnity under any of the Insurance Policies, the relevant insurer will indemnify the RSA directly against such claim and any charges, costs and expenses in respect of such claim. If the relevant insurer does not so indemnify the RSA, the Contractor shall use all insurance monies received by it to indemnify the RSA in respect of any claim and shall make good any deficiency from its own resources.
- 12.8 The Contractor shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Contractor is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Contractor shall notify the RSA without delay and the Parties shall meet as soon as possible thereafter to discuss how best to protect their respective interests and the RSA shall be entitled to terminate this Agreement with immediate effect if such insurances cannot be procured by the Contractor.
- 12.9 It shall be the Contractor's responsibility to ensure that any agent or sub-contractor of the Contractor effects and maintains all insurance required by law and all such other insurances as are necessary for the provision of the Services. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Contractor.
- 13. Intellectual Property Rights**
- 13.1 The parties agree that the Intellectual Property Rights in the Materials and any other products of the Services shall vest in and be the property of the RSA (or such other person, persons or client as the RSA may nominate) absolutely. The RSA hereby grants to the Contractor a limited, non-exclusive, royalty free, world-wide, non-transferable and non-sublicensable licence to use any such Intellectual Property Rights solely strictly as necessary for the supply of the Services pursuant to this Agreement.
- 13.2 To give effect to clause 13.1, the Contractor as legal and beneficial owner hereby absolutely and irrevocably assigns to the RSA, including by way of present assignment of present and future copyright, all Intellectual Property Rights whether in existence now or created in the future throughout the world for the full duration of such rights and any renewals or extensions thereof in and to the Materials, free from all encumbrances, including the right to sue for damages for past infringement.
- 13.3 The Contractor shall further execute all documents and do all such other acts (whether during the Term or after the termination of this Agreement) as the RSA, in its reasonable discretion, deems necessary or may be necessary or desirable:
- (a) in connection with its application to register (where relevant) any Intellectual Property Rights in the Materials in the name of the RSA; and/or
 - (b) to vest the legal and beneficial ownership in any and all such Intellectual Property in the Materials in the RSA.
- 13.4 The Contractor undertakes to sign, execute and do any such act or thing necessary for the purpose of giving to the RSA or its nominee the full benefit of the provisions of this clause 13.
- 13.5 The Contractor also irrevocably hereby waives any so-called moral and authors' rights in the

Materials in favour of the RSA and any successors in title to the Materials.

- 13.6 The Contractor shall retain all right and title to, and interest in any Intellectual Property Rights developed, owned, licensed to or otherwise controlled by the Contractor prior to the Commencement Date or generated by the Contractor during the Term, in either case, independently of the Services. The Contractor hereby grants to the RSA a non-exclusive, royalty free, world-wide, non-revocable licence to use any such Intellectual Property Rights in connection with the Services.
- 13.7 The Contractor shall indemnify the Indemnified Person(s) against all losses, damages, actions, claims, demands, costs, charges and expenses suffered or incurred by an Indemnified Person(s) arising from any infringement or alleged infringement of any third party Intellectual Property Rights in consequence of the supply of the Services by the Contractor under this Agreement or the use or possession of the Materials by the RSA, subject to the following:
- (a) the RSA shall promptly notify the Contractor in writing of any alleged infringement of which it has notice;
 - (b) the RSA shall make no admissions without the Contractor's prior written consent; and
 - (c) the RSA, at the Contractor's request and expense, shall allow the Contractor to conduct any negotiations or litigation and/or settle any claim. The RSA shall give the Contractor all reasonable assistance. The costs incurred or recovered in such negotiations or settled claim shall be for the Contractor's account.
- 13.8 If at any time an allegation of infringement of Intellectual Property Rights is made in respect of the Materials (or any part thereof) or, if in the Contractor's reasonable opinion such an allegation is likely to be made, the Contractor may at its own expense modify or replace the Materials (or any part thereof) so as to avoid the infringement, without detracting from overall performance, the Contractor making good to the RSA any loss of use during modification or replacement.
14. **Transfer of Undertakings**
- 14.1 The Parties agree and acknowledge that neither the commencement nor the termination of the provision of the Services pursuant to this Agreement is intended to constitute a transfer within the meaning of the European Communities (Protection of Employees on the Transfer of Undertakings) Regulations 2003 (the "**Regulations**").
- 14.2 Notwithstanding the provisions of clause 14.1 above, it is accepted that if the Regulations apply or will apply to the Services (or part of the Services) on termination of this Agreement and to any of employees of the Contractor or its sub-contractors (including any person claiming to be an employee or former employee of the Contractor) wholly or mainly assigned to the provision of the Services (the "**Affected Employees**") the following provisions shall apply:
- (a) the Contractor shall provide to the RSA, as soon as practicable, anonymized information (with employee names redacted therefrom) relating to such Affected Employees including, remuneration details, employing entity, dates of commencement of employment, hours of work, accrued holiday entitlement, job descriptions, copy contracts of employment or written statements of terms and conditions in compliance with the Terms of Employment (Information) Acts 1994 and 2001, details of employee claims or other liabilities, collective agreements, customs and practices applicable to Affected Employees and any other details reasonably requested by the RSA;
 - (b) the Contractor and the RSA agree that each severally shall comply (and the RSA shall use reasonable endeavours to procure that any New Contractor shall comply) with its respective obligations to inform and/or consult Affected Employees under Regulation 8 of the Regulations about the transfer of some or all of the Services;

- (c) the Contractor shall indemnify the RSA and any New Contractor against any and all Liabilities arising from or incurred by reason of any claims made under the Regulations or any claims made by any Affected Employees in circumstances where such claim relates to:
 - (i) the Contractor's failure to comply with its obligations under the Regulations;
 - (ii) any and all Liabilities arising out of or in connection with the deemed transfer of Affected Employees under the Regulations (including, if applicable, the termination of the Affected Employees' employment by the Contractor and/or the RSA or New Contractor) or the termination of the employment of another employee of the RSA or New Contractor where the RSA, or as the case may be a New Contractor, is required by law to terminate the employment of the other employee instead;
 - (iii) any event or occurrence related to or arising out of the employment of an Affected Employee prior to the date of termination of this Agreement for which the Contractor is liable; or
 - (iv) any material term of any contract of employment (whether written or oral) not disclosed to the RSA or disclosed inaccurately in a material respect to the RSA and which term has effect as if originally made between the RSA or a New Contractor and any Affected Employee as a result of the provisions of Regulations 3 or 4 of the Regulations.

For the purposes of clauses 14.1 and 14.2 "**Liabilities**" means costs (including the cost of wages, salaries and other remuneration or benefits), expenses, taxation, PRSI payments, health contributions, levies, losses, claims, damages, demands, actions, fines, penalties, awards, liabilities and expenses (including legal expenses on an indemnity basis), in each case howsoever arising.

- 14.3 At the RSA's request from time to time, the Contractor shall provide the RSA, as soon as practicable, with anonymized information (with all personal data redacted therefrom) including remuneration details, dates of commencement of employment, hours of work, accrued holiday entitlement, job descriptions, copy contracts of employment or written statements of terms and conditions in compliance with the Terms of Employment (Information) Acts 1994 and 2001, details of employee claims or other liabilities, collective agreements, customs and practices and any other details reasonably requested by the RSA applicable to employees of the Contractor or its sub-contractors to whom the Regulations may apply on termination of this Agreement. The Contractor hereby consents to disclosure of any information provided or to be provided to the RSA pursuant to this clause 14.3 to any candidates in a competition for the award of a contract to replace (in whole or in part) this Agreement. The Contractor shall ensure that it obtains all requisite consents from the Affected Employees with respect to disclosure of such information to the RSA and to any candidates in such a competition as aforesaid.
- 14.4 The Contractor shall comply with all applicable law relating to employment or employees in Ireland and in any other applicable jurisdiction and shall indemnify the RSA and any New Contractor against any and all Liabilities incurred during the term of this Agreement and for a period of three (3) years following termination in respect of:
 - (a) any claims by any employees, sub-contractors or agents of the Contractor or its sub-contractors that they were employees, agency workers, agents or sub-contractors of the RSA during the term of this Agreement or have become employees, agency workers, agents or sub-contractors of the RSA (or a New Contractor) on the termination of this Agreement or, as the case may be, on termination of any of the Services; and
 - (b) any breach of applicable law by the Contractor (including agents or sub-contractors) or claims by any employee, agent or sub-contractor of the Contractor or its sub-

contractors arising out of such breach during the term of this Agreement.

14.5 During the Stand-Still Period (defined below) the Contractor will:

- (a) not initiate or make any changes in the composition or identities of the personnel engaged in providing the Services without the prior written consent of the RSA save where the Contractor is required to do so by law;
- (b) not amend or vary (or promise to amend or vary) the terms and conditions of employment or engagement (including for the avoidance of doubt, pay) of the personnel engaged in providing the Services without the prior written consent of the RSA save where the Contractor is required to do so by law; and
- (c) make no commitments to any of the personnel engaged in providing the Services whether under its information and consultation obligations under the Regulations or otherwise without the RSA's prior, written consent.

For the purposes of this clause 14.5, "**Stand-Still Period**" means:

- (a) where any notice is given terminating this Agreement prior to the date on which it would otherwise expire, the period commencing on the date of such notice and ending on the date on which this Agreement expires pursuant to the terms of such notice or such later date on which the Contractor ceases to provide the Services; or
- (b) where no such notice has been given by the date which falls three months before the date on which the Agreement would ordinarily expire (the "**Three Month Date**"), the period commencing on the Three Month Date and ending on the normal expiry date or such later date on which the Contractor ceases to provide the Services.

14.6 If and to the extent that the Regulations apply by reason of the transaction given or to be given effect to, by or pursuant to and in accordance with this Agreement, the Contractor shall comply with the Regulations.

14.7 The Contractor expressly agrees that any indemnities, agreements or warranties provided under this clause 14 (or any sub-clauses hereof), and which are expressed to be for the benefit of a New Contractor shall be assignable by the RSA to the New Contractor (to whom the RSA shall be entitled to disclose this clause 14), and that the Contractor shall indemnify the New Contractor to that extent.

15. **Data Protection**

15.1 The Contractor acknowledges that in providing Services under this Agreement, the Contractor may process personal data within the meaning set out in Data Protection Law on behalf of the RSA. In such circumstances, the Contractor acknowledges that the RSA is the data controller and the Contractor is the data processor, as each term is defined under Data Protection Law and the Contractor agrees that:

- (a) details of:
 - (i) the subject-matter and duration of the data processing;
 - (ii) the nature and purpose of the data processing; and
 - (iii) the type(s) of personal data and categories of data subjects;are as set out in Schedule 6 (Data Protection);
- (b) the Contractor shall only process such personal data in accordance with the documented lawful instructions of the RSA, including with regard to transfers of personal data to a third country and solely as strictly necessary for the performance of its obligations under this Agreement;

- (c) the Contractor shall ensure that the persons authorised by the Contractor to process such personal data are bound by appropriate confidentiality obligations;
- (d) the Contractor shall implement such technical and organisational security measures as are required to comply with the data security obligations under Data Protection Law;
- (e) the Contractor shall not engage any sub-processor without the prior written consent of the RSA and where the RSA has consented to the appointment of a sub-processor, the Contractor must not replace or engage other sub-processors without the prior written consent of the RSA;
- (f) where any sub-contractor of the Contractor will be processing such personal data on behalf of the RSA, the Contractor shall ensure that a written contract exists between the Contractor and the sub-contractor containing clauses equivalent to those imposed on the Contractor in this clause 15. In the event that any sub-processor fails to meet its data protection obligations, the Contractor shall remain fully liable to the RSA for the performance of the sub-processors obligations;
- (g) the Contractor shall inform the RSA promptly and in any event within three (3) Business Days of receiving a request from a data subject to exercise their rights under Data Protection Law and provide such co-operation and assistance as may be required to enable the RSA to deal with such request in accordance with the provisions of Data Protection Law;
- (h) the Contractor shall assist the RSA by implementing appropriate technical and organisational measures to allow the RSA to comply with requests from data subjects to exercise their rights under Data Protection Law;
- (i) the Contractor shall assist the RSA in ensuring compliance with its obligations in respect of security of personal data under Data Protection Law;
- (j) the Contractor shall at the choice of the RSA, delete or return all such personal data to the RSA when the Contractor ceases to provide service relating to data processing, delete all existing copies of such personal data unless EU law or the laws of an EU Member State require storage of the personal data;
- (k) the Contractor shall: (i) make available to the RSA all information necessary to demonstrate compliance with the obligations laid down in this clause 15; and (ii) allow for and assist with audits, including inspections, conducted by the RSA or another auditor mandated by the RSA, in order to ensure compliance with the obligations laid down in this clause 15, including its data security obligations under Data Protection Law provided however that the RSA shall be entitled, at its discretion, to accept adherence by the Contractor to an approved code of conduct or an approved certification mechanism to aid demonstration by the RSA that it is compliant with the provisions of this clause 15;
- (l) the Contractor shall inform the RSA immediately if, in its opinion, it receives an instruction from the RSA in relation to clause 15.1(k) above which infringes Data Protection Law;
- (m) the Contractor shall notify the RSA without undue delay after becoming aware of any 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 and provide the RSA with such co-operation and assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such breach; and
- (n) no such personal data shall be transferred outside of the European Economic Area by the Contractor or any of its agents or sub-processors without the prior written consent

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

16. Force Majeure

- 16.1 If and to the extent that either Party (the “**Affected Party**”) is hindered or prevented from performing any of its obligations under this Agreement, by circumstances not within its reasonable ability to control and which, by the exercise of diligence, the Affected Party is unable to prevent, including, but not limited to, acts of God, inclement weather, flood, lightning, fire, , acts or omissions of Governments or other competent authority including acts of terrorism, war, military operations, acts or omissions of third parties for whom the Affected Party is not responsible (“**Force Majeure**”) excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or sub-contractor or agents) place(s) of business, the Affected Party shall be relieved of liability for failure to perform such obligations.
- 16.2 The Affected Party shall promptly notify the other Party (the “**Other Party**”) of the estimated extent and duration of such inability to perform its obligations (the “**Force Majeure Notification**”).
- 16.3 Upon the cessation of the event of Force Majeure the Affected Party shall notify the Other Party of such cessation.
- 16.4 If, as a result of Force Majeure, the performance by the Affected Party of its obligations under this Agreement is only partially affected, the Affected Party shall subject to the provisions of clause 16.5 nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 16.5 In the case a Force Majeure notification then:
- (a) any obligation outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party;
 - (b) if the Force Majeure lasts for more than forty-five (45) days from the date of the Force Majeure notification and notice of cessation has not been given pursuant to clause 16.3 and such Force Majeure prevents the Affected Party from performing its obligations in whole or to a material extent during that period, the Other Party shall be entitled (but not obliged) to terminate this Agreement by giving not less than fourteen (14) days written notice to the Affected Party after expiry of the said forty five (45) day period PROVIDED THAT such notice shall be deemed not to have been given in the event that notice of cessation of the Force Majeure given pursuant to clause 16.3 is received by the Other Party prior to the expiry of the fourteen (14) days' notice. If this Agreement is not terminated in accordance with the provisions of this sub-clause 16.5(b) then any obligations outstanding shall be fulfilled by the Affected Party as soon as reasonably possible after the Force Majeure event has ended, save to the extent that such fulfilment is no longer possible or is not required by the Other Party.
- 16.6 In circumstances where the Contractor is the Affected Party, the RSA 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 fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

17. No Assignment or Sub-contracting

17.1 The RSA shall be entitled to assign any or all of its rights or obligations under this Agreement in whole or in part. The Contractor may not assign or sub-contract any of its rights or obligations under this Agreement without the prior consent in writing of the RSA.

17.2 Where the RSA consents in writing to any sub-contracting, the Contractor shall procure compliance with the terms of this Agreement by any such sub-contractor(s) agreed by the RSA. The Contractor shall remain primarily liable to the RSA for the performance of the Contractor's obligations under this Agreement notwithstanding the RSA's consent to the appointment of any sub-contractor(s) by the Contractor pursuant to Clause 17 (No Assignment of Sub-contracting).

18. Multiple Counterparts

This Agreement may be executed simultaneously in two or more counterparts, each one of which shall be deemed an original, but all of which shall constitute one and the same instrument.

19. Severability

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable then such illegality, invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect. The Parties agree to attempt to substitute for any illegal, invalid or unenforceable provision a valid or enforceable provision which achieves to the greatest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision.

20. Notices

20.1 Notices or other communications given pursuant to this Agreement shall be in writing and shall be sufficiently given:

(a) if delivered by hand or sent by post to the address and for the attention of the person set forth in this clause of the Party to which the notice or communication is being given or to such other address and for the attention of such other person as such Party shall communicate to the Party giving the notice or communication; or

(b) if sent by email to the correct email address of the Party to which it is being sent.

20.2 Any notice, or communication, given or sent by post under this clause, shall be sent by ordinary post and each person giving a notice or communication by email in accordance with this clause shall promptly post the original copy to the person to whom the notice or communication was given but the absence of such posting shall not affect the validity of the notice or communication.

20.3 Every notice or communication given in accordance with this clause shall be deemed to have been received as follows:

Means of Dispatch

Delivered by hand:

Post:

Email:

Deemed Received

the day of delivery;

Two (2) Business Days after posting; and

Twenty-four (24) hours after the email leaves the sender's email server

Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a Business Day) such notice or other communication shall be deemed to be given or made at the start of working hours on the next Business Day.

[SUBJECT TO CONTRACT/CONTRACT DENIED]

- 20.4 The relevant addressee, address and email address of each Party for the purposes of this Agreement, subject to clause 20.5 are:

Name of Party

The Road Safety Authority

Address/e-mail

Moy Business Park
Primrose Hill
Ballina
Co. Mayo
Email: [REDACTED]

[REDACTED]

[REDACTED]

Email: [REDACTED]

- 20.5 Each Party shall notify the other of a change to its name, relevant addressee, address or email address for the purposes of clause 20.4. Such notification shall only be effective on:

- (a) the date specified in the notification as the date on which the change is to take place; or
- (b) if no date is specified or the date specified is less than five (5) Business Days after the date on which notice is given, the date falling five (5) Business Days after notice of any such change has been given.

21. No Partnership or Agency

Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between the parties or their respective personnel.

22. Dispute Resolution

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

- 22.2 If any dispute cannot be settled amicably by the RSA Relationship Manager and the Contractor Relationship Manager within ten (10) Business Days, the dispute shall be referred to the RSA's [REDACTED] and the Contractor's [REDACTED]. The RSA's [REDACTED] and the Contractor's [REDACTED] will use all reasonable endeavours to resolve the dispute. If the dispute is not resolved by the RSA's [REDACTED] and the Contractor's [REDACTED] within ten (10) Business Days of the matter being referred to them, the parties will refer the dispute to mediation in accordance with the International Centre for Effective Dispute Resolution ("CEDR") procedures then in force before resorting to litigation. The mediation process will be commenced by service by one Party on the other of a written notice that the issue is to be referred to mediation (the "**Mediation Notice**"). The parties shall agree on a choice of mediator with sufficient knowledge and experience in the industry sufficient to comprehend the technical and economic issues raised. In the event that the parties are unable to agree on a choice of mediator within ten (10) Business Days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. The costs of the mediation shall be shared equally between the parties.

- 22.3 Nothing contained in this clause 22 shall restrict either Party's freedom to commence legal proceedings where such proceedings are required urgently to preserve any legal right or remedy, to protect any Intellectual Property Rights or rights in Confidential Information or to otherwise prevent irreparable harm.

23. Prevention of Corruption/Ethics in Public Office

Without prejudice to any other provision of this Agreement, the Contractor shall not offer, or give or agree to give, any person employed by the RSA any gift or consideration of any kind as an inducement or reward for doing, or forbearing to do, or having done, or forbore to do, any

act in relation to the obtaining or performance of this Agreement or for showing, or forbearing to show, favour or disfavour to any person in relation to this Agreement. In the event of any breach of this clause 23 or the commission of any offence by the Contractor or any employee, servant, agent or subcontractor (or any employee, servant, agent of any sub-contractor) of the Contractor under the Prevention of Corruption Acts 1889 to 2001, the Bribery Act 2010, the Ethics in Public Office Act 1995 or under any legislation analogous to the foregoing in any applicable jurisdiction, the Contractor shall be deemed to have committed a material breach which is not capable of remedy and the RSA may terminate this Agreement pursuant to clause 9. The decision of the RSA shall be final and conclusive in any dispute, difference or question arising in respect of the interpretation of this clause or the right of the RSA under this clause to terminate this Agreement.

24. Governing Law and Jurisdiction

- 24.1 This Agreement, and all disputes arising out of or in connection with this Agreement, shall in all respects be governed by, construed and take effect in accordance with the laws of Ireland.
- 24.2 The Parties irrevocably agree that subject to clause 22, the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Agreement.

25. Miscellaneous

- 25.1 This Agreement embodies and sets forth the entire agreement and understanding of the Parties and supersedes all prior oral or written agreements understandings or arrangements relating to the subject matter of this Agreement. Neither Party shall be entitled to rely on any agreement, understanding or agreement that is not expressly set forth in this Agreement.
- 25.2 This Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the Parties.
- 25.3 No failure or delay on the part of either Party hereto to exercise any right or remedy under this Agreement shall be construed or operate as a waiver thereof nor shall any single or partial exercise of any right or remedy as the case may be. Termination of this Agreement shall be without prejudice to the rights of each Party in respect of any antecedent breach hereof by the other. The rights and remedies provided in this Agreement are cumulative and are not exclusive of any rights or remedies provided by law.
- 25.4 The text of any press release or other communication to be published by or in the media concerning the subject matter of this Agreement shall require the approval of each Party.
- 25.5 Each of the Parties hereto shall be responsible for its respective legal and other costs incurred in relation to the preparation of this Agreement.

[SUBJECT TO CONTRACT/CONTRACT DENIED]

IN WITNESS WHEREOF the parties have executed this Agreement on the date written above

SIGNED by:

in the presence of:

(Signature)

(Signature)

(Name)

(Name – witness)

(Title)

(Title – witness)

(Date)

duly authorised for and on behalf of
[NAME OF CONTRACTOR]

SIGNED by:

in the presence of:

(Signature)

(Signature)

(Name)

(Name – witness)

(Title)

(Title – witness)

(Date)

duly authorised for and on behalf of
THE ROAD SAFETY AUTHORITY

[SUBJECT TO CONTRACT/CONTRACT DENIED]

SCHEDULE 1 - THE SERVICES

Part 1 – The Services

[to be updated prior to execution in line with the RFT and the Contractors' Tender]

SCHEDULE 2 - PAYMENT

Part 1 – Payment for Set Up, Mobilisation and Transition Services

1. The Contractor's one-off fee for the Set Up and Mobilisation of the Services is €[insert amount] and the RSA shall pay the Contractor such fee on completion of the Set Up and Mobilisation Services within thirty (30) days of receipt by the RSA of a valid invoice from the Contractor.

Part 2 – Payment for the Services

1. The Contractor's fee for the management and delivery of the NRSES shall be €[insert amount] per annum and the RSA shall pay the Contractor ninety-two and a half percent (92.5%) of such amount in equal monthly instalments of €[insert amount] and the balance thereof ("the KPI Holdback") will be payable on completion of the calendar year subject to adjustment in accordance with Schedule 7.
2. It is acknowledged that the Contractor's remuneration for the Services will be fixed for the Term of this Contract unless revised in line with Part 4 of this Schedule 2 and the Contractor will not be entitled to charge the RSA for any time incurred by the Contractor which exceeds the value of such fixed remuneration, save where such charges are agreed pursuant to the Change Control Procedure. Notwithstanding the foregoing the Contractor will provide the RSA with such reasonable information in relation to the provision of the Services at any time (and on any number of occasions) as the RSA may request.
3. The Contractor's remuneration for any overnight accommodation required shall be €[insert rate as quoted by the Contractor in their Tender prior to execution] (subject always to prior approval of the RSA).
4. The RSA shall pay for fuel charges and other vouched expenses incurred in the performance of the Services, subject to the provision of vouched evidence. The RSA shall pay the Contractor such fee on a monthly basis in arrears,

Part 3 – Payment for Additional Services

1. Where the RSA requests the Contractor to perform any Additional Services under clause 3.8 the Contractor will be required to quote for the Service required.
2. The Contractor's fee for the Additional Services shall be calculated in line with the daily rates and half-day rates submitted by the Tenderer. [Insert Table(s) with Rates as quoted by the Contractor in their Tender below prior to execution].
3. Where the Parties agree the Contractor's fee estimate for Additional Services pursuant to clause 3.8, the Parties shall at the same time agree the frequency and amounts of payment instalments in respect of such Additional Services.

Part 4 – Price Review

1. The Successful Tenderer may apply in writing to the RSA on or after the commencement of the Contract Year 2 requesting review of the rates summarised in Part 2 of this Schedule 2 (“**Price Review**”).
2. The price review application must clearly set the grounds for the request and provide vouched evidence in support of this request. Such evidence must demonstrate to the satisfaction of the RSA that the reasons for the revision of price are outside the Contractor’s control and that the requested revision of price is justifiable.
3. Approval, in whole or in part (if any), of any requested revision of price will be at the sole discretion of the RSA.
4. Please note that a **maximum of one** revision of rates is permitted per Contract Year.
5. In the event that the fees/rates are approved, the revised fees/rates shall apply and shall remain fixed for the remainder of the Term of the Contract unless revised in subsequent Contract Year(s).

Part 5 – Invoicing

1. The Contractor shall submit a valid invoice to the RSA in accordance with clause 4 of the Agreement.
2. If the RSA accepts the Contractor’s invoice it shall discharge the relevant amount within thirty (30) days of receipt by the RSA of such invoice.
3. If the RSA disputes any invoice then the matter shall be resolved under the dispute resolution provisions under clause 22 (Dispute Resolution).

[SUBJECT TO CONTRACT/CONTRACT DENIED]

SCHEDULE 3 - KEY PERSONNEL

Name of Individual	Role(s)
[Details to be inserted prior to execution of the Contract]	Relationship/Contract Manager
Details to be inserted prior to execution of the Contract	Scheduler
[Details to be inserted prior to execution of the Contract]	NRSES Programme Developer
[Details to be inserted prior to execution of the Contract]	Project Manager

SCHEDULE 4 – CHANGE CONTROL PROCEDURE

1. Where either Party (the “**Requesting Party**”) wishes to make a material change to the terms of this Agreement including, without limitation, any change to:
 - (a) the Services; or
 - (b) the timeframes for the provision of the Services,the procedure in this Schedule (the “**Change Control Procedure**”) shall apply. The Change Control Procedure shall also apply in respect of any matters which are specifically identified in the Agreement as being subject to the Change Control Procedure.
2. All change requests must be documented in a request form (a “**Change Request Form**”) which shall include, as a minimum, the following details:
 - (a) description of the requirements for the change;
 - (b) comparison of the new requirements with the existing requirements;
 - (c) reasons for the change, including a high level description of the proposed business impact;
 - (d) timeframe for completion of the change.
3. The Change Request Form shall be signed by the Relationship Manager of the Requesting Party and submitted to the Relationship Manager of the other Party.
4. The Contractor shall provide the RSA Relationship Manager with an impact statement (an “**Impact Statement**”) within ten (10) Business Days of receipt or submission of a Change Request Form (or such longer period as the parties may agree). The Impact Statement shall include, as a minimum, the following details:
 - (a) the estimated number of Business Days and personnel (including levels of qualification) and details of the work categories required to deliver the change within the timeframe specified in the Change Request Form;
 - (b) overall impact on the charges payable under the Agreement (i.e. reduction or increase) which shall include a breakdown of how such fees relate to the details in (a) above so as to facilitate, where relevant, any reduction being offset against any increase in fees;
 - (c) timetable for the change including any impact on the timeframes set out in the Project Plan; and
 - (d) impact on the Services to be provided under the Agreement.
5. After consideration, the RSA Relationship Manager may elect by giving written notice to the Contractor either to:
 - (a) accept the Impact Statement in which case the Agreement shall be amended accordingly;
 - (b) reject the Impact Statement in which case the Agreement shall remain unchanged; or
 - (c) require the Contractor to produce a revised Impact Statement by repeating (up to a maximum of 2 times) the procedure set out in paragraphs 4 and 5 of this Schedule.
6. Following completion of the procedure in paragraph 5 above, where the parties fail to reach agreement on a request for change, the dispute resolution procedure set out in clause 22 of the Agreement may be invoked.

SCHEDULE 5 – EXIT MANAGEMENT PLAN

1. Development and Updating of Exit Management Plan
 - 1.1 The Parties shall discuss and agree an exit management plan within not more than six (6) months from the date of signature of this Agreement (the “**Exit Management Plan**”) covering action to be taken upon the termination or expiry of the Agreement to provide for an orderly handover of the Services to any New Contractor.
 - 1.2 The Parties shall review and, if necessary, agree updates to the Exit Management Plan at six (6) monthly intervals from the date on which the Exit Management Plan is first agreed in order to ensure that it reflects the contemporaneous state of the Services.
2. Content of Plan
 - 2.1 The Exit Management Plan shall, as a minimum:
 - (a) where relevant, upon early termination of the Agreement, provide for the assignment and/or novation to the New Contractor of any licences or other contracts with third parties on which the supply of the Services, or any replacement services, are dependent or for the procurement of similar licences or contracts directly between the New Contractor and the relevant third party on terms no less favourable than those provided to the Contractor;
 - (b) seek to ensure that there is an orderly and smooth transition from the performance of the Services by the Contractor to the performance of the Services, or any replacement services, by the New Contractor or a new service provider;
 - (c) define the responsibilities of the RSA and the Contractor clearly in the event of exit and transfer;
 - (d) provide for the handover of the following data to the New Contractor in such manner as the New Contractor may reasonably require:
 - (i) all such data as may be necessary to facilitate the continued provision of the Services, or any replacement services, by the New Contractor or a new service provider seamlessly and without interruption; and
 - (ii) all such data as the New Contractor may deem necessary to enable a new service provider to tender for the provision of the Services or any replacement services; and
 - (e) provide for any training reasonably required by the New Contractor for the personnel (of either the New Contractor or any new service provider) who will be assuming responsibility for the Services or any replacement services.
 - 2.2 The Exit Management Plan shall include the following:
 - (a) a list and timetable of activities for the New Contractor and the Contractor to undertake during the exit management period;
 - (b) full details of any dependencies on the New Contractor for the successful implementation of the Exit Management Plan; and
 - (c) such other details as the New Contractor and the Contractor consider appropriate when agreeing the terms of the Exit Management Plan.

SCHEDULE 6 – DATA PROTECTION

1. Types of Personal Data and Data Subjects

1.1 General Provision of the Services

The data subjects in connection with delivering the Services (day to day running of the office) shall be RSA staff and other stakeholders. Personal data processed on the data subjects in the course of delivery of the Services will include:

- (i) Name
- (ii) Business email address
- (iii) Business work location
- (iv) Business phone number

1.2 Road Safety Education Programmes

The data subjects in connection with delivering the road safety education programmes/events may include but are not limited to schools, colleges, companies, organisations, and other stakeholders.

Personal data processed on the data subjects in relation to delivering road safety education programmes will include:

- (i) Name
- (ii) email address
- (iii) phone number

2. Nature and Purpose of Data Processing

2.1 To enable the provision of certain service elements (e.g. delivering the general provision of services, delivering road safety education programmes to participants) The Contractor will use personal data to communicate with the data subjects, and in the case of the delivery of road safety education programmes to register participants.

2.2 This Schedule 6 may be supplemented and amended over the course of the Term of the Contract as required to facilitate delivery of the Services.

3. Subject Matter and Duration of Processing

3.1 **Subject matter of processing:** The Contractor will provide the Services as described in this Agreement to the RSA. The provision of the Services necessitates the Contractor processing personal data described below on behalf of the RSA.

3.2 **Duration of processing:** the Term of the Contract.

SCHEDULE 7 – KEY PERFORMANCE INDICATORS AND KPI HOLDBACK

1. Purpose

- 1.1 This Schedule sets out the Key Performance Indicators (KPIs) applicable to the Contract and the KPI Holdback mechanism that shall apply to the Contractor's Annual Fee.
- 1.2 The Contractor shall perform the Services in accordance with the KPIs set out in this Schedule throughout the Contract Term.
- 1.3 The list of KPIs is not definitive and may be amended throughout the Contract Term, in line with agreement between the Parties.

2. KPIs and KPI Assessment

- 2.1 Table 1 below sets out the KPIs applicable to the Contract.

Table 1: KPIs

No	KPI	Description	Target Time
1	Programme Plan	Submit the approved Annual Programme Plan (as agreed with the RSA) to the RSA two months prior to the next calendar year	By the 31 October each calendar year
2	Delivery of the Programme Plan	Deliver 9,120 hours of the road safety education programmes/events in accordance with the approved Annual Programme Plan	By the 31 December each calendar year
3	Monthly Activity Report	Submit the Monthly Activity Report to the RSA for the relevant calendar month	By the date agreed with the RSA following the end of each calendar month
4	Operational Data Report	Submit the Operational Data Report to the RSA for the relevant calendar month	Within 5 working days after the end of the relevant calendar month
5	Annual Report	Submit an Annual Report to the RSA for the relevant calendar year	By the 31 January following the relevant calendar year
6	Quarterly Assurance Audits	Carry out one Quality Assurance Audit on each RSPO responsible for delivering the Services for the relevant quarter	By the end of each Quarter

- 2.2 Each KPI shall be assessed on an Achieved or Not Achieved basis.
- 2.3 As set out in paragraph 5 below, the Parties shall monitor the Contractor's performance against

the KPIs on an ongoing basis throughout each calendar year.

- 2.4 The Annual Report produced by the Contractor will form the basis for the KPI assessment.
- 2.5 At the Annual Review Meeting, the Parties shall discuss the Annual Report including the achievement of each KPI and the amount of KPI Holdback payable (if any) shall be recorded in writing and signed by both Parties.
- 2.6 If the Parties are unable to agree whether a KPI has been achieved or the amount of KPI Holdback payable, the disputed matter shall be resolved under the dispute resolution provisions under clause 22 (Dispute Resolution). For clarity, payment of any undisputed portion of KPI Holdback shall not be delayed by this process.

3. KPI Holdback

- 3.1 The RSA shall, during each calendar year retain an amount equal to seven and a half percentage (7.5%) of the annual fee for the provision of NRSES.
- 3.2 The proportion of such held back amount payable to the Contractor at the end of the calendar year shall be determined by the Contractor's performance against the KPIs as set out in the table 2 below.

Table 2: KPI Holdback

No	KPI	KPI Holdback Weighting	KPI Holdback
1	Programme Plan	15%	[to be populated before signature in line with the fees submitted]
2	Delivery of the Programme Plan	65%	[to be populated before signature in line with the fees submitted]
3	Monthly Activity Report	5%	[to be populated before signature in line with the fees submitted]
4	Operational Data Report	5%	[to be populated before signature in line with the fees submitted]
5	Annual Report	5%	[to be populated before signature in line with the fees submitted]
6	Quarterly Assurance Audits	5%	[to be populated before signature in line with the fees submitted]

4. Payment of KPI Holdback

- 4.1 The amount of the KPI Holdback payable shall be calculated in line with weighting assigned to the applicable KPI(s) in Table 2 above. Where more than one KPI is not achieved, the KPI holdback will be cumulative.
- a) where a KPI is Not Achieved, the KPI Holdback allocated to that KPI shall be forfeited;
 - b) where more than one KPI is Not Achieved, the KPI Holdback allocated to those KPIs shall be forfeited.
- 4.2 By way of illustration only:
- a) failure to achieve KPI 1 shall result in forfeiture of 15% of the KPI Holdback;
 - b) failure to achieve KPI 2 shall result in forfeiture of 65% of the KPI Holdback;
 - c) failure to achieve KPI 3, KPI 4, KPI 5 or KPI 6 shall each result in a 5% forfeiture of the KPI Holdback;
 - d) failure to achieve KPI 1 and KPI 2 shall result in a forfeiture of 80% of the KPI Holdback;
 - e) failure to achieve all KPIs shall result in forfeiture of 100% of the KPI Holdback.
 - f) where all KPIs are Achieved, 100% of the KPI Holdback shall be released.
- 4.3 The balance of the KPI Holdback payable (if any) shall be paid by the RSA within thirty (30) days of RSA approval and in accordance with the procedure outlined at paragraph 2 of this Schedule.

5. Continuous Performance Management

- 5.1 Performance against KPI 2 shall be monitored monthly to ensure that the Contractor remains on track to deliver the 9,120 contact hours of road safety education programmes and events in accordance with the approved Annual Programme Plan
- 5.2 Where any KPI is assessed as Not Achieved, the Contractor shall, within such reasonable period as may be specified by the RSA:
- a) undertake a root cause analysis;
 - b) submit a corrective action plan identifying the measures to address the issue; and
 - c) implement the agreed corrective actions to prevent recurrence.
- 5.3 The Contractor's performance will also be monitored for overall effectiveness. Any performance-related issue identified, whether or not it is linked to a KPI, shall be dealt with in accordance with clause 5.2 above.
- 5.4 Where the same KPI is assessed as Not Achieved in consecutive calendar years, the KPI Holdback retained by the RSA shall increase on a cumulative basis in accordance with the Table 3 below.

Table 3 - Cumulative KPI Holdback

Calendar Year	Holdback
Year 1	7.5%
Year 2	10%
Year 3	12.5%

- 5.5 Where a KPI that was assessed as Not Achieved in one calendar year is assessed as Achieved the following calendar year, the KPI Holdback will be reset.
- 5.6 Consistent achievement of the KPIs will be a condition of contract extension (if any).
- 5.7 Where the same KPI is Not Achieved in three consecutive calendar years, the RSA reserve the right to terminate the Contract, in line with clause 9.1 of the Contract.