

APPENDIX 3 – IDA IRELAND'S TERMS AND CONDITIONS

Subject to contract / contract denied

THIS AGREEMENT is made on [insert date]

BETWEEN:-

- (1) Industrial Development Agency (Ireland), having its offices at Three Park Place, Hatch St. Upper, Dublin 2 (the "**IDA**" which expression includes its successors and permitted assigns and any body to whom its functions are transferred under Applicable Law) of the one part; and
- (2) [insert supplier name], a company established under [Irish law] with company registration number [insert number] and its registered address at, [insert address], (hereinafter referred to as the "**Supplier**" which expression includes its successors and permitted assigns) of the other part,

as set out in Schedule E

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

WHEREAS:

- A. The IDA invited responses ("**Tenders**") to a Request for Tenders [insert date] entitled "**Expatriate Health Insurance**" (the "**RFT**") from economic operators ("**Tenderers**"), for the provision of services as described in section 3 of the RFT, to IDA Ireland. References to the RFT shall include any clarifications issued by IDA Ireland.

The Supplier submitted a response (ins date) as set out in Schedule E (the "**Response**"). Reference to the Response shall include any clarifications issued by the Supplier. The Response (including any clarifications) is hereby incorporated by reference to this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. The Supplier agrees to provide the Services described in Schedule B (the "**Services**") to the IDA in accordance with this agreement (the "**Agreement**"). Schedule B details the nature, quantity, quality, time of delivery, key personnel, and specifications of the Services in accordance with the RFT.
2. Subject to the terms and conditions of this Agreement, the IDA agrees to pay to the Supplier the charges as stipulated in Schedule C (the "**Charges**"). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
3. This Agreement is governed by the terms and conditions as set out in Schedule A and consists of the following documents, and in the case of conflict of wording, in the following order of priority:

- i. This Agreement and Schedules attached hereto;
- ii. The RFT;
- iii. The Response.

4. This Agreement shall take effect on [insert date] (the “**Effective Date**”) and continue for a period of two (2) years in duration, unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (the “**Term**”).

IN WITNESS WHEREOF this Agreement has be executed by the Parties on the date shown at the beginning of this Agreement.

SIGNED for and on behalf of the IDA

(being a duly authorised officer)

SIGNED for and on behalf of the Supplier

SIGNED for and on behalf of the IDA

(being a duly authorised officer)

in the presence of:

Witness

SCHEDULE A: TERMS AND CONDITIONS

1. Supplier's Obligations

- A. The Supplier undertakes to act with due care, skill, and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Supplier shall require its agents and Subcontractors to exercise due care, skill, and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Supplier to its agents and Subcontractors under this Agreement.
- B. In consideration of payment of the Charges and subject to Clause 3 of this Schedule A the Supplier shall:
 - 1. provide the Services in accordance with the RFT, in the manner set out in the RFT and Response (as accepted by IDA Ireland) and in accordance with IDA Ireland's directions and the terms of this Agreement;
 - 2. comply with and implement any policies and/or guidelines issued by IDA Ireland from time to time and notified to the Supplier in writing;
 - 3. comply with all local security arrangements as notified to it by IDA Ireland;
 - 4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "**Regulations**") The Supplier shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration, and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Supplier is deemed to be the prime contractor under this Agreement and the Supplier assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Supplier as prime contractor under the Submission hereby assumes liability for its subcontractors and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Agreement to the extent that it or they are retained by the Supplier. Subject to Clause 14, the Supplier shall notify the IDA as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- D. Without prejudice to Clause 1C, where the IDA becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the IDA reserves the right to require the Supplier to immediately replace such Subcontractor and the Supplier shall comply with such requirement. The Supplier shall include in every sub-contract a right for the Supplier to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

- E. During this Agreement the Supplier shall be an independent contractor and not the employee of the IDA. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Supplier are not and shall not hold themselves out to be (and shall not be held out by the Supplier as being) servants or agents of the IDA for any purposes whatsoever.
- F. The IDA acknowledges that the Supplier may from time to time be dependent on the IDA to facilitate the Supplier in the carrying out of its duties under this Agreement. The IDA agrees to use its reasonable endeavours to so facilitate the Supplier within the timescales and in the manner agreed by it in writing in accordance with Clause 10.
- G. The Supplier shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "**TUPE Regulations**") and failure to so comply shall constitute a serious breach of this Agreement. The Supplier shall indemnify, save harmless and keep the IDA indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.
- H. Third Country Access

In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Supplier shall comply with the following obligations:

- i. Not to subcontract more than 50% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure;
- ii. For contracts whose subject matter covers the supply of goods, to ensure for the duration of the contract that goods or services supplied or provided in the execution of the contract and originating in the third country which is subject to the IPI measure represent no more than 50% of the total value of the contract, irrespective of whether such goods or services are supplied or provided directly by the successful tenderer or by a subcontractor;
- iii. To provide to the IDA Ireland, upon request, adequate evidence corresponding to point (i) or (ii) above;
- iv. To pay a proportion charge, in the event of non-observance of the obligations referred to at point (i) or (ii) above, of between 10% and 30% of the total value of the contract.

2. Key Personnel

The Supplier undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission ("**Key Personnel**"), assigned by it to provide the Services shall be available for the Term of this Agreement. The Supplier acknowledges that the Key Personnel are essential to the proper provision of the Services to the IDA. In the event that any of the Key Personnel assigned by the Supplier to provide the Services under this Agreement becomes unable to provide the Services for whatever reason then, the Supplier acknowledges and undertakes that it shall immediately notify the IDA in writing of the inability of any Key Personnel and replace that person with a person of equivalent

experience and expertise ("**Replacement Personnel**"). The Supplier shall provide to the IDA such details as the IDA may reasonably require in writing regarding any Replacement Personnel. The IDA shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3. Payment

- A. Subject to the provisions of this Clause 3 IDA Ireland shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
 - 1. Compliance by the Supplier with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to Clause 10A of this Schedule A from time to time;
 - 2. The furnishing by the Supplier of a valid invoice and such supporting documentation as may be required by IDA Ireland from time to time. Any Supplier pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to IDA Ireland's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed as the case may be) must be raised by IDA Ireland's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of IDA Ireland or upon such deemed acceptance the invoice shall be payable by IDA Ireland. Payment is subject to any rights reserved by IDA Ireland; and
 - 4. IDA Ireland being in possession of the Supplier's current Tax Clearance Certificate. The Supplier shall comply with all EU and domestic taxation law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at www.finance.gov.ie. The Supplier may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by IDA Ireland.
- C. 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 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to IDA Ireland in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with IDA Ireland. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money

recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- E. Any and all taxes applicable to the provision of the Goods under and in accordance with this Agreement will be the sole responsibility of the Supplier and the Supplier so acknowledges and confirms.

4. Warranties, Confirmation and Undertakings

- A. The Supplier acknowledges warrants, confirms, and undertakes that:

1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
3. it is entering into this Agreement with and has a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations;
4. it has acquainted itself with and shall comply with legal requirements or such other laws, recommendations, guidance, or practices as may affect the provision Services as they apply to the Supplier;
5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
6. where applicable, the status of the Supplier, as declared in the “Declaration as to Personal Circumstances of Tenderer” in the Submission, which confirms that none of the excluding circumstances listed in Article 57 of EU Directive 2014/24/EU as implemented into Irish law by European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284/2016) apply to the Supplier, remains unchanged;
7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in Clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the IDA to obtain the benefit of the Services for its business purposes;
8. the IDA shall be under no obligation to purchase any minimum number or value of Services;
9. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Supplier undertakes to advise the IDA forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Supplier shall carry out all directions of the IDA with regard to compliance with this Clause 4 A.9.

- B. The Supplier undertakes to notify IDA Ireland forthwith of any material change to the status of the Supplier with regard to the warranties, confirmations and undertakings as set out in Clause 4A of this Schedule A and to comply with all reasonable directions of IDA Ireland with regard thereto which may include termination of this Agreement.

5. Remedies

- A. The Supplier shall be liable for and shall indemnify IDA Ireland for and in respect of all and any losses, claims, demands, damages or expenses which IDA Ireland may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Supplier, its employees, subcontractors or agents or any of them or as a result of the Supplier's failure to exercise care as outlined in Clause 1 of this Schedule A. The terms of this Clause 5A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, the Supplier's indemnity under Clause 6(G), a breach by the Contractor of Clause 21 (Data Protection) or in respect of reputational damage, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs, and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the IDA find itself obliged to order elsewhere in consequence of the failure of the Supplier to deliver Services, the IDA shall be entitled to recover from the Supplier any excess prices which may be paid by the IDA.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E. If for any reason the IDA is dissatisfied with the performance of the Supplier, a sum may be withheld from any payment otherwise due calculated as follows:

("the **Retention Amount**") which Retention Amount shall not at any given time exceed 20% per cent of the Charges. In such event the IDA shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the IDA or resolution of outstanding queries. The IDA shall hold the Retention Amount on behalf of the Supplier but without any obligation to invest. The terms of this Clause 5E shall be without prejudice to and not be in substitution for any remedy of the IDA under this Agreement.

6. Intellectual Property

- A. Intellectual Property Rights ("**IPR**") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

- B. Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Supplier or IDA independently of this Agreement, and any IPR in the Supplier's standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively "the **Materials**") (or any part or parts thereof) shall vest in the IDA and the Supplier so acknowledges and confirms. For the avoidance of doubt the Supplier hereby assigns all Intellectual Property Rights, title, and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the IDA absolutely.
- D. The IDA grants to the Supplier a royalty-free non-exclusive licence to use the IDA's Pre-existing IPR for the Term to the extent necessary to enable the Supplier to fulfil its obligations under this Agreement. Save as expressly set out in this Clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired, or developed such intellectual property.
- E. The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Supplier from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Supplier be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies, and techniques that are acquired or used in the course of providing the Services.
- G. The Supplier shall ensure that all and any necessary consents and/or licences for any software, instrument, modality, or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the IDA shall be vested with all necessary rights so as to enable the IDA to enjoy the benefit of the Services for its business purposes). The Supplier hereby indemnifies the IDA and shall keep and hold the IDA harmless from and in respect of all and any losses (whether direct, indirect, or consequential) liability, damages, claims, costs, or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

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

- i. procure the necessary rights for the IDA to continue use;
- ii. replace the relevant deliverable with a non-infringing equivalent;

- iii. replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
 - iv. if the Supplier cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the IDA Charges paid for such deliverable less a reasonable amount for the IDA's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect, or consequential) thereby accruing to the IDA as a result of the breach.
- H. Upon the termination of this Agreement for whatever reason, the Supplier shall immediately deliver up to the IDA 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.

7. Confidentiality

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided, or obtained arising from their participation in this Agreement ("**Confidential Information**") and shall not disclose same to any third party except:
- 1. to its professional advisers subject to the provisions of this Clause 7; or
 - 2. as may be required by law; or
 - 3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this Clause 7 including to a Party's officers or employees who need to know the Confidential information for the purposes of giving effect to the terms of this Agreement subject to the provisions of this Clause 7; or
 - 4. in the case of IDA Ireland by request of any person or body or authority whose request IDA Ireland or persons associated with IDA Ireland (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Supplier undertakes to comply with all reasonable directions of IDA Ireland with regard to the use and application of all and any of its Confidential Information (which may include compliance with operational protocols and/or signing of a non-disclosure agreement).

The obligations in this Clause 7 will not apply to any Confidential Information:

- 1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
- 2. which is or becomes public knowledge other than by breach of this Clause 7; or
- 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
- 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).

- C. In circumstances where IDA Ireland is subject to the provisions of the Freedom of Information Act 2014, then in the event of IDA Ireland receiving a request for information related to this Agreement, IDA Ireland shall consult with the Supplier in respect of the request. The Supplier shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. IDA Ireland will consult the Supplier about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner, and ultimately, the Courts.
- D. The Supplier's attention is drawn to the Second Schedule, paragraph 4, subparagraphs (1), (2) and (3) of the Industrial Development Act 1993, as amended by the Industrial Development (Enterprise Ireland) Act 1998, which states that a person shall not disclose any information obtained by that person while performing duties (or as a result of having performed duties) as, inter alia, an adviser or consultant to IDA Ireland or an employee of such person while performing duties relating to such advice or consultation. These provisions shall apply to the Supplier. Any such disclosure by the Supplier in breach of the above provision may give rise to termination pursuant to Clause 9 of this Schedule A.

The Supplier must also strictly preserve the confidentiality of any information coming to its knowledge relating to the affairs of any Supplier dealing with IDA Ireland, Science Foundation Ireland or Enterprise Ireland and may not make use of any such information for the purpose of any dealing (direct or indirect) in shares, property or otherwise.

- E. The terms of this Clause 7 shall survive expiry, completion, or termination for whatever reason of this Agreement.

8. Force Majeure

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in this Clause 8A of this Schedule A) 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 Supplier (or subcontractor or agent) places of business.
- B. In the event of any failure, interruption, or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "**Affected Party**") shall promptly notify the other Party in writing specifying:
 - 1. the nature of the Force Majeure Event;
 - 2. the anticipated delay in the performance of obligations;
 - 3. the action proposed to minimise the impact of the Force Majeure Event;
- C. If the Force Majeure Event continues for 20 calendar days either Party may terminate this Agreement by giving 14 days' written notice to the other Party.

- D. In circumstances where the Supplier is the Affected Party, IDA Ireland 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 Supplier in accordance with the terms and conditions of this Agreement.

9. Termination

- A. IDA Ireland shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages if the Supplier 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.
- B. Where applicable, IDA Ireland shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where IDA Ireland becomes aware that any of the excluding circumstances listed in Article 57 of EU Directive 2014/24/EU as implemented into Irish law by European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. No. 284/2016) apply to the Supplier.
- C. This Agreement may be terminated by the IDA, without liability for compensation or damages, by serving **one (1) month** written notice to the Contractor. This Agreement may be terminated by the Supplier, without liability for compensation or damages, by serving **one (1) month** written notice to the IDA.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations, or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. On completion or termination of this Agreement, howsoever arising, the Supplier shall immediately return all confidential information, records, papers, materials, media, and other property of IDA Ireland which is in its possession. As an exception to its obligations under this Clause 9E the Supplier may retain one copy of the confidential information and records in paper form, in the Supplier's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement.

10. Contract Management

- A. The Supplier agrees to:
1. liaise with and keep IDA Ireland's Contact fully informed of any matter which might affect the observance and performance of the Supplier's obligations under this Agreement
 2. comply with the reporting arrangements and protocols required by IDA Ireland from time to time; and
 3. comply with all reasonable directions of IDA Ireland.

- B. IDA Ireland or its authorised representative may inspect the Supplier'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 Supplier shall comply with all reasonable directions of IDA Ireland thereby arising. The cost of inspection shall be borne by IDA Ireland.
- C. The Supplier shall be required to hold for the Term insurances of the nature and amount as set out in the RFT and shall immediately advise IDA Ireland of any material change to its insured status. The Supplier shall produce proof of current premiums paid upon request and where required produce valid certificates of insurance for inspection. The Supplier shall carry out all directions of IDA Ireland with regard to compliance with this Clause 10C.
- D. During this Agreement the Supplier shall be an independent contractor and not be employee of IDA Ireland. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Supplier are not and shall not hold themselves out to be (and shall not be held out by the Supplier as being) servants or agents of IDA Ireland for any purposes whatsoever.

11. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the "**Dispute**"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to within the Supplier and to Jemma Lyons, HR & OD Manager, IDA Ireland within the IDA respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.

- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Supplier shall comply fully with the requirements of the Agreement at all times.

12. Governing Law, Choice of Jurisdiction and Execution

- A. This Agreement and any dispute or claim (including non-contractual disputes or claims) arising out of it or in connection with it or its subject matter 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 (including non-contractual disputes or claims) arising out of or in connection with this Agreement.
- B. This Agreement shall, if required, be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Agreement. This Agreement shall become effective on [insert date] and be dated (and each counterpart shall be dated) on the date first written above between the parties which have executed and delivered a counterpart. The parties hereby consent to the use of electronic signatures in connection with the execution of this Agreement, and further agree that electronic signatures on a word version of this Agreement shall be legally binding with the same force and effect as delivery of an original manually executed copy of this Agreement. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

13. Notices

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email or facsimile transmission. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this Clause 13.
- B. All notices shall be deemed to have been served as follows:
1. if personally delivered, at the time of delivery;
 2. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 3. if communicated by email or facsimile transmission at the time of acknowledgement of transmission.

14. Assignment and Subcontract

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

15. Entire Agreement

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

16. Severability

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

17. Waiver

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

18. Non-exclusivity

- A. Nothing in this Agreement shall preclude IDA Ireland from purchasing goods (or Goods) from a third party at any time during the currency of the Agreement.

19. Media

- A. No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or marketing material, shall be made by the Supplier without the prior written consent of IDA Ireland.

20. Conflicts, Registrable Interests and Corrupt Gifts

- A. The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Supplier hereby undertakes to advise IDA Ireland forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with IDA Ireland's directions in respect thereof.
- B. Any registrable interest involving the Supplier (and any subcontractor or agent as the case may be) and IDA Ireland, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to IDA Ireland immediately upon such information becoming known to the Supplier (subcontractor or agent as the case may be) and to comply with IDA Ireland's directions in respect thereof. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (as amended) a copy of which is available on request.
- C. The Supplier shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this Clause 20C or the commission of any offence by the Supplier, any subcontractor, agent, or employee under the Prevention of Corruption Acts 1889 to 2005 and/or the Criminal Justice (Corruption Offences) Act 2018 shall entitle IDA Ireland to terminate this Agreement

forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Supplier of the amount or value of any such gift, consideration, or commission.

21. Data Protection

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

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

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

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

“Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the **“General Data Protection Regulation”**), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.

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

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

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

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

- B. The Supplier shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, IDA Ireland is the Data Controller and the Supplier is the Data Processor in respect of Data which is Personal Data. Schedule D sets out the scope, nature and purpose of Processing by the Supplier, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of Clause 21B of this Schedule A, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under this Agreement:
1. process that Personal Data only on the written instructions of IDA Ireland;
 2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by IDA Ireland, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal

Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of IDA Ireland has been obtained and the following conditions are fulfilled;
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. The Supplier complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Supplier complies with reasonable instructions notified to it in advance by IDA Ireland with respect to the processing of the Personal Data;
- E. The Supplier shall promptly notify IDA Ireland (by email: dpo@ida.ie) if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to IDA Ireland's obligations under the Data Protection Laws and provide full co-operation and assistance to IDA Ireland in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Supplier shall without undue delay report in writing to IDA Ireland (by email: dpo@ida.ie) any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Supplier shall assist IDA Ireland in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Supplier shall at the written direction of IDA Ireland, amend, delete, or return Personal Data and copies thereof to IDA Ireland on termination of this Agreement unless the Supplier is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Supplier to store the Personal Data.

- I. The Supplier shall permit IDA Ireland, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Supplier's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Supplier in any way for the provision of the Services. The Supplier shall comply with all reasonable directions of IDA Ireland arising out of any such inspection, audit, or review.
- J. The Supplier shall fully comply with, and implement policies which are communicated or notified to the Supplier by IDA Ireland from time to time.
- K. The Supplier shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21 and allow for inspections and contribute to any audits by IDA Ireland or IDA Ireland's designated auditor.
- L. The Supplier shall:
 - 1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - 2. ensure that a back-up copy of any and all such Personal Data is made in accordance with the Supplier's data back-up policy and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - 3. in such an event and if attributable to any default by the Supplier or any Sub-contractor, promptly restore the Personal Data at its own expense or, at IDA Ireland's option, reimburse IDA Ireland for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. IDA Ireland does not consent to the Supplier appointing any third party processor of Personal Data under this Agreement.
- N. The Supplier shall indemnify the IDA against all claims and proceedings and all liability, loss, costs, and expenses incurred by the IDA as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of the Suppliers breach of any Data Protection Laws or any unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Supplier, its employees or agents.
- O. Save for Clauses 21B, 21C, 21D(4) and 21E, all the obligations on the Supplier in this Clause 21 relating to the processing of Personal Data shall apply to the processing of all Data.
- P. The provisions of this Clause 21 shall survive termination and or expiry of this Agreement.

SCHEDULE B: THE SERVICES

SCHEDULE C: CHARGES

SCHEDULE D: DATA PROTECTION

Processing, Personal Data and Data Subjects

1. Processing by the Supplier

1.1 Subject matter of processing: all information, whether in oral or written (including electronic) form, created by or in any way originating with the IDA (including but not limited to its' employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the IDA provided under the Agreement which relates to an identified or identifiable natural person as may be provided in connection with the provision of the Services.

1.2 Nature of processing: [to be inserted on completion of contract]

1.3 Purpose of processing: to allow the Supplier to provide the Services under the Agreement;

1.4 Duration of the processing: [to be inserted on completion of contract]

2. Types of personal data: [to be inserted on completion of contract].

3. Categories of data subject: [to be inserted on completion of contract].

SCHEDULE E: THE RESPONSE