

SUBJECT TO CONTRACT/CONTRACT DENIED

APPENDIX 7 - CONTRACT

ROAD SAFETY AUTHORITY

and



**SERVICES AGREEMENT FOR THE PROVISION, HOSTING, SUPPORT, MAINTENANCE, AND
ENHANCEMENT OF THE RSA ONLINE TACHOGRAPH CARD APPLICATION SOLUTION**

CONTENTS

CLAUSE	PAGE
1. Interpretation	4
2. Term	8
3. The Solution	8
4. Testing and Acceptance	9
5. Services	10
6. Charges	12
7. Warranties	14
8. Change Control	16
9. Audit	16
10. Confidential Information	17
11. Termination	18
12. Return of Material	19
13. Limitation of Liability	19
14. Insurance	19
15. Intellectual Property Rights	20
16. Transfer of Undertakings	22
17. Re-Tendering	24
18. Data Protection	24
19. Force Majeure	26
20. Disaster Recovery Strategy	27
21. No Assignment or Sub-contracting	27
22. Non-Solicitation	27
23. Multiple Counterparts	27
24. Severability	28
25. Notices	28
26. No Partnership or Agency	29
27. Dispute Resolution	29

SUBJECT TO CONTRACT/CONTRACT DENIED

28.	Prevention of Corruption/Ethics in Public Office	29
29.	Governing Law and Jurisdiction.....	29
30.	Miscellaneous	30
	Schedule 1 – The Services	32
	Schedule 2 – Solution Setup and Transition Plan	33
	Schedule 3 – Payment	34
	Schedule 4 – Key Account Personnel.....	37
	Schedule 5 – Change Control Procedure	38
	Schedule 6 – Exit Management Plan	39
	Schedule 7 – Data Protection	41
	Schedule 8 – Service Level Agreement.....	42
	Schedule 9 – Cyber Security Program.....	54
	Schedule 10 – The Solution Specification	55

SUBJECT TO CONTRACT/CONTRACT DENIED

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 hereinafter specified 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:

“**Acceptance**” means acceptance of the Solution by the RSA in accordance with clause 4.2;

“**Acceptance Tests**” means the tests to be agreed in writing between the RSA and the Contractor which are designed to show that the Solution, or any part of the Solution, performs in accordance with the Solution Specification as set out in Schedule 10;

“**Additional Services**” means any services in addition to the Solution Setup and Transition Services and the Support Services to be carried out by the Contractor as set out in Part 3 of Schedule 1 and as may be agreed by the Parties in accordance with clause 5.10 and the Change Control Procedure;

“**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, and “**Approved**” shall have a similar meaning;

“**Business Day**” means a day other than a Saturday or Sunday, or 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 5;

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

“**Computer Virus**” means any malware, virus, undocumented malicious data, code, program, or other internal component (e.g. computer worm, computer time bomb or similar component), which could damage, destroy, alter or disrupt any computer program, firmware or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information;

“**Confidential Information**” shall have the meaning set out in clause 10.1 of this Agreement;

“Contractor Relationship Manager” means [•];

“Data Protection Law” means Applicable Law relating to data protection including the Data Protection Acts 1988 to 2018 and the EU General Data Protection Regulation (Regulation 2016/679);

“Disaster Recovery Strategy” means the documented contingency plan of the Contractor setting out the emergency back-up and service recovery procedures which the Contractor will implement where necessary with a view to preventing any delay, interruption or disruption to the Services or any part thereof or any non-availability of the Solution including as a result of any loss of, damage to, destruction or non-availability of any communications, information technology or other technical solution of the Contractor;

“Exit Management Plan” has the meaning set out in Schedule 6;

“First Repeat Acceptance Tests” and **“Second Repeat Acceptance Tests”** means the repeat acceptance tests to be implemented by the RSA and the Contractor in accordance with clause 4;

“Go-Live Date” means the date on which the Solution enters into live use (not including any live use for Acceptance Testing purposes);

“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 13.1 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 Account Personnel” means the Contractor's employees identified in Schedule 4, as the same may be replaced from time to time in accordance with clause 5.5;

“Liquidated Damages” means the amounts set out in Part 4 of Schedule 3 (Payment) as being payable by the Contractor to the RSA if the Contractor fails to meet the milestone(s)/timeframe(s) specified in Part 4 of Schedule 3 (Payment) in respect of which Liquidated Damages apply;

“Materials” means all materials, documents, submissions, reports, records and other items supplied by or on behalf of the Contractor in connection with the Solution or 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 or, if the RSA commences providing part or all of such services in-house, the RSA;

“Other Systems” means all of the RSA or third party systems, if any, identified in the Solution Specification with which the Solution is required to interface;

“Performance Adjustment” means a payment which may be due from the Contractor to the RSA where the Contractor fails to perform Services in accordance with the applicable Service Level, as set out in Schedule 8;

“PO Number” has the meaning given to it in clause 6.3;

SUBJECT TO CONTRACT/CONTRACT DENIED

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

“Requirements Specification Document” means the document detailing the requirements for the relevant Solution Development/Enhancement as agreed and signed off by the RSA and the Contractor;

“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 Solution and the Services;

“RSA Relationship Manager” means [•];

“Services” means the Solution Setup and Transition Services and the Support Services, together with any Additional Services that may be required under this Agreement;

“Service Level Agreement” means the service level agreement set out in Schedule 8;

“Service Levels” means the service levels, including key performance indicators, response and resolution times set out in Schedule 8 (Service Level Agreement);

“Software” means any software, including any Third Party Software incorporated into the Solution by the Contractor under this Agreement and shall include any Third Party Software, customisations, configurations, enhancements, updates, bug fixes, patches, or other modifications made thereto;

“Solution” means the RSA’s Online Digital Tachograph Card Application Solution;

“Solution Development / Enhancement” means any modification, development or enhancement to be made to the Solution as may be requested by the RSA;

“Solution Setup and Transition Plan” means the plan set out in Schedule 2 for the replication/building and transition of the Solution to the Contractor’s hosting environment, where applicable, and any updated plan agreed between the Parties pursuant to clause 3.3, in which the timeframes/milestones for the provision of the Solution Setup and Transition Services are set out;

“Solution Setup and Transition Services” means the services to be provided by the Contractor in connection with the replication/building and transition of the Solution, where applicable, as more particularly described in Part 1 of Schedule 1;

“Solution Specification” means the technical specification for the Solution set out in Schedule 10;

“Support Services” means the hosting, support, and maintenance services to be provided by the Contractor following Acceptance of the Solution as more particularly described in the Part 2 of Schedule 1;

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

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

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

“Third Party Software” means any software in respect of which the Intellectual Property Rights are owned by a third party.

- 1.2 The headings and sub-headings in this Agreement are inserted only for convenience and shall not affect its interpretation or construction.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 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 Submission and the RFT save where the context otherwise requires. In the event of a conflict between a provision of the Tender Submission, the RFT or any provision of this Agreement, the following order of priority shall apply:
- (a) clauses 1 to 30 of this Agreement;
 - (b) the Schedules;
 - (c) the RFT; and

SUBJECT TO CONTRACT/CONTRACT DENIED

(d) the Tender Submission;

save where the applicable provision of the Tender Submission would result in a higher standard of operation for the Solution or performance of the Services, in which case the applicable provision of the Tender Submission 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 twenty-four (24) months from the Commencement Date (the “**Initial 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 six (6) months’ written notice to the Contractor, for a period of up to twelve (12) months (each an “**Extended Term**”) with a maximum of four (4) such extensions on the same terms and conditions, subject to its obligations at law, up to a maximum Term of seventy-two (72) months. The Initial Term and any Extended Terms shall together constitute the “**Term**”.

3. The Solution

- 3.1 In consideration of the payment by the RSA of the charges to the Contractor in accordance with clause 6 and Schedule 3 (Payment), the Contractor agrees to provide the Solution and 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 Where applicable, the Contractor shall provide the RSA with an updated detailed version of the Solution Setup and Transition Plan for approval, within twenty (20) Business Days of the Commencement Date.
- 3.4 The RSA shall formally approve or reject the updated versions of the Solution Setup and Transition Plan no later than ten (10) Business Days after the date on which they are first delivered to the RSA.
- 3.5 If the RSA rejects the updated Solution Setup and Transition Plan, the RSA shall inform the Contractor in writing of its reasons for its rejection. The Contractor shall then revise the updated Solution Setup and Transition Plan (taking reasonable account of the RSA’s comments) and shall re-submit a revised updated Solution Setup and Transition Plan to the RSA for the RSA’s Approval within ten (10) Business Days of the date of the RSA’s notice of rejection. The provisions of Clause 3.3 to 3.6 shall apply again to any resubmitted documents, provided that either Party may refer any disputed matters for resolution by Clause 27 (Dispute Resolution) at any time.
- 3.6 Once the updated Solution Setup and Transition Plan have been approved by the RSA, the updated Solution Setup and Transition Plan shall replace the version set out in Schedule 2 of this Agreement, and any further changes shall be made in accordance with the Change Control Procedure.
- 3.7 The Contractor shall provide the Solution Setup and Transition Services in a timely manner and in accordance with the timeframes set out in the Solution Setup and Transition Plan.
- 3.8 The Contractor shall notify the RSA of any actual or potential delays and its likely impact on the Contractor’s ability to achieve the relevant timeframe specified in the Solution Setup and Transition Plan as soon as reasonably practicable upon becoming aware of such failure.
- 3.9 In the event that the Contractor fails to meet any timeframe specified in the Solution Setup and Transition Plan in respect of which Liquidated Damages (if any) apply, without prejudice to any other rights or remedies which may be available to the RSA, the RSA shall be entitled

SUBJECT TO CONTRACT/CONTRACT DENIED

to recover the relevant Liquidated Damages from the Contractor on demand in accordance with Schedule 3 (Payment).

- 3.10 It is acknowledged by the Parties that the Liquidated Damages set out in Schedule 3 (Payment) (if any) are a genuine pre-estimate of part of the loss that may be suffered by the RSA in respect of the Contractor's failure to meet the timelines specified in the Solution Setup and Transition Plan and do not represent a penalty. Accordingly, the crediting of such sums is without prejudice to any entitlement the RSA may have to damages from the Contractor relating to failure to meet the timelines specified in the Solution Setup and Transition Plan or any other provision of this Agreement. The Parties agree that if a court of competent jurisdiction determines that any Liquidated Damages constitute a penalty, those Liquidated Damages shall reduce to such amounts which do not, in the view of the court, constitute a penalty.
- 3.11 The Contractor shall use its best endeavours to ensure that it shall not introduce any Computer Virus into the Solution or any Other Systems. The Contractor shall use best industry standard virus scanners (updated with the then-most current virus signatures and data sets) to scan the Solution or any deliverable prior to linking it with any Other Systems. If a Computer Virus is found to have been introduced into the Solution or any Other Systems by the Contractor, or if the Solution is found to contain a Computer Virus at the time of making available to the RSA, the Contractor shall provide all reasonable assistance to the RSA in reducing the effects of the Computer Virus including the effects of any loss of operational efficiency or loss of data.

4. Testing and Acceptance

- 4.1 The Contractor shall support the RSA in carrying out Acceptance Tests in accordance with the timelines set out in the Solution Setup and Transition Plan, where applicable.
- 4.2 The RSA shall provide written confirmation to the Contractor promptly after the Solution is demonstrated by the Contractor to have successfully completed the Acceptance Tests.
- 4.3 If the Solution (or any part thereof) fails the Acceptance Tests (disregarding any minor and inconsequential failures) the Contractor shall, without prejudice to any other right or remedy to which the RSA might be entitled, forthwith rectify free of charge such defects in the Solution as it shall in the circumstances reasonably judge necessary and in sufficient time to make possible the repetition of the Acceptance Tests within five (5) Business Days of the date of failure (or such later date as the Parties may agree) (the "**First Repeat Acceptance Tests**").
- 4.4 If the Solution (or any part thereof) fail(s) the First Repeat Acceptance Tests (disregarding any minor and inconsequential failures), the RSA may, without prejudice to any other right or remedy to which the RSA might be entitled, require the Contractor by written notice to rectify forthwith free of charge such defects in the Solution as the Contractor shall reasonably judge necessary to enable the Solution to pass repeat Acceptance Tests (the "**Second Repeat Acceptance Tests**"). The Second Repeat Acceptance Tests shall be carried out within five (5) Business Days of the date of failure.
- 4.5 If the Contractor shall not have completed the alterations or modifications referred to in clause 4.4 above by the fifth (5th) Business Day after the First Repeat Acceptance Tests or if the Solution (or any part thereof) shall fail the Second Repeat Acceptance Tests (disregarding any minor and inconsequential failures), the RSA shall be entitled at its option to proceed under clauses 4.5(a) to 4.5(d) below;
- (a) fix a new date for carrying out further Repeat Acceptance Tests on the same terms and conditions as the Second Repeat Acceptance Tests; or
 - (b) accept such Second Repeat Acceptance Tests subject to an abatement of the charges set out in the Schedule 3 (Payment), such abatement to be such amount as is agreed in writing between the Parties; or

SUBJECT TO CONTRACT/CONTRACT DENIED

- (c) where relating to the provision of the Solution Setup and Transition Services, without prejudice to any other rights or remedies which may be available to the RSA, terminate this Agreement and receive a full refund of all charges paid under this Agreement; or
 - (d) where relating to a Solution Development/Enhancement, without prejudice to any other rights or remedies which may be available to the RSA, terminate the relevant System Development/Enhancement and receive a full refund of all fees paid under such Solution Development/Enhancement.
- 4.6 The Parties hereby agree to provide each other with all such assistance and advice as is reasonable in connection with the tests to be carried out pursuant to this clause 4 with a view to ensuring that the Solution passes the Acceptance Tests.
- 4.7 For the avoidance of doubt:
 - (a) references in this clause 4 to “minor and inconsequential failures” shall be failures which in no way inhibit normal business practices; and
 - (b) Acceptance of the Solution or any Approval issued by the RSA shall not preclude the RSA from relying on the warranties set out in clause 7 and shall be strictly without prejudice to any other rights or remedies which may be available to the RSA in respect of any non-performance of the Solution or any other breach of the terms of this Agreement by the Contractor.
- 4.8 The Contractor shall, at the request and expense of the RSA, promptly upon or at any time after the completion of successful Acceptance Tests in respect of the Solution place a copy of the source code for any Software, and all associated documentation, in escrow with an escrow agent to be agreed between the Parties and subject to the terms of the escrow agent's standard source code escrow agreement.
- 4.9 The Contractor and the RSA agree that the provisions of this Clause 4 shall apply to the carrying out of Acceptance Tests (where Acceptance Tests are required by the RSA) in respect of any customisation, Solution Development/Enhancement, update, new version or other modifications made by the Contractor and incorporated into the Solution under this Agreement following the Go-Live Date.
- 5. Services**
- 5.1 The Contractor shall:
 - (a) where applicable, provide the Solution Setup and Transition Services with effect from the Commencement Date until the date of Acceptance;
 - (b) provide the Support Services with effect from the Go-Live Date; and
 - (c) where applicable, provide any Additional Services for such period as may be agreed in writing between the Parties.
- 5.2 The Contractor shall provide all ancillary or incidental services or functions where such services or functions are required for the provision of the Solution or the Services.
- 5.3 The Contractor agrees to implement and maintain for the duration of the Term of the Contract a comprehensive Cyber Security Programme which shall meet, at a minimum, the obligations described in Schedule 9 (Cyber Security Program). The Parties acknowledge that Schedule 9 may be updated or amended subject to the Change Control Procedure.
- 5.4 The Contractor in carrying out its duties under this Agreement shall comply with all reasonable instructions of the RSA issued in connection with the Solution or the Services.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 5.5 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 Account Personnel identified in Schedule 4 (Key Account Personnel). Unless the Key Account Personnel are removed in accordance with clause 5.7, 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 Account 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 Account 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.
- 5.6 Unless the Contractor Relationship Manager (named in Clause 1.1 above) is removed in accordance with Clause 5.7, or ceases to be employed by or contracted to the Contractor, is taken ill, is injured or is on maternity or paternity leave, no change in the Contractor Relationship Manager shall be made without the RSA's prior written approval, which shall not be unreasonably withheld. As soon as reasonably practicable upon the Contractor Relationship Manager ceasing to act pursuant to Clause 5.7 and at least twenty (20) Business Days prior to his/her ceasing to act as Contractor Relationship Manager in all other cases, the Contractor shall notify the RSA in writing of its intention to appoint a substitute. Such appointment shall be subject to the prior written Approval of the RSA (not to be unreasonably withheld).
- 5.7 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.
- 5.8 Where requested by the RSA in respect of a given System Development/Enhancement:
- (a) The Contractor shall provide to the RSA the Requirements Specification Document and an initial project plan for the given System Development/Enhancement together with the fixed fee quotation, which shall be based on the rates set out in Part 4 of Schedule 3 (Payment).
 - (b) The RSA shall formally approve or reject the Requirements Specification Document and the project plan and the fixed fee quotation.
 - (c) If the RSA rejects the Requirements Specification Document and/or project plan and/or the quotation, the RSA shall inform the Contractor in writing of its reasons for its rejection. The Contractor shall then revise the Requirements Specification Document and/or project plan, and/or the quotation (taking reasonable account of the RSA's comments) and shall re-submit a revised updated Requirement Specification Document and/or project plan, and/or quotation to the RSA for the RSA's Approval. The provisions of Clauses 5.8 (a) to 5.8 (c) shall apply again to any resubmitted documents, provided that either Party may refer any disputed matters for resolution by Clause 27 (Dispute Resolution) at any time.
 - (d) Once the Requirements Specification Document and project plan and quotation have been approved by the RSA, the approved Requirements Specification Document and project plan and quotation shall replace the previous versions, and any further changes shall be made in accordance with the Change Control Procedure.

SUBJECT TO CONTRACT/CONTRACT DENIED

- (e) The Contractor shall provide any System Development/Enhancements in a timely manner and in accordance with the timeframes set out in the relevant project plan and in accordance with the fixed fee quotation.
 - (f) The Contractor shall notify the RSA of any actual or potential delays and its likely impact on the Contractor's ability to achieve the relevant timeframe specified in the project plan as soon as reasonably practicable upon becoming aware of such failure.
- 5.9 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.
- 5.10 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 4 of Schedule 3 (Payment) and agreed pursuant to the Change Control Procedure (Schedule 5).
- 5.11 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).
- 5.12 The Contractor shall provide the Services in accordance with the Service Levels. Where the Contractor fails to provide any Service in accordance with the applicable Service Levels, then without prejudice to any other rights or remedies to which the RSA may be entitled, the Performance Adjustments shall apply.
- 5.13 It is acknowledged by the Parties that any Performance Adjustments are a price adjustment to reflect the actual quality of Services provided to the RSA in the relevant period and do not represent a penalty or an agreed estimate of the loss or damage that may be suffered by the RSA in respect of a breach of the Service Levels. The crediting of such sums is without prejudice to any other rights or remedies which may be available to the RSA relating to breach of the Service Levels. The Parties agree that if a court of competent jurisdiction determines that any Performance Adjustments constitute a penalty, those Performance Adjustments shall reduce to such amounts which do not, in the view of the court, constitute a penalty.
- 5.14 Unless otherwise determined by the RSA, the Contractor shall apply any Performance Adjustments which may be due as a deduction against the next invoice payable by the RSA under this Agreement such that the invoice will be the amount which would otherwise be invoiced less the amount of the Performance Adjustments. In the event that the Contractor does not so apply those Performance Adjustments, the RSA may set-off the Performance Adjustments against such invoice. In the event that the Contractor is no longer entitled (for whatever reasons) to invoice the RSA under this Agreement for parts of the Services to which the Performance Adjustments are to be applied, the RSA shall notify the Contractor of the amount of the Performance Adjustments so payable by the Contractor and the said amount, unless validly disputed in accordance with this Agreement, shall become due and payable by the Contractor on the day which is thirty (30) days after the date of deemed delivery of such notice.

6. Charges

SUBJECT TO CONTRACT/CONTRACT DENIED

- 6.1 The charges payable by the RSA under this Agreement are set out in Schedule 3 (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.
- 6.2 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.
- 6.3 The Contractor shall issue a pro-forma invoice for approval by the RSA in advance of the RSA raising a purchase order (“PO”). The RSA shall, if satisfied, approve such pro-forma invoice and shall issue a purchase order number (“PO Number”) to the Contractor. The Contractor shall issue the invoice which shall reference the PO Number. Each invoice issued by the Contractor to the RSA under this Agreement shall reference a valid 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.
- 6.4 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 6.3) and shall forthwith notify the Contractor in writing of the reasons for withholding payment.
- 6.5 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.
- 6.6 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 Solution or 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%
- 6.7 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.
- 6.8 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

SUBJECT TO CONTRACT/CONTRACT DENIED

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.

- 6.9 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.
- 6.10 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 Solution or the Services and performance of this Agreement.
- 6.11 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 Performance Adjustments or Liquidated Damages as are provided for in this Agreement against any amount due to the Contractor by the RSA under this Agreement.

7. Warranties

- 7.1 The Contractor warrants that:
- (a) from Acceptance, the Solution shall perform in accordance with the terms of the Solution Specification and shall be free from material defects in normal use;
 - (b) all System Developments/Enhancement shall be fully compatible and interoperable with the System;
 - (c) the Solution shall be fully capable of being integrated with the Other Systems and that it shall operate on and be fully compatible with the RSA's operating system, processes, software and hardware and any third party hardware or software (if any) approved or recommended by the Contractor;
 - (d) the Solution shall be based on proven architecture and shall be in accordance with current industry standards and practices and be such that the Solution shall be reliable, resilient and scalable to the extent specified in this Agreement;
 - (e) it is entitled to grant the licences set out in clause 15 of this Agreement;
 - (f) the Software and the Solution provided under this Agreement are free from any Computer Virus and that it shall not introduce any Computer Virus into the Solution or any other systems, including third party systems of the RSA (the "**Relevant Solutions**"). The Contractor shall use best industry standard virus scanners (updated with the then-most current virus signatures and data sets) to scan all work product, data or software immediately prior to introducing it into or connecting it with any Relevant Solution. If a Computer Virus is found to have been introduced into

SUBJECT TO CONTRACT/CONTRACT DENIED

any Relevant Solution by the Contractor, then without prejudice to any other any other rights or remedies which may be available to the RSA, the Contractor shall take immediate corrective action including, but not limited to Computer Virus removal and data recovery to reduce the effects of the Computer Virus including the effects of any loss of operational efficiency or loss of data, and shall bear all associated costs, and any damages incurred as a result of the Computer Virus;

- (g) 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;
- (h) 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;
- (i) it is entering into this Agreement with a full understanding of the material terms and risks and is capable of assuming those risks;
- (j) 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;
- (k) 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;
- (l) 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;
- (m) where applicable, the Article 57 Declaration produced by the Contractor in the Tender Submission 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.
- (n) the provision of the Services under this Agreement will not infringe the Intellectual Property Rights of any third party;
- (o) 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.
- (p) 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
- (q) 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

SUBJECT TO CONTRACT/CONTRACT DENIED

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.

7.2 Without limiting the generality of clause 7.1(q)(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 Solution or 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 Solution or the Services.

7.3 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 Solution or the Services and of any other right title or interest of the RSA of which the Contractor is aware.

7.4 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 7 and to comply with all reasonable directions of the RSA with regard thereto, which may include termination of this Agreement.

8. Change Control

8.1 Any request for a change to the Solution or Services will be dealt with in accordance with the Change Control Procedure, described in Schedule 5.

9. Audit

9.1 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 Solution or 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 and cyber security 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 Solution and 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.

9.2 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.

9.3 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.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 9.4 The Parties agree that they shall bear their own respective costs and expenses incurred in respect of compliance with their obligations under this Clause 9 (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.

10. Confidential Information

- 10.1 In this Clause 10, "**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.
- 10.2 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 10.3 and 10.4; and
 - (c) shall make every reasonable effort to prevent the unauthorised use or disclosure of Confidential Information.
- 10.3 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.
- 10.4 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;
 - (e) the information was obtained by the Receiving Party from a third party who was free to divulge the same; or
 - (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 10.4(a) shall be disclosed only after notice to the other party, where reasonably practicable.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 10.5 The obligations of each party as to disclosure and confidentiality shall continue in force notwithstanding the termination or expiration of this Agreement.
- 10.6 Notwithstanding clause 10.1, 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.

11. Termination

- 11.1 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.
- 11.2 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.
- 11.3 This Agreement may be terminated immediately by either Party on written notice if the other Party is in material or persistent 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.

For the purposes of this Clause 11.3:

- (a) a breach is capable of remedy if time is not of the essence in performance of the obligation and if the Contractor can comply with the obligation within the twenty (20) Business Day period (or such other period as the RSA may specify); and
 - (b) persistent failure by the Contractor to meet timeframes specified in a Solution Setup and Transition Plan or persistent failure (specified in Schedule 8) by the Contractor to meet the Service Levels will be deemed to be a persistent breach; and a significant delay for which the Contractor is responsible in meeting any individual date specified in a Solution Setup and Transition Plan will be deemed to be a material breach.
- 11.4 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.
- 11.5 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.
- 11.6 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.
- 11.7 The Contractor shall develop an Exit Management Plan in accordance with the provisions of Schedule 6 (Exit Management Plan). On termination of this Agreement for any reason, the provisions of the Exit Management Plan shall apply and the Contractor shall provide the exit management services during the Exit Management Period in accordance with the Exit Management Plan. For the avoidance of doubt, the Contractor's obligations under this clause

SUBJECT TO CONTRACT/CONTRACT DENIED

11.7 are in addition to and not in replacement of the Contractor's obligations which apply throughout the Term. The Contractor shall be entitled to charge additional charges for the provision of exit management services as set out in Schedule 6 (Exit Management).

12. Return of Material

- 12.1 At the end of the Term or on the earlier termination of this Agreement pursuant to clause 11, the Contractor shall, if so requested by the RSA, 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 21, 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 12.1.
- 12.2 All such documents, materials, matters and things shall upon their purchase or creation become the property of the RSA.

13. Limitation of Liability

- 13.1 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 provision of the Services or any breach by the Contractor of this Agreement.
- 13.2 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 15.8; or (iv) breach by the Contractor of clause 10 (Confidential Information) or clause 18 (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.
- 13.3 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.
- 13.4 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.

14. Insurance

- 14.1 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.
- 14.2 Without prejudice to the generality of clause 14.1, 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) minimum legal requirement or market standard in terms of employer's liability insurance / equivalent worker compensation scheme for the country in which the

SUBJECT TO CONTRACT/CONTRACT DENIED

- supplier conducts the Services (e.g. €13,000,000 if operating in the Republic of Ireland) to be maintained for the duration of the Term;
- (b) public liability insurance to a limit no less than €6,500,000 (six million five hundred thousand euro) to be maintained for the duration of the Term;
 - (c) professional indemnity insurance of €1,000,000 (one million euro) to be maintained for the duration of the Term and for a period of six years following completion of the Services and covering claims for civil liability as well as negligence; and
 - (d) cyber liability insurance of €5,000,000 (five million euro) to be maintained for the duration of the Term.
- 14.3 The Contractor shall notify the RSA immediately in the event that any of the insurances described in clause 14.2 ceases to be available or maintained.
- 14.4 Where permitted under the relevant terms and conditions, the insurance policies described in clause 14.2 shall include an indemnity to principals clause specifically indemnifying the RSA. None of the policies described in clause 14.2 shall include any terms or conditions to the effect that the RSA must discharge any liability before being able to recover from the insurers.
- 14.5 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 14.2 in the event of a claim under any of the policies.
- 14.6 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.
- 14.7 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.
- 14.8 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.
- 14.9 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 Solution or 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.

15. Intellectual Property Rights

- 15.1 The Contractor or its licensors shall retain all right and title to, and interest in the Software and any Intellectual Property Rights developed, owned, licensed to or otherwise controlled by the Contractor or its licensors prior to the Commencement Date or generated by the Contractor or its licensors during the Term, in either case, independently of the Services. The Contractor

SUBJECT TO CONTRACT/CONTRACT DENIED

hereby grants to the RSA (and its employees, agents and service providers) for the duration of the Term a worldwide, non-exclusive, sub-licensable right and licence to use the Software and any such Intellectual Property Rights for the purpose of the RSA's operations and performance of its functions. The licence granted to the RSA hereunder shall include the right for the RSA to permit any third party service provider of the RSA or any third party that the RSA has procured to perform any functions of the RSA to use the Software in connection with the operations of the RSA and performance of its functions.

- 15.2 The Parties agree that the Intellectual Property Rights in Solution Developments/Enhancements (and for the avoidance of doubt, in the Solution) 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.
- 15.3 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.
- 15.4 To give effect to clause 15.2 and 15.3, 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 Solution Developments/Enhancements, the Materials, and for any other products of the Services, free from all encumbrances, including the right to sue for damages for past infringement.
- 15.5 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 name of the RSA; or
 - (b) to vest the legal and beneficial ownership in any and all such Intellectual Property in the RSA.
- 15.6 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 15.
- 15.7 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.
- 15.8 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 use of the Solution, the receipt of the Services or the use or possession of the Materials in accordance with the terms of this Agreement, 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 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.
- 15.9 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.
- 16. Transfer of Undertakings**
- 16.1 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**").
- 16.2 Notwithstanding the provisions of clause 16.1 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 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 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

SUBJECT TO CONTRACT/CONTRACT DENIED

- (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 16.1 and 16.2 “**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.

- 16.3 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 16.3 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.
- 16.4 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.
- 16.5 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 16.5, “**Stand-Still Period**” means:

SUBJECT TO CONTRACT/CONTRACT DENIED

- (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.
- 16.6 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.
- 16.7 The Contractor expressly agrees that any indemnities, agreements or warranties provided under this clause 16 (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 16), and that the Contractor shall indemnify the New Contractor to that extent.
- 17. Re-Tendering**
- 17.1 The Contractor shall promptly, and in any event no later than five (5) Business Days, after receiving a request, provide to the RSA and/or to any prospective tenderer in a competition for the award of a contract to replace (in whole or in part) this Agreement (subject to such prospective tenderers entering into reasonable written confidentiality undertakings), the following material and information in order to facilitate the preparation by the RSA of any invitation to tender and/or to facilitate any prospective tenderer undertaking due diligence:
 - (a) details of the Solution and Service(s) and the assets through which the Contractor provides the Services;
 - (b) an inventory of RSA’s data in the Contractor’s possession or control;
 - (c) the Affected Employees information, in accordance with Clause 16; and
 - (d) any other material and information reasonably required by the RSA for the purposes of a re-tender of the Services.
- 18. Data Protection**
- 18.1 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;
 - (iv) location of data processing;are as set out in Schedule 7 (Data Protection);

SUBJECT TO CONTRACT/CONTRACT DENIED

- (b) the Contractor shall only process such personal data in accordance with the documented 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 18. 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 agreed 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 and when requested, provide satisfactory confirmation of such deletion to the RSA 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 18; 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 19, 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 18;
- (l) the Contractor shall inform the RSA immediately if, in its opinion, it receives an instruction from the RSA in relation to clause 18.1(k) above which infringes Data Protection Law;
- (m) the Contractor shall notify the RSA immediately upon becoming aware of any potential or actual 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 in remediating the causes 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.

19. Force Majeure

- 19.1 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, pandemic and epidemic, 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.
- 19.2 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**”).
- 19.3 Upon the cessation of the event of Force Majeure the Affected Party shall notify the Other Party of such cessation.
- 19.4 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 19.5 nevertheless remain liable for the performance of those obligations not affected by Force Majeure.
- 19.5 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 19.3 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 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 19.3 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 19.5(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.

SUBJECT TO CONTRACT/CONTRACT DENIED

- 19.6 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.

20. Disaster Recovery Strategy

- 20.1 The Disaster Recovery Strategy shall be agreed between the Parties prior to the Go-Live Date and may be amended or updated from time to time by agreement between the Parties during the Term of this Agreement in line with Schedule 9.

- 20.2 The Contractor shall comply at all times with the relevant provisions of the Disaster Recovery Strategy and the provisions of Schedule 9. If any event occurs which results in interruption of the Contractor's activities or work in respect of any of the Services (a "**Business Interruption**"), the Contractor shall:

- (a) implement the Disaster Recovery Strategy;
- (b) continue to undertake the affected Services in accordance with the Disaster Recovery Strategy; and
- (c) restore the affected Services to normal within the period laid out in the Disaster Recovery Strategy.

- 20.3 To the extent that the Contractor complies fully with the provisions of this clause (and the reason for the declaration of a Business Interruption was not breach of any of the other terms of this Agreement on the part of the Contractor), the levels of service to which the affected Services are to be provided during the continuation of the Business Interruption shall not be as defined in this Agreement, but shall be the levels of service set out in the Disaster Recovery Strategy or (if none) the best service levels which are reasonably achievable in the circumstances.

21. No Assignment or Sub-contracting

- 21.1 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.
- 21.2 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 21 (No Assignment of Sub-contracting).

22. Non-Solicitation

- 22.1 It is agreed that neither of the Parties shall approach directly or indirectly employees of the other, who have been involved in the provision and receipt of Services under this Agreement, with offers of employment for the duration of this Agreement and for a period of six months thereafter. This will not restrict either Party from employing staff who apply unsolicited in response to general advertising or other general recruitment campaigns.

23. Multiple Counterparts

- 23.1 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.

24. Severability

- 24.1 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.

25. Notices

- 25.1 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.

- 25.2 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.

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

Means of Dispatch

Deemed Received

Delivered by hand:

the day of delivery;

Post:

Two (2) Business Days after posting; and

Email:

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.

- 25.4 The relevant addressee, address and email address of each Party for the purposes of this Agreement, subject to clause 25.5 are:

Name of Party

The Road Safety Authority

Address/e-mail

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

[Contractor]

[redacted]
Email: [redacted]

SUBJECT TO CONTRACT/CONTRACT DENIED

25.5 Each Party shall notify the other of a change to its name, relevant addressee, address or email address for the purposes of clause 25.4. 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.

26. No Partnership or Agency

26.1 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.

27. Dispute Resolution

27.1 The Parties shall use all reasonable endeavours to settle any dispute that may arise in connection with this Agreement.

27.2 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 Chief Operations Officer and the Contractor's [REDACTED]. The RSA's Chief Operations Officer and the Contractor's [REDACTED] will use all reasonable endeavours to resolve the dispute. If the dispute is not resolved by the RSA's Chief Operations Officer 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.

27.3 Nothing contained in this clause 27 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.

28. Prevention of Corruption/Ethics in Public Office

28.1 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 29 or the commission of any offence by the Contractor or any employee, servant, agent or subcontractor (or any employee, servant, agent of any subcontractor) 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 11. 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.

29. Governing Law and Jurisdiction

SUBJECT TO CONTRACT/CONTRACT DENIED

29.1 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.

29.2 The Parties irrevocably agree that subject to clause 27 (Dispute Resolution), 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.

30. Miscellaneous

30.1 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.

30.2 This Agreement shall not be amended, modified, varied or supplemented except in writing signed by duly authorised representatives of the Parties.

30.3 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.

30.4 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.

30.5 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:

SIGNED by:

(Name)

(Print)

(Title)

(Date)

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

SIGNED by:

in the presence of:

(Name)

(Name – witness)

(Print)

(Print)

(Title)

(Title – witness)

(Date)

duly authorised for and on behalf of
THE ROAD SAFETY AUTHORITY

Schedule 1 – The Services

Part 1 – The Solution Setup and Transition Services

[Relevant details from the RFT and the Contractor's Tender Submission dealing with the setup and transition to be inserted prior to execution, as applicable]

Part 2 – Support Services

[Relevant details from the RFT and the Contractor's Tender Submission dealing with the hosting, support, and maintenance of the Solution to be inserted prior to execution]

Part 3 – Additional Services

1. Over the Term of this Agreement, the RSA may require the Contractor to provide Additional Services.
2. The fees for any Additional Services shall be agreed between the Parties and payable in line with Part 3 of Schedule 3

Schedule 2 – Solution Setup and Transition Plan

[Relevant details from Contractor's Tender Submission to be inserted prior to execution, where applicable (e.g. project phases/deliverables and details of timeframes and/milestone dates for such phases/deliverables for Solution Setup and Transition)]

Schedule 3 – Payment

Part 1 – Payment for Solution Setup and Transition Services

1. The Contractor's fee for the Solution Setup and Transition Services is €[insert amount] payable by the RSA on completion of milestones by the Contractor (to the RSA's reasonable satisfaction) as follows:

Milestone	Milestone Event	Milestone Payment
MS1	Agreement and signoff of Solution Setup and Transition Plan	10% of the Solution Setup and Transition Services fee
MS2	Approval and signoff of functional design and workflows for Solution	10% of the Solution Setup and Transition Services fee
MS3	Readiness for User Acceptance Testing of the Solution	20% of the Solution Setup and Transition Services fee
MS4	Solution Go-Live	25% of the Solution Setup and Transition Services fee
MS5	End of Hypercare and Acceptance into service	25% of the Solution Setup and Transition Services fee
MS6	Three (3) months after Go-Live where there are no unresolved P1 incidents (as defined in Schedule 8)	10% of the Solution Setup and Transition Services fee

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. If the RSA disputes any invoice, then the matter shall be resolved under the dispute resolution provisions under clause 27.
3. It is acknowledged that the Contractor's remuneration for the Solution Setup and Transition Services will be fixed for the Term of this Agreement in accordance with this Part 1 of Schedule 3 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 Solution Setup and Transition Services at any time (and on any number of occasions) as the RSA may request.

Part 2 – Payment for Support Services

1. The Contractor's annual fee for hosting is €[insert amount] and the Contractor's annual fee for support and maintenance is €[insert amount]. The RSA shall pay the Contractor such fees in equal monthly instalments within thirty (30) days of receipt by the RSA of a valid invoice from the Contractor.
2. It is acknowledged that the Contractor's remuneration for the Support Services will be fixed for the Term of this Agreement in accordance with this Part 2 of Schedule 3 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 Support Services at any time (and on any number of occasions) as the RSA may request.

Part 3 – Payment for Additional Services

1. Where the RSA requests the Contractor to perform any Additional Services under clause 5.10 the Contractor's fee estimate shall be based on the rates set out below:

[Daily rates for relevant personnel as quoted in the Tender Submission to be inserted prior to execution]

2. Where the Parties agree the Contractor's fee estimate for Additional Services either in accordance with the Change Control Procedure or such amount is determined under the dispute resolution process in clause 27, the Parties shall at the same time agree the frequency and amounts of payment instalments in respect of such Additional Services.

Part 4 – Liquidated Damages

1. **"LD Rate"** means five per cent (5%) of the total charges payable upon the achievement of the relevant milestone as set out in Part 1 of this Schedule 3 for every 5 working days after the milestone date that elapses until the Contractor achieves the relevant milestone.
2. **"Go-Live Milestone"** means the relevant go-live milestone(s) as set out in the Solution Setup and Transition Plan;
3. In accordance with clause 3.9 of the Agreement, and subject to paragraphs 4 and 5 of this Part 4 of Schedule 3 the RSA shall be entitled to claim Liquidated Damages at the LD Rate if the Contractor fails to achieve the relevant Go-Live Milestone by the relevant Go-Live Date.
4. The aggregate Liquidated Damages payable for failure by the Contractor to achieve the relevant Go-Live Milestone by the relevant Go-Live Date shall not exceed twenty per cent (20%) of the total charges payable by the RSA upon the achievement of the relevant Go-Live Milestone.
5. Payment of Liquidated Damages by the Contractor to the RSA shall be made as directed by the RSA. The RSA may retain or set-off any amount due to the RSA by the Contractor under this Part 4 of Schedule 3 against any amount due to the Contractor by the RSA under this Agreement.

Part 5 – Price Review

1. It is hereby acknowledged that, following the Go-Live Date, the rates set out in Parts 2 to 4 of this Schedule 3 may be revised as follows:
 - (a) Unless otherwise triggered by a change request pursuant to the Change Control Procedure, a maximum of one revision of rates is permitted per Contract Year;
 - (b) The revision of rates (if any) shall be in accordance with the provisions of clauses 2 to 7 below.
2. Either Party may request a revision of the rates summarised in Parts 2 to 4 of this Schedule 3 (**"Price Review"**).
3. A Price Review shall be considered only where it is submitted to the other Party in writing after the Go-Live Date.
4. The price review application must clearly set the grounds for the request and provide vouched evidence in support of the request. Such evidence must demonstrate to the satisfaction of both

SUBJECT TO CONTRACT/CONTRACT DENIED

Parties that the reasons for the revision of rates are outside the control of the requesting Party and that they are justifiable relative to the nature and current state of the market and/or the given change request and/or the Services being delivered.

5. Approval in whole or in part of any Price Review requested by the Contractor shall be at the sole discretion of the RSA.
6. Approval in whole or in part of any Price Review initiated by the RSA, or those triggered by a change request pursuant to the Change Control Procedure (if any), shall be by mutual written agreement between the Parties with any disputes being handled in accordance with clause 26 (Dispute Resolution).
7. In the event that the rates are revised following a Price Review, the revised rates shall apply from the date agreed between the Parties which shall not be retrospective.

SUBJECT TO CONTRACT/CONTRACT DENIED

Schedule 4 – Key Account Personnel

[Details of the Key Account Personnel proposed in the Contractor's Tender Submission to be inserted prior to execution of the Contract]

Schedule 5 – 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:
 - (i) the Services; or
 - (ii) 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:
 - (i) description of the requirements for the change;
 - (ii) comparison of the new requirements with the existing requirements;
 - (iii) reasons for the change, including a high level description of the proposed business impact;
 - (iv) timeframe for completion of the change.
3. The Change Request Form shall be signed by the Representative of the Requesting Party and submitted to the Representative of the other Party.
4. The Contractor shall provide the RSA Representative 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:
 - (i) 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;
 - (ii) 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;
 - (iii) timetable for the change including any impact on the timeframes set out in the Project Plan; and
 - (iv) impact on the Services to be provided under the Agreement.
5. After consideration, the RSA Representative may elect by giving written notice to the Contractor either to:
 - (i) accept the Impact Statement in which case the Agreement shall be amended accordingly;
 - (ii) reject the Impact Statement in which case the Agreement shall remain unchanged; or
 - (iii) 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 5.
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 27 of the Agreement may be invoked.

Schedule 6 – 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.
- 1.3 The Contractor agrees to cooperate fully in the transition of services to either the RSA or a New Contractor. This includes the delivery of all documentation, training material, specifications, configurations, and reasonable support for a period of time after termination or expiration of the Agreement to be agreed between the parties, to ensure a smooth transition and address any outstanding technical issues.

2. Content of Plan

- 2.1 The Exit Management Plan shall, as a minimum:
 - (a) where relevant, upon termination or expiration of the Agreement, provide for the assignment 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) Identify the roles that would perform the responsibilities defined in accordance with (c) above.
 - (e) provide for the handover of the following data to the New Contractor in such manner as the New Contractor may reasonably require:
 - (i) Upon termination or expiration of the Agreement, the Contractor shall provide all RSA data, where applicable, in a machine-readable, non-proprietary format (e.g., CSV, JSON, XML) within 15 business days. The Contractor will assist in data migration efforts, if applicable, at the RSA's request and any 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

- (f) 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.

2.3 Development and review of the Exit Management Plan shall be at no additional cost to the RSA. The charges payable for the performance of the exit management services shall be subject to Part 3 of Schedule 3 (Payment).

Schedule 7 – Data Protection

1. Types of Personal Data and Data Subjects

- 1.1 The data subjects are holders of Irish driving licences and learner permits with higher categories - drivers.
- 1.2 The companies apply for cards to download their drivers' data.
- 1.3 Personal details accessed on the data subjects are:
- 1.4 Driver: Name; address; date of birth; driving licence number, categories, and expiry date; PPSN; place of birth; telephone numbers; email address; previous names and address; tachograph card number and expiry date.
- 1.5 Company: Name of company/sole trader; Company Registration Number; PPSN/Vat Registration Number; address; previous address; telephone numbers; email address; tachograph card number and expiry date

2. Nature and Purpose of Data Processing

- 2.1 To enable drivers and companies to make online applications to the RSA for driver and company tachograph cards, to enable the RSA to process these applications in accordance with relevant legislation and to enable the RSA produce reports on the System.

3. Subject Matter and Duration of Processing

- 3.1 Subject matter of processing: All types of personal data and data subjects as outlined in clause 1 of this Schedule 7, including all information, whether in oral or written (including electronic) form, created by or in any way originating with the Contractor (including but not limited to his 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 Contractor provided under the Agreement which relates to an identified or identifiable natural person.
- 3.2 Duration of processing: the Term of the Agreement

Schedule 8 – Service Level Agreement

PART A Introduction

1. Introduction and Definitions

1.1. Introduction

This Schedule 8 sets out the Service Levels which the Contractor is required to achieve when delivering the hosting, support and maintenance services listed in Schedule 1 (**“the Support Services”**), a mechanism by which certain Service Failures will be managed and the method by which the Contractor's compliance obligations with the Service Levels will be monitored. This Schedule 8 applies from the Go-Live Date.

This Schedule comprises:

- Part A: Introduction.
- Part B: Service Levels; and
- Part C: Performance Monitoring

1.2. Definitions

In this Schedule 8, the following words and expressions have the following meanings:

“Contract Month” means a single calendar month from 1st day of that month to last day of that month.

“Core Business Hours” means 09:00 to 17:00 Monday to Friday, excluding Bank Holidays.

“Emergency Maintenance” means ad hoc and unplanned maintenance provided by the Contractor where:

- a) the RSA reasonably suspects that the Solution or the Services, or any part thereof, has or may have developed a fault, and notifies the Contractor of the same; or
- b) the Contractor reasonably suspects that the Solution or the Services, or any part thereof, has or may have developed a fault.

“Go-Live Date” means the date on which the Solution enters live use (not including any live use for Acceptance Testing purposes).

“Open Tickets” means support tickets not yet resolved but where the agreed resolution time has not yet been reached.

“Overdue Open tickets” means support tickets not resolved and remaining open beyond the agreed resolution times.

“Performance Adjustment” means the amounts payable by the Contractor because of the failure by the Contractor to meet one or more Service Levels as described in Table 1 of this Schedule 8;

“Performance Monitoring Report” means the report prepared by the Contractor in accordance with paragraph 3.2 of Part C of this Schedule 8.

“Performance Review Meeting” means the regular meeting between the Contractor and the RSA to review the Contractor's performance under the Agreement referred to in paragraph 3.6 of Part C of this Schedule 8.

“Quarter” means the first three Service Periods and each subsequent three (3) Service Periods (or reduced period immediately prior to the end of the Contract Period).

“Repeat Failure” has the meaning given to it in paragraph 5 of Part B of this Schedule 8.

“RPO” means recovery point objective; it defines the maximum acceptable amount of data loss the RSA can tolerate following an incident.

“RTO” means recovery time objective; it defines the maximum acceptable time duration for restoring the Solution after an outage or incident.

“Service Downtime” means any period during which a Service and/or the Solution, or any part thereof is not available.

“Service Level” means the target level of performance which is required by the RSA as set out in Table 1 and Table 2 of this Schedule 8.

“Service Level Failure” means any failure by the Contractor to perform any of the Support Services in accordance with the applicable Service Level.

“Service Period” shall have the following meaning:

- a) the first Service Period of this Agreement shall begin on the Go-Live Date and shall expire at the end of the Contract Month in which the Go-Live Date falls, and
- b) after the first Service Period of this Agreement, a Service Period shall be a Contract Month.

“Service Support Date” means the date that the Support services commence.

“Support Services Charge” means the applicable charges for the hosting, support, and maintenance services as set out in Part 2 of Schedule 3 (Payment) prior to any Performance Adjustments being applied in respect of a Support Service Period.

“System(s)” means the systems and components that make up the Solution as the case may be.

“System(s) Hours” means the hours that the Systems(s) is/are required to be available, e.g., 24x7 (24 hours per day 7 days per week) excluding Service Downtime for Permitted Maintenance.

PART B Support Services and Service Levels

1. Objectives

- 1.1. The objectives of this Service Level Agreement is to:
- a) ensure that the Contractor maintains the Solution in such a manner so that it shall at all times function in accordance with the Solution Specification (set out in Schedule 10) and with the Service Levels set out in this Schedule 8; and
 - b) provide a mechanism for resolving performance issues and Service Level Failures including compensation for the Contractor's failure to deliver the level of service for which it has been contracted to deliver.
- 1.2. The underlying principles of this Schedule are that:
- a) the Contractor is financially rewarded for delivery of the Support Services through the Support Services Charge;
 - b) the Contractor shall be responsible for:
 - (i) supporting and maintaining the Solution to ensure that it at all times conforms with the Solution Specification;
 - (ii) measuring and reporting against the Service Levels in each Service Period; and
 - c) if a Service Level Failure occurs then this shall entitle the RSA to invoke the escalation procedure and/or apply Performance Adjustments as applicable, without prejudice to any other rights or remedies which may be available to the RSA.

2. Service Levels

- 2.1. Table 1 to this Schedule 8 sets out Service Levels for certain aspects of the Support Services, the performance of which the Parties have agreed to measure.
- 2.2. The Contractor shall monitor its performance of the Services by reference to the Service Levels set out in Table 1 and shall send the RSA a report detailing the level of service which was achieved in accordance with the provisions of Part C of this Schedule 8.
- 2.3. The Contractor shall always provide the Support Services in such a manner that the Service Levels are achieved.
- 2.4. A model system of Performance Adjustments set out in paragraph 3.9 of section B of this Schedule 8 will be used.
- 2.5. Service Levels are set out in Table 1 of this Schedule 8 or, as specified by the RSA in accordance with paragraph 4 below. The Service Levels in Table 1 of this Schedule 8 shall continue to apply until such time as any adjustment is agreed by the RSA and the Contractor subject to paragraph 4 of this Part B of Schedule 8; and
- 2.6. The Performance Adjustment will be calculated for each Contract Month based on the Support Services Charge for the relevant Contract Month and the Performance Adjustments incurred in the Contract Month.

Table 1: Service Levels

SL No.	Service Level	Service Level Category	Service Level				
SL1	Availability of the Solution during Core Business Hours. Measured by the Contractor, using an automated tool which measures the Availability of the Solution by running a simulated transaction every 5 minutes during Core Hours as defined in Contract	Availability	97%				
SL2	Performance of the Solution during Core Business Hours. Measured by the Contractor, using data derived from an automated tool monitoring the performance of access and responsiveness of the Solution by running simulated truncations every 5 minutes during Core Hours as defined in Contract: <table><tr><td>Page load time for Digi Admin</td><td>2.5 seconds</td></tr><tr><td>Page Load Time for Customer Portal</td><td>2.04 seconds</td></tr></table>	Page load time for Digi Admin	2.5 seconds	Page Load Time for Customer Portal	2.04 seconds	Performance	95%
Page load time for Digi Admin	2.5 seconds						
Page Load Time for Customer Portal	2.04 seconds						
SL3	Availability of Solution Interfaces during Core Business Hours Measured by the Contractor, using an automated tool which measures the Availability of the agreed Solution interfaces by running a simulated transaction every 5 minutes during Core Business Hours.	Performance	97%				
SL4	Performance of Solution Interfaces During Core Business Hours Measured by the Contractor, using data derived from an automated tool monitoring the performance of access and responsiveness of the Solution by running simulated truncations every 5 minutes during Core Business Hours as defined in Contract	Performance	100%				
SL5	Monitoring and alerting 95% of incidents reported by system alerts and not by end users. (Issues should be avoided by resource monitoring alert before incident happens)	Performance	95%				
SL6	Priority Level 1 incidents resolved within 4 Core Business Hours	Performance	100%				
SL7	Priority Level 2 incidents resolved within 8 Core Business Hours	Performance	100%				
SL8	Priority Level 3 incidents resolved 24 Core Business Hours	Performance	100%				
SL9	Priority Level 4 incidents resolved within 100 Core Business Hours	Performance	100%				
SL10	Service Request High resolved within 5 Core Business Hours	Request	100%				
SL11	Service Request Standard resolved within 30 Core Business Hours	Request	100%				
SL12	Participation in Performance Review Meetings in line with the agreed parameters as set out in 3.6 of Part C of this Schedule 8.	Performance	100%				
SL13	Performance Reports are provided in line with the agreed parameters as set out in paragraph 3 of Part C of this Schedule 8.	Reporting	100%				
SL14	RPO – 1 hour RTO – 4 hours	RPO RTO	100%				
SL15	Disaster Recovery (DR) Testing requirements met	Disaster Recovery	100%				

Table 2: Incident and Severity Definitions

Priority	Description	Initial Response time	Time to Fix
P1	Solution is not available or operational, and no workaround exists. The Solution is available, but performance is degraded to such an extent that makes it unusable. Escalation of a Priority 2 Major incident not resolved within 6 Core Business Hours of the incident being logged.	30 business mins	4 core business hours
P2	Solution is impaired, but it is operational i.e. Any issue with Digi Tacho or Digi admin where the systems are impaired, but an acceptable workaround is in place. Escalation of a Priority 3 Minor incident not resolved within 2 Core Business days of the incident being logged.	2 business hours	8 core business hours
P3	Minor Solution problem or functionality issues e.g. Minimal Impact on the service or information request such as a specific issue.	8 hours	100 core business hours
P4	Enhancement request or cosmetic problem; Onboarding of new service	5 business days	In line with timelines agreed by the Parties on a case-by-case basis

For the purpose of the Table 2 and this Schedule 8:

- i. *"Initial Response Time"* means any of the following actions: answering the Service Request; logging the Service Request; and/ or initial troubleshooting over the phone.
- ii. *"Fix"* means the provision of a resolution of the relevant problem or the downgrading of the problem to a lower Severity Level.

3. Performance Adjustment Model

- 3.1. A Performance Adjustment Calculation Model is included below in paragraph 3.9 of Part B of this Schedule 8. The model contains the definitive reference version of the Performance Adjustment totals. It will also be refined to reflect any additional Service Levels specified by the RSA in accordance with paragraph 4 of this Part B of Schedule 8.
- 3.2. Changes to the model can be initiated by either the RSA or the Contractor but will only be applied with the agreement of both parties. An email exchange will be necessary between authorised representatives of both parties, specifying both agreement to a model version and the starting validity period. These emails will be stored in a mutually accessible location so that they can be related to the Performance Adjustment model versions. This will provide full audit control of changes to the model.
- 3.3. The Performance Adjustments will be calculated by entering the actual performance level values applicable to each Service Level in the appropriate Service Period into the Performance Adjustment model. At the end of each month, the Contractor shall provide the RSA with a report setting out the extent to which the Contractor has performed the Support

Services and the Hosting Services in accordance with the applicable Service Levels, as set out in Part B of this Schedule 8, respectively, in the immediately preceding month ("**Preceding Month**"). For the avoidance of doubt, each report shall contain details of each Service Request, together with details of the relevant severity level, the response timeframe, and the fix times.

- 3.4. The Contractor agrees to accept a reduced payment for non-compliance with the Service Level specified. Where the Contractor fails to comply with a Service Level specified in Table 1, the RSA will apply the relevant Performance Adjustment. Where the Contractor has failed to attain any Service Level, the Contractor shall credit the RSA with a percentage of the Charges for the Support Services, as applicable, which were payable in respect of the Preceding Month, such percentage to be calculated in the manner set out in paragraph 3.9 of this Part B of Schedule 8. The RSA's entitlement to such credits shall be in addition to, and not in substitution for, any other rights or remedies arising from the Contractor's failure to provide the Support Services.
- 3.5. The amounts deducted in any given month shall not exceed a cumulative total of 20% of the charges for the month in which the relevant issue occurred, save for repeat or persistent failures as described in paragraph 5 of this Part B of Schedule 8.
- 3.6. Performance Adjustments will accrue until either it is agreed between the RSA and the Contractor that business continuity should be invoked, a Force Majeure Event has occurred, or the performance is restored to the Service Level.
- 3.7. Where, following a Service Failure, performance is restored to the relevant Service Level, but a Service Failure of lower priority remains, such lower priority Service Failure shall be recorded as a separate Service Failure, starting at the time the Performance Adjustments cease to accrue in respect of the initial Service Failure, in accordance with the provisions of paragraph 5.4 of this Part B of Schedule 8.
- 3.8. If the level of performance of the Contractor in respect of any Service Level during a Service Period:
 - a) meets or exceeds the relevant Service Level, no Performance Adjustments will accrue to the Contractor in respect of that Service Level; or
 - b) is below the relevant Service Level the appropriate Performance Adjustment which will be agreed between the Parties will accrue or apply
- 3.9. Performance Adjustment Calculation Model:

Table 3: Performance Adjustment Calculation Model

Service Level Metric	Service Level	Performance Adjustment to be applied if Service Level not met (i.e. % of the Charges for the Support Services for the Preceding Month)
Application and Interface Availability SL1 and SL3	97.0%	5%
Page load time for Digi Admin SL 2	95.0%	5%
Page Load Time for Customer Portal SL 2	95.0%	5%
P1 Incidents SL 6	100% of Service Requests resolved within target	5%
P2 Incidents SL 7	100% of Service Requests resolved within target	3%

4. Changes to Service Levels

- 4.1. The RSA shall have the right to request on reasonable notice, the inclusion of additional or different Service Levels and/or Performance Adjustments. Such changes, additions or substitutions may occur in conjunction with Changes to the Support Services (or part thereof) or new means of service delivery. Any changes shall be made in accordance with Schedule 5 (Change Control Procedure) to reflect changes in the RSA's requirements.

5. Repeat and Persistent Failures

- 5.1. If the Contractor fails to achieve any Service Level during three (3) or more Service Periods in a row, the last occurrence of such failure shall be a "Repeat Failure" for the purposes of this paragraph 5. Subject to paragraph 5.3, if any Repeat Failure occurs, the Performance Adjustments that shall accrue to the Contractor in respect of such Repeat Failure shall be subject to a deduction of the monthly service charge.
- 5.2. If any of the Service Levels are not met for any 4 Service Periods in any 6-month period, then this shall be deemed to be a persistent breach for the purpose of Clause 11.3(b) of the Agreement, and the RSA may terminate the Agreement in accordance with Clause 11.3.

5.3. The Performance Adjustments applicable to each Service Level as set out in Table 3 above shall only apply in respect of Performance Adjustments normally accruing to the Contractor in respect of Service Failures. Application of Performance Adjustments for Repeat Failures shall not be subject to any cap.

5.4. Achievement of Service Levels

- a) The Contractor shall use best endeavours to achieve all Service Levels, as set out in Table 1 above.
- b) Where the elapsed time to resolve a Priority 4 incident exceeds the target resolution time (100 Core Business Hours) by more than 30 Core Business Hours, such incident shall be closed. A new ticket shall be opened, and the incident managed as a Priority 3 incident. The closed and new ticket shall be linked for traceability purposes,
- c) Where the elapsed time to resolve a Priority 3 incident exceeds the target resolution time (50 Core Business Hours) by more than 20 Core Business Hours, such incident shall be closed. A new ticket shall be opened, and the incident managed as a Priority 2 incident. The closed and new ticket shall be linked for traceability purposes.
- d) Where the elapsed time to comply with a Service Request Standard exceeds the target resolution time (30 Core Business Hours) by more than 20 Core Business Hours such incident shall be closed. A new ticket shall be opened, and the Service Request managed as a Service Request higher than originating request. The closed and new ticket shall be linked for traceability purposes.
- e) Overdue Open Tickets will be considered a repeated failure and are subject to paragraphs 5.1 to 5.3 (inclusive) and 5.4 (c-d).
- f) Where the Contractor considers that the circumstances relating to resolution of any ticket within the target resolution time are such that the provisions of clauses (b) to (e) should not apply to such ticket, this shall be notified to the RSA. The RSA shall consider the circumstances and may, at its discretion, waive the application of such escalation provision.

6. Contractor Solution Maintenance

6.1. The Contractor shall create and maintain a rolling maintenance schedule with regard to the Solution ("**Maintenance Schedule**") to be agreed with the RSA.

6.2. When the Contractor wishes to carry out any maintenance to the Solution (Other than Emergency Maintenance), it shall ensure that:

- a) the timing of the planned maintenance is in accordance with the requirements of the Maintenance Schedule or is as otherwise agreed in writing with the RSA's Representative at least twenty (20) Working Days in advance.
- b) unless otherwise required by the RSA, it is carried out outside Core Business Hours.
- c) users affected or likely to be affected by such maintenance are notified at least ten (10) Working Days in advance and reminded one (1) Working Day in advance of such maintenance being carried out.
- d) once agreed with the RSA's Representative the planned maintenance (which shall be known as "Permitted Maintenance") is forthwith entered onto the Maintenance Schedule; and
- e) the Permitted Maintenance is subsequently carried out in accordance with the Maintenance Schedule.

- 6.3. The Contractor will be allowed to book a maximum of 36 hours Service Downtime for Permitted Maintenance in any one Quarter which shall take place between the hours and on the day specified in the Maintenance Schedule unless otherwise agreed in writing with the RSA.
 - 6.4. Service Downtime arising due to Permitted Maintenance that is carried out by the Contractor in accordance with paragraph 7 of this Part B will be deducted from the total number of hours in the relevant Service Period when calculating the relevant Availability Service Levels.
 - 6.5. Performance Adjustments shall apply as agreed by both parties, if any Service Downtime occurs because of Emergency Maintenance undertaken by the Contractor or where maintenance undertaken by the Contractor exceeds 36 hours in any Quarter.
 - 6.6. The Contractor shall carry out any necessary maintenance where it reasonably suspects that the Solution and/or the Services or any part thereof has or may have developed fault. Any such maintenance shall be carried out in such a manner and at such times so as to avoid (or where this is not possible to minimise) disruption to the Solution and/or the Services. The Contractor shall give as much notice as is reasonably practicable to the RSA's Representative prior to carrying out any Emergency Maintenance.
- 7. RSA & Third-Party Maintenance**
- 7.1. Service Downtime arising because of RSA and/or third party planned and unplanned maintenance shall be Permitted Maintenance and shall be excluded from the calculation of any Performance Adjustments.

PART C Performance Monitoring

1. Methodology

- 1.1. This Part C provides the methodology for monitoring the Support Services:
 - a) to ensure that the Contractor is complying with the Service Levels; and
 - b) for identifying any Service Level Failures or other defects in the Contractor's performance and/or delivery of the Support Services ("**Performance Monitoring System**").
- 1.2. Within twenty-five (25) Working Days of the Support Services Commencement Date the Contractor shall provide the RSA with details of their Performance Monitoring System for Approval by the RSA, which shall as a minimum include details of the Contractor's proposals in respect of the following:
 - a) Notifications of Service Level Failures and other defects in the Contractor's performance and/or delivery of the Support Services.
 - b) The interface that will be made available to the RSA to allow the RSA to monitor compliance with the Service Levels on a day-to-day basis.
 - c) Performance review.
 - d) RSA audit.
 - e) The processes and systems the Contractor will put in place to effectively monitor its performance of the Support Services as against the Service Levels.
 - f) The format and content of the Performance Monitoring Report.
 - g) How the Contractor will comply with the obligations set out in Part C of this Schedule.
- 1.3. The RSA shall notify the Contractor within ten (10) Working Days of its receipt of the draft Performance Monitoring System and of its response (Approval or rejection) to it. The draft Performance Monitoring System shall not be deemed to have been approved if no notice of approval is given during such period. If the draft Performance Monitoring System is approved by the RSA, it shall be adopted immediately.
- 1.4. If the RSA gives notice of its rejection of the draft Performance Monitoring System, it shall in such notice identify the changes it requires to be made to it. The Contractor shall amend the draft Performance Monitoring System to incorporate the changes required by the RSA and re-submit the amended draft Performance Monitoring System to the RSA for Approval within five (5) Working Days of receipt of the RSA's rejection notice. The RSA shall not unreasonably withhold or delay its Approval of the amended draft Performance Monitoring System.
- 1.5. The Contractor shall ensure that the Performance Monitoring System shall be maintained and updated monthly by the Contractor as may be necessary to reflect the then current state of the Support Services.

2. Reporting of Service Level Failures

- 2.1. The Contractor and/or the RSA shall report all Service Level Failures to the Contractor Relationship Manager and/or the Contractor Representative.
- 2.2. The Contractor shall ensure that all Service Level Failures are logged immediately on discovery, on a log maintained by the Contractor (the "**Service Level Failure Log**").

- 2.3. Where the Contractor Representative and/or Contractor Relationship Manager receives more than one report of a Service Level Failure then all such reports shall be logged on a Service Level Failure Log.
- 2.4. The Contractor shall ensure that, as a minimum, the following details are recorded by the Contractor in the Service Level Failure Log in respect of each Service Level Failure:
- a) A unique report number (report numbers shall be applied sequentially);
 - b) The date and time the report is received by the Contractor Representative and/or service manager.
 - c) The nature and location of the Service Level Failure.
 - d) The person/organisation making the report.
 - e) An estimate (produced with all due care and diligence) of the number of users of the Solution which are affected by the Service Level Failure.
 - f) The action intended to be taken, or which has been taken to rectify the Service Level Failure.
 - g) Details of any communication with the RSA Representative in connection with the Service Level Failure.
 - h) Notes/comments regarding any mitigating circumstances regarding the Service Level Failure.
 - i) The Contractor's plans for remedying the Service Level Failure and/or for preventing the Service Level Failure from recurring, including details, where applicable of the estimated time within which such Service Level Failure will be remedied
 - j) The reasons for any inability of the Contractor to meet the Service Level Failure so as to resolve the Service Level Failure.

3. Performance Monitoring and Performance Review

- 3.1. Within five (5) Working Days of the end of each Service Period, the Contractor shall provide a Performance Monitoring Report to the RSA.
- 3.2. The Performance Monitoring Report shall be in the format set out in the Performance Monitoring System and shall contain, as a minimum, the following information in respect of the Service Period just ended:
- a) The monitoring which has been performed in accordance with the Performance Monitoring System with a summary of any issues identified by such monitoring.
 - b) For each Service Level, the actual performance achieved over the relevant Service Period, and that achieved over the previous six Service Periods.
 - c) A summary of all Service Level Failures that occurred during the relevant Service Period.
 - d) The level of each Service Level Failure which occurred.
 - e) Which Service Level Failures remain outstanding (i.e. Open Tickets) and progress in resolving them, a plan to resolve these tickets to include timelines and any dependency on the RSA
 - f) Reporting of duplicate incidents.

SUBJECT TO CONTRACT/CONTRACT DENIED

- g) For any Repeat Failures, actions taken to resolve the underlying cause and prevent recurrence.
 - h) Relevant particulars of any aspects of the performance by the Contractor which fail to meet the requirements of the Agreement
 - i) Reporting of “no fault found” incidents
 - j) Reporting of incidents due to system change(s)
 - k) Reporting of security incidents
 - l) Such other details as the RSA may reasonably require from time to time.
- 3.3. The draft Performance Monitoring Report shall be reviewed, and its contents agreed in writing by the parties at the Performance Review Meeting which follows the issue of such report.
- 3.4. The RSA shall be entitled to raise any additional questions and/or request any further information regarding any Service Level Failure.
- 3.5. The Contractor shall provide to the RSA such supporting documentation as the RSA may reasonably require verifying the level of the performance by the Contractor and the calculations of the amount of the Performance Adjustment for any specified period.
- 3.6. Performance Review Meetings
 - i. The Contractor’s Relationship Manager and any relevant members of the Contractor team will attend the Performance Review Meetings as agreed.
 - ii. The Contractor will provide to the RSA all documentation required no less than 5 working days in advance of the relevant Performance Review Meeting.
 - iii. The Contractor shall circulate the minutes and actions agreed at the Performance Review Meeting no later than 3 working days after the meeting.
 - iv. The Contractor shall circulate all agreed reports to RSA attendees within 5 working days of the end of the month.

Schedule 9 – Cyber Security Program

1. The Contractor shall maintain a comprehensive Cyber Security Programme that shall, at a minimum, comply with the information set out in this Schedule 9.

[Current version of RSA Third Party Security Standards to be inserted together with relevant information from the Contractor's Tender as accepted by the RSA, prior to execution]

2. For avoidance of doubt, the associated risk category applicable to this Contract is defined in the RSA's Third-Party Security Standards as **Category 2**.
3. It is acknowledged that the provisions of this Schedule 9 may be amended or updated over the Contract Term pursuant to the Change Control Procedure.
4. In addition, the Contractor shall complete a cyber security audit within 4 weeks of the Commencement Date to check and verify that all proposed cyber security arrangements outlined in this Schedule 9 are in place and furnish the RSA with the results within 7 days following completion of the audit.

SUBJECT TO CONTRACT/CONTRACT DENIED

Schedule 10 – The Solution Specification

[Details of the Solution i.e., the Software (including its technical specification), and any equipment and/or materials to be provided by the Contractor under the Agreement to be inserted prior to execution]