

APPENDIX 3 – DATA PROCESSING AGREEMENT



ENTERPRISE IRELAND LIMITED

and

[INSERT SUPPLIER NAME]

DATA PROCESSING AGREEMENT

THIS DATA PROCESSING AGREEMENT is made on **[insert date]**

BETWEEN:

(1) **ENTERPRISE IRELAND** with Principal Office at The Plaza, Eastpoint Business Park, Dublin 3 (**EI**); and

(2) **[]** (**the Supplier**) having its registered office at **[.....]**.

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

BACKGROUND:

(A) The Supplier is **[insert description of the Supplier's business activities]**.

(B) The Supplier is providing the Services to EI pursuant to a framework agreement for **[insert title of framework agreement]** dated **[insert date of agreement]** (the “**Services Agreement**”).

(C) In the course of providing the Services to EI pursuant to the Services Agreement, the Supplier will process Personal Data on behalf of EI. The Supplier agrees to comply with the following provisions with respect to any Personal Data processed on behalf of EI.

AGREED TERMS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement the following expressions will have the following meanings unless expressly stated to the contrary:

Commencement Date means [.];

Confidential Information means any information, that relates to the business, affairs, operations, customers, processes, budgets, pricing policies, product information, strategies, developments, trade secrets, know-how, methods, technology, technical data, personnel and suppliers of the disclosing party, and any other information clearly designated by a Party as being confidential to it (whether or not it is marked "confidential"), or which ought reasonably be considered to be confidential, or other matters connected with the Services;

Controller Data means all Personal Data and Confidential Information that may be supplied to the Processor by or on behalf of the Controller pursuant to the Services Agreement or produced or obtained by the Processor wholly or partly at the Controller's expense;

Data Controller, Data Processor, Data Subject, Personal Data, Processing and Prior Consultation shall have the meanings ascribed to them under Data Protection Law;

Data Processing Annex means Annex 1 to this Agreement;

Data Protection Law means (i) Data Protection Acts 1988 to 2018 in Ireland (as amended or replaced); (ii) to the extent applicable, the data protection and information privacy laws of another jurisdiction; (iii) the General Data Protection Regulation (EU) 2016/679 (**GDPR**); (iv) any subsequent re-enactment, replacement or amendment of such laws; and (v) any guidance issued by the Irish Data Protection Commission (or replacement Irish supervisory authority);

Data Security Breach means any known potential or actual breach of the Data Controller's minimum information security requirements, or any obligations or duties owed by the Data Processor to the Data Controller relating to the confidentiality, integrity or availability of Confidential Information or Personal Data;

Group means of a party means in relation to a party, that party, any subsidiary or holding company of that party, and any subsidiary of a holding company of that party, 'holding company' and 'subsidiary' having the meanings given to them in sections 7 and 8 of the Companies Act 2014 (Ireland);

Losses means all direct, indirect or economic loss (including loss of profits), liability, damage, injury, claim, action, demand, expense (including legal and other professional services expenses on a full indemnity basis) or proceedings awarded against, suffered, incurred or paid by the Controller;

Personnel means (i) the officers, employees, agents and contractors (including Subcontractors) of a Party and the members of its Group; and (ii) the officers, employees, contractors and agents of the contractors (including Subcontractors) of that Party and the members of its Group;

Regulator means any regulator or regulatory body (including the Office of the Data Protection Commissioner and its successor) to which the Data Controller is subject from time to time or whose consent, approval or authority is required so that the Data Controller can lawfully carry on its business; and

Services mean the services to be delivered by or on behalf of the Data Processor under the Services Agreement.

2 DATA CONTROLLER AND DATA PROCESSOR

- 2.1** In order to provide the Services to EI, the Supplier will require certain Personal Data to be made available to it by EI.

- 2.2 The Parties acknowledge that for the purposes of Data Protection Law, EI is a Data Controller (the **Controller**) under the Services Agreement.
- 2.3 The Supplier is a Data Processor (the **Processor**) in respect of the Personal Data processed under the Services Agreement on behalf of the Controller. All right, title and interest in the Personal Data shall vest solely in the Controller and the Processor shall not acquire any rights in the Personal Data, except as may be set out in this Agreement or the Services Agreement.
- 2.4 The rights and obligations of each party in connection with data processing activities are set out in clause 3 below.

3 DATA PROTECTION OBLIGATIONS

Obligations of the Controller

- 3.1 The Controller shall provide the Personal Data to the Processor together with such other information as the Processor may reasonably require in order for the Processor to provide the Services to the Controller.

Obligations of the Processor

- 3.2 **Instructions:** The Processor shall only, and shall procure that its Personnel only, Process the Personal Data to the extent necessary to perform its obligations in accordance with this Agreement, the Services Agreement and any other written instructions of the Controller, including those set out in the [Data Processing Annex](#), unless required to do so by Union or Member State law to which the Processor is subject and in such a case, the Processor shall inform the Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.
- 3.3 **Disclosure to Third Parties:** The Processor shall not disclose the Controller Data to any third party without the prior written approval of the Controller.
- 3.4 **Data Transfers:** The Processor shall not transfer any of the Personal Data or other information relating to customers of the Controller to a country outside of the European Economic Area except with the prior written consent of the Controller and in accordance with any terms the Controller may impose on such transfer.
- 3.5 **Data Subject Rights:** The Processor agrees to assist the Controller in responding to requests by Data Subjects exercising their rights under Data Protection Law, within such timescales as may be specified by the Controller.
- 3.6 **Assistance:** The Processor shall assist the Controller within timescales that allow the Controller to comply with its obligations pursuant to:
- 3.6.1 Article 32 of the GDPR (Security);

- 3.6.2 Articles 33 and 34 of the GDPR (Data Breach Notification);
 - 3.6.3 Article 35 of the GDPR (the conduct of Data Protection Impact Assessments);
and
 - 3.6.4 Article 36 of the GDPR (Prior Consultation requests to Regulators in relation
to Personal Data Processing under the Services Agreement).
- 3.7 **Breach Notification:** The Processor will notify the Controller within twenty-four (24) hours of the Processor becoming aware of a Data Security Breach, and shall include in such notification, at least the applicable information referred to in Article 33(3) of the GDPR. The Processor shall not communicate with any Data Subject in respect of a Data Security Breach without the prior written consent of the Controller.

- 3.8 Restoration:** In the event that any of the Controller Data is corrupted or lost or sufficiently degraded as a result of the any negligence or default by the Processor or its Personnel so as to be unusable then, the Controller shall have the option to:
- 3.8.1** require the Processor at its own expense to use best endeavours to restore or procure the restoration of the Controller Data and the Processor shall use best endeavours to do so as soon as possible; or
 - 3.8.2** itself restore or procure the restoration of the Controller Data and require the Processor to reimburse the Controller for any costs incurred in so doing.
- 3.9 Confidentiality:** The Processor will ensure that its Personnel who Process Personal Data under this Agreement and the Services Agreement are subject to obligations of confidentiality in relation to such Personal Data.
- 3.10 Security:** The Processor shall implement appropriate technical and organisational measures to assure a level of security appropriate to the risk to the security of Personal Data, in particular, from accidental or unlawful destruction, loss, alteration, unauthorised, disclosure of or access to Personal Data including as appropriate:
- 3.10.1** the pseudonymisation and encryption of Personal Data;
 - 3.10.2** the ability to ensure the ongoing confidentiality, integrity and availability and resilience of the Processor's systems used for such Processing, the Personal Data and the Services;
 - 3.10.3** the ability to restore the availability and access to the Personal Data in the event of a physical or technical incident; and
 - 3.10.4** a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing.
- 3.11** The Processor shall notify the Controller of any material changes to the technical and organisational measures used by the Processor throughout the Term.
- 3.12 Sub-Processing:** The Processor agrees that it shall not engage any third party to Process the Controller's Personal Data without the prior written consent of the Controller. The Processor shall inform the Controller of any intended changes concerning the addition or replacement of the other processors and shall not make any such changes without the prior written consent of the Controller.
- 3.13** If the Processor engages any third party to Process any of the Controller's Personal Data, the Processor shall impose on such third party, by means of a written contract, the same data protection obligations as set out in this Agreement and shall ensure that if any third party engaged by the Processor in turn engages another person to Process any Personal Data, the third party is required to comply with all of the

obligations in respect of Processing of Personal Data that are imposed under this Agreement.

- 3.14 The Processor shall remain fully liable to the Controller for Processing by any third party as if the Processing was being conducted by the Processor and the limitations on liability agreed in clause.
- 3.15 **Demonstrating Compliance:** The Processor shall make available to the Controller all information necessary to demonstrate compliance with the obligations set out in Article 28 of the GDPR and allow for and contribute to audits, including inspections, conducted by EI or another auditor mandated by EI.
- 3.16 **Infringement:** The Processor will immediately inform the Controller if, in its opinion, an instruction given, or request made pursuant to the Services Agreement infringes Data Protection Law.
- 3.17 **Termination/Expiry:** On termination or expiry of the last call-off contract awarded under the Services Agreement (or at any other time on request by the Controller), the Processor shall return or permanently erase, at the election of EI, all copies of Personal Data received and/or processed by it under the Services Agreement unless European Union or Member State law requires retention of the Personal Data.
- 3.18 The provisions of this clause shall survive the Term until the Processor has returned or destroyed all Personal Data.

Processor Indemnity

- 3.19 The Processor agrees to indemnify the Controller against any and all losses, costs, expenses (including legal expenses), damages, liabilities, demands, claims, fines, actions or proceedings which the Controller may suffer or incur arising out of any breach of this Agreement whether or not such losses were foreseeable at the time of the breach which occasioned them.

4 TERM AND TERMINATION

- 4.1 This Agreement shall come into force on the Commencement Date and shall, subject to the terms of clauses 3.17, 3.18 and 3.19, terminate on the termination or expiry of the last call off contract under the Services Agreement **(the Term)**.

5 GENERAL

- 5.1 **Counterparts:** this Agreement may be executed in any number of counterparts, each of which when executed and delivered shall constitute an original of this Agreement.
- 5.2 **Governing Law:** The formation, existence, construction, performance, validity and all aspects whatsoever of this Agreement or of any term of this Agreement will be governed by Irish law. The Parties irrevocably agree to submit to the exclusive

jurisdiction of the courts of Ireland over any claim or matter arising under or in connection with this Agreement.

- 5.3 Severability:** If any provision of this Agreement shall be held to be void or declared illegal, invalid or unenforceable for any reason whatsoever, such provision shall be divisible from this Agreement and shall be deemed to be deleted from this Agreement and the validity of the remaining provisions shall not be affected.

IN WITNESS whereof this Agreement has been duly executed by the parties to it on the date set out at the beginning of this Agreement.

Signed for and on behalf of **Enterprise Ireland** Signed for and on behalf of the **Supplier**

Signed _____

Signed _____

Duly authorised by **Enterprise Ireland**

Duly authorised by the **Supplier**

Name _____

Name _____

Title _____

Title

Date

Date _____

ANNEX 1 (DATA PROCESSING ANNEX)

Description of the Personal Data Processing (Tenderers will complete this in the TRD as part of their tender response)									
Subject Matter									
Duration	[Duration of this Agreement/ the Services Agreement]								
Nature & Purpose of the Processing	[E.g. use of client contact details to provide the Services]								
Categories of Data Subjects	[E.g. EI clients, employees]								
Types of Personal Data i.e. any information relating to an identified or identifiable person.	[E.g. names, addresses, financial details]								
Subcontracting/Sub Processors	[Insert details of any subcontractors who will process personal data]								
Data Transfers Outside EU – Location & Transfer Mechanism	[Identify any countries outside the EU to which data is transferred and the agreements covering the transfer] <table border="1" style="width: 100%; margin-top: 10px;"> <thead> <tr> <th style="width: 33%;">Sub-Processor</th> <th style="width: 33%;">Services</th> <th style="width: 33%;">Location & Transfer mechanism (if</th> </tr> </thead> <tbody> <tr> <td style="height: 40px;"></td> <td></td> <td></td> </tr> </tbody> </table>			Sub-Processor	Services	Location & Transfer mechanism (if			
Sub-Processor	Services	Location & Transfer mechanism (if							

			applicable)
			Standard Contractual Clauses/ Binding Corporate Rules
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Data Protection & Security Measures	[Insert a description of the technical and organisational security measures regarding Data Protection Training & Awareness/Information Security, Access Controls, Data Retention & Deletion, Encryption, Breach Management, DSAR Management]		
Supplier DPO			
Other	[Insert details of any relevant certification as well as links to the company Data Protection Notice and Privacy Statement]		
Controller Rights and Obligations	The obligations and rights applicable to a Controller under Data Protection Law, including the matters specified in the Agreement.		