COIMISIÚN NA MEÁN
CONTRACT AWARD FOR SUPPLY OF GOODS

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COIMISIÚN NA MEÁN
TERMS AND CONDITIONS OF SUPPLY OF GOODS

These Terms and Conditions shall apply to the Contract between An Coimisiún and the Supplier and, shall not be deemed to be amended or excluded in whole or part save by written agreement duly executed by the Supplier and An Coimisiún and making express provision for such amendment or exclusion. Any rights or remedies of An Coimisiún otherwise or elsewhere provided for in the Tender Documents shall be deemed to be in addition to and not to limit the rights and entitlements of An Coimisiún pursuant to these Terms and Conditions. Any terms or conditions of the Supplier (including any terms and conditions contained in Schedule D) whether contained in quotations, invoices or otherwise conflicting with or purporting to amend or exclude these Terms and Conditions shall be deemed not to apply.

Definitions

Capitalised terms not defined in these Terms and Conditions shall have the meaning given to them in the Particulars of Contract.

"**2016 Regulations**" means the European Union (Award of Public Authority Contracts) Regulations 2016.

"**Business Day**" shall mean any day other than Saturday, Sunday or any other day which is a public holiday in Ireland between the hours of 9.00 and 17.30.

"**Compliant Systems"** means that the performance and functionality of the systems, machinery, hardware, software, and products will be consistent and uninterrupted regardless of the date and time on which they are being used or operated and regardless of any currency which they use or to which they refer where use of or reference to that currency is required by law or by the terms of this Contract.

"**Confidential Information"** means all information relating to the affairs of business of both parties.

"**Customer Information**" means all information, data, records, material, programs, databases, e-mails, accounts information and all other information of An Coimisiún which is to be located and/or stored on the Servers as may be part of the provision of Goods.

"**Data Protection Legislation**" means all applicable laws and regulations relating to the processing of personal data and privacy including the Data Protection Act 2018 the General Data Protection Regulation 2016/679 (the "**GDPR**"), the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I 336/2011), and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms "data controller", "data processor", "process", "personal data" and "personal data breach" shall have the meanings given to those terms in the GDPR.

"Disclosing Party" has the meaning given to it in clause 11.3.

"**Force Majeure**" means an event or circumstance or combination of events and/or circumstances not within the reasonable control of either or both An Coimisiún and/or the Supplier (the "**Affected Party**") which has the effect of delaying or preventing the Affected Party from complying with its obligations

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under this Contract including but not limited to acts of God, war, out-break of disease (but shall not include COVID-19), insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts, and similar) occurring at the Affected Party's places of business.

"**GDPR**" has the meaning given to it in Data Protection Legislation.

"**Intellectual Property Rights**" means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

"Laws" has the meaning given to it in clause 4.16.

"Receiving Party" has the meaning given to it in clause 11.3.

"**Servers**" means the server(s) on which the Customer Information will be located and/or stored in the course of providing the Goods which for the avoidance of doubt may be virtual servers in a multi tenancy environment.

"**Specification"** includes any plans, drawings, data, or other information relating to the Goods and the Specification of Goods more particularly described at Schedule A to the Contract.

"**Supplier Personnel**" shall mean any personnel, officers, contractors, and agents employed or engaged by Supplier in relation to the supply of any part of the Goods hereunder.

"**Tender Documents**" shall include the following:

(a) any request for proposal or invitation to tender for the provision of goods and/or services made by An Coimisiún to the Supplier;

(b) any tender or other response to such request for proposal or invitation to tender, as clarified or amplified in writing between an Coimisiún and the Supplier prior to written acceptance by An Coimisiún thereof;

(c) additional tender documents including specifications, price schedules, form of tender and European Single Procurement Document (together with any declarations provided as part of its tender); and,

(d) the Supplier's submission contained at Schedule D.

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1. General Terms

1.1 This Contract takes legal effect on and from the Effective Date unless earlier terminated in accordance with this Contract.

1.2 The Supplier undertakes to supply the Goods from the Effective Date to the highest professional standards at all times and in compliance with the terms of this Contract.

1.3 The Supplier shall accept sole responsibility for acquiring any permits, customs clearance or licences necessary for its performance of the Contract.

1.4 An Coimisiún shall not be responsible under any circumstances for any loss or damage suffered by the Supplier or its servants or agents in the performance of the Contract, nor entertain any claim relating to such damage.

2. Payment Terms

2.1 Prior to the supply of any Goods under this Contract it shall be the responsibility of the Supplier to procure a valid written purchase order from An Coimisiún (the "**Purchase Order**") for the relevant Goods. The Goods may be supplied only following issue of such written purchase order by An Coimisiún to the Supplier.

2.2 The Supplier shall invoice An Coimisiún in accordance with the provisions of Schedule B.

2.3 In accordance with the Late Payments in Commercial Transactions Regulations 2012, payment will be made within thirty (30) days of receipt of a valid, complete and accurate invoice provided in accordance with clause 2.2, delivered by the Supplier to An Coimisiún's Finance Department, quoting the Purchase Order number. Each invoice shall include such supporting information reasonably required by An Coimisiún to verify the accuracy of the invoice, including the information specified in Schedule B.

2.4 Payment will not be made to a Supplier who has failed to supply or refused to demonstrate their tax clearance status.

2.5 An Coimisiún shall withhold tax as required by the Taxes Consolidation Act 1997 (as amended) and the Revenue Commissioners in respect of payments made by public bodies for professional services.

2.6 The charges for the supply of Goods is as set out in Schedule B and shall be the full and exclusive remuneration of the Supplier in respect of the supply of the Goods. Unless otherwise agreed in writing by An Coimisiún, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the supply of the Goods. Any and all taxes applicable to the provision of the Services under and in accordance with this Contract will be the sole responsibility of the Supplier and the Supplier so acknowledges and confirms.

2.7 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to An Coimisiún in respect of any breach of this Contract), An Coimisiún may deduct, with prior notice to the Supplier,

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that sum from any sum then due, or which at any later time may become due to the Supplier by An Coimisiún under this Contract. For the avoidance of doubt, any sums deducted under this clause shall not be calculated in the cap specified in clause 10.

3. Warranties

3.1 The Supplier warrants, represents and undertakes that, subject to the remaining provisions of this clause 3:

3.1.1 it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Contract and to provide the Goods hereunder;

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

3.1.3 it owns, has obtained or is able to obtain, all relevant titles and licences that are necessary to allow it carry out its obligations and responsibilities under this Contract;

3.1.4 it has not and will not in the supply of the Goods under this Contract at any time infringe the intellectual or other property rights of any third party;

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

3.1.6 An Coimisiún has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;

3.1.7 it has made and shall make its own enquiries as to the accuracy of the information referred to in clause 3.1.6;

3.1.8 the status of the Supplier, as declared in its European Single Procurement Document response included within the Tender Documents, has not changed and none of the circumstances listed in Regulation 57 of the 2016 Regulations apply to the Supplier;

3.1.9 it will provide the Goods in accordance with the Terms and Conditions of this Contract;

3.1.10 it will be responsible for and take due precautions for the safe custody of any Goods on its premises which are the property of An Coimisiún and shall insure the same against any form of loss or damage;

3.1.11 it will, on request from An Coimisiún, assign to An Coimisiún all benefits or any manufacturer's, sub-suppliers or other third party warranty or guarantee which may apply to the Goods;

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3.1.12 following a written request to that effect by An Coimisiún, the Supplier will procure the immediate removal of any member of the Supplier's personnel and the replacement by another suitably qualified member of the Supplier's personnel. An Coimisiún agrees to act reasonably and in good faith in relation to any such request;

3.1.13 it has acquainted itself with and shall comply with all relevant legal and/or regulatory statutes, bylaws, regulations and requirements of any government, local or other competent authority and best industry practice including but not limited to those relating to tax, health, safety and the environment, employment, and those made known by An Coimisiún to the Supplier in this Contract, the Tender Documents (if applicable) or otherwise in connection with the Goods;

3.1.14 it retains and maintains the insurances required by this Contract;

3.1.15 it will maintain the confidentiality and integrity of any Customer Information or Confidential Information acquired or accessed by the Supplier and/or Supplier Personnel in the course of providing the Goods; and

3.1.16 the Goods shall not infringe any patent, trademark, registered design, copyright or other right of any third party and the Supplier shall indemnify An Coimisiún against all actions, claims, suits, demands, losses, costs or expenses incurred or likely to be incurred by An Coimisiún under this heading and the Supplier covenants and undertakes not to enter into any agreement which in any way interferes with the rights granted by the Supplier to An Coimisiún under this Contract;

3.1.17 that the Goods will on delivery have good absolute title and be free from encumbrance or any third party entitlement;

3.1.18 that the Goods will:

3.1.18.1 correspond with their description and any applicable specification;

3.1.18.2 be of satisfactory quality (within the meaning of the Sale of Goods and Supply of Services Act 1980, as amended) and fit for any purpose held out by the Supplier or made known to the Supplier in writing at the time the Purchase Order is placed;

3.1.18.3 be free from defects in design, material and workmanship and shall remain so for a minimum period of twelve (12) months after delivery;

3.1.18.4 correspond with any relevant specification or sample; and

3.1.18.5 comply with all statutory requirements and regulations relating to the sale of the Goods.

3.2 The warranties and remedies provided for in this clause 3 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding

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acceptance by An Coimisiún of all or part of the Services in respect of such warranties and remedies.

3.3 The Supplier undertakes to notify An Coimisiún forthwith of any material change to the status of the Supplier with regard to the warranties, representations and undertakings as set out in this clause 3 and to comply with all reasonable directions of An Coimisiún with regard thereto which may include termination of this Contract.

4. Supply and Delivery of Goods

4.1 The Goods shall be supplied to the satisfaction of An Coimisiún in strict conformity with this Contract (in particular the standard specified in clause 1.2 and the warranties specified in clause 3.1.18) and the Specification of Goods set out in Schedule A, except as may otherwise be agreed in writing by An Coimisiún. The Supplier will provide such reports, if any, as are detailed in Schedule A promptly.

4.2 The Supplier shall at all times allocate sufficient resources to supply the Goods in accordance with the terms of the Contract and shall ensure that any personnel engaged in the provision of any of the Services shall, if required by An Coimisiún, attend such meetings with An Coimisiún as and when reasonably required.

4.3 The Supplier shall during the term of the Contract deliver the Goods and shall take all appropriate steps having regard to its obligations under the Contract to ensure that all matters are dealt with to ensure delivery of the Goods as provided for in the Contract and to achieve the timely, efficient, and economic performance of its obligations under the Contract in a manner and to the standards and within the time stipulated in the Contract.

4.4 Delivery of the Goods shall be to the place named on the Purchase Order, or if none is stated, to the An Coimisiún's offices at ne Shelbourne Buildings, Shelbourne Road, Dublin, D04 NP20 (the "**Delivery Location"**) and the delivery of the Goods shall be completed on the completion of unloading the Goods at the Delivery Location and/or the location specified in the Purchase Order. If Delivery of the Goods is to a place other than the Delivery location, the Supplier shall confirm prior to delivery the location with the An Coimisiún Contract.

4.5 The title and property in the Goods shall pass to An Coimisiún upon delivery or (in the case of delivery by instalments) upon delivery of each instalment unless payment or part payment has been made prior to delivery in which event title and property in any goods purchased or allocated by the Supplier for the purpose of the Contract shall immediately vest with An Coimisiún upon such payment. Risk of damage or loss of the Goods shall remain with the Supplier until delivery in accordance with the Contract.

4.6 If An Coimisiún is not satisfied with the standard of any part of the Goods provided, by reason of quality, quantity or (without limitation) any other reason, or the Goods are not delivered or provided in due time then without prejudice to any other rights to which it may be entitled, An Coimisiún, at its absolute discretion, may either:

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4.6.1 return the Goods or any instalment or any part thereof on the basis that a full refund for such goods shall be paid forthwith by the Supplier (title but not risk therein remaining with An Coimisiún until the refund is made); or

4.6.2 require immediate replacement or rectification by delivery of goods which are in accordance with the Contract; or

4.6.3 require the immediate repair or remedy of any defects in the Goods; or

4.6.4 repair or remedy the defects or deficiencies itself or by others, at the Supplier's expense; or

4.6.5 purchase equivalent goods elsewhere at the Supplier's expense; or

4.6.6 refuse to accept any further delivery of goods without liability

and the Supplier will indemnify An Coimisiún in full on demand in respect of all costs and expenses thereby incurred by An Coimisiún. The making of any prior payment shall not prejudice An Coimisiún's right of rejection.

4.7 Unless expressly agreed to the contrary, An Coimisiún shall not be obliged to accept delivery by instalments. If, however An Coimisiún does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of An Coimisiún, entitle An Coimisiún to terminate the whole of any unfulfilled part of the Contract without further liability to the Supplier. If the Supplier delivers less than 95% or more than 105% of the quantity of Goods ordered, An Coimisiún may reject the Goods at its discretion (in whole or in part) and any rejected Goods shall be returnable at the Supplier's risk and expense. If An Coimisiún accepts the delivery, a pro rata adjustment will be made to the Purchase Order.

4.8 An Coimisiún shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Purchase Order.

4.9 Time of delivery shall be of the essence and if the Supplier fails to deliver the Goods within the time specified in the Purchase Order An Coimisiún may release itself from any obligation to accept and pay for the Goods and/or terminate the Contract without prejudice to any other rights and remedies of An Coimisiún.

4.10 Rejected Goods shall be removed by the Supplier from An Coimisiún within thirty (30) calendar days from the date of the notification to the Supplier of their rejection. In the event of failure by the Supplier to remove Goods within fourteen (14) calendar days of such notification, An Coimisiún may dispose of such Goods as he sees fit and pending such removal, the Goods will remain with An Coimisiún at the risk of the Supplier. Any costs incurred by An Coimisiún relating to such disposal shall at the option of An Coimisiún be borne by the Supplier.

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4.11 For the avoidance of doubt, An Coimisiún will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with this clause 4.

4.12 The issue by An Coimisiún of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or An Coimisiún's acceptance of them.

4.13 Without prejudice to any other rights of An Coimisiún under the Contract, An Coimisiún may terminate this Contract with immediate effect if the Supplier does not comply with any requirements of the Terms and Conditions. within the time specified or if An Coimisiún is not satisfied with the standard of any such remedial replacement Goods delivered by the Supplier.

4.14 The Supplier acknowledges that it does not have any exclusive right to provide the Goods, or goods similar or identical to the Goods, to An Coimisiún, and that there is no guarantee of any value, volume or frequency of Goods unless otherwise specified.

4.15 The Supplier acknowledges and agrees that An Coimisiún is deemed to have fully relied on the Supplier's skill, expertise, and experience in providing the Goods. The Supplier further acknowledges and agrees that An Coimisiún may require the Supplier to interact with other suppliers of An Coimisiún and the Supplier shall provide such reasonable co-operation and information regarding the Goods as An Coimisiún may reasonably require without further payment.

4.16 The Supplier shall comply with all relevant standards and codes (including inter alia voluntary codes) and all applicable laws, ordinances, statutes, orders, rules and regulations of any governmental or other applicable authority having jurisdiction (hereafter "**Laws**") in the performance of its obligations under the Contract and delivery and production and provision of the Goods hereunder and shall ensure that the Goods are in compliance with such Laws and without prejudice to the generality of the foregoing shall ensure that the production, creation and transmission of all materials supplied or generated pursuant to the Contract shall be designed and implemented in strict compliance with those Laws and shall obtain and pay for, at its own cost all licences and permits necessary for the performance of its obligations under the Contract.

4.17 The Supplier shall confirm in advance of delivery whether it requires the return of packaging material from An Coimisiún. If the Supplier requires the same, the packaging material shall be returned at the cost of the Supplier.

5. Inspection of the Goods

5.1 An Coimisiún or its authorised representative may inspect (to include a call for advance samples) or test the Goods either completed or in the process of manufacture, during normal business hours on reasonable notice at the Supplier's premises (including the premises of any subcontractor or agent) and the Supplier shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint at the time of any such inspection or test and / or the approval given during or after such inspection or test shall not constitute a waiver by An Coimisiún of any rights or

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remedies in respect of the Goods and An Coimisiún reserves the right to reject the Goods in accordance with clause 4.

6. Variation

Both parties agree that the Contract can be modified by mutual agreement between the parties.

7. Specifications

7.1 An Coimisiún agrees that, from time to time, the Supplier may subject to the prior written approval of An Coimisiún:

7.1.1 for operational reasons, change the Specification of the Goods to be provided by the Supplier hereunder provided it does not materially affect the delivery of the Goods; and/or

7.1.2 suspend the delivery of the Goods, for operational reasons or because of an emergency.

7.2 The Supplier will resume the delivery of the Goods within a timeframe approved by An Coimisiún.

8. Intellectual, Industrial and Commercial Property Rights

8.1 All specifications, products, or documents supplied by An Coimisiún in connection with the Contract together with all Intellectual Property Rights, design rights or copyright connected therewith shall remain the property of An Coimisiún.

8.2 The Supplier shall indemnify, defend and hold harmless An Coimisiún from any and all damages and costs awarded by a court of competent jurisdiction or any amounts agreed in settlement, including reasonable legal fees and expenses, arising out of any claims of infringement by the Supplier or An Coimisiún of any patent, trade mark, copyright, goodwill, covenant or other intellectual or other property right or similar right whether registerable or not in any jurisdiction.

8.3 If as a result of any such action or infringement detailed in clause 8.2, An Coimisiún is unable to lawfully use or benefit from the Goods, or if such action or claim is likely to be made or is initiated, the Supplier will either procure for An Coimisiún the right to continue to use and benefit from the Goods in accordance with the Contract, or replace or modify the Goods, with goods of comparable quality, serviceability and capability at no cost to An Coimisiún, so that it becomes non-infringing.

8.4 The Supplier shall not obtain any rights in products, materials or methodologies proprietary to An Coimisiún except pursuant to a separate written agreement executed by the parties.

8.5 The Supplier shall at the request and reasonable expense of An Coimisiún provide such assistance as An Coimisiún may require in obtaining, maintaining, defending and/or enforcing An Coimisiún's rights in respect of the Goods, including without limitation the

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execution of all necessary documents. The Supplier unconditionally and irrevocably waives any non-transferable rights in the Goods and shall procure that, written, unconditional and irrevocable waiver of any moral or other non-transferable rights in the same, whether asserted or not, has been given by Supplier Personnel in a form approved by An Coimisiún, acting reasonably, and delivered to it prior to the supply and delivery of the Goods.

9. Compliant Systems/Machinery/Products

The Supplier guarantees and undertakes that all systems, machinery, hardware, software and products supplied or used in the performance of this Contract are or will, when supplied or used, be Compliant Systems.

10. Liability, indemnity, and insurance

10.1 The Supplier shall be liable to An Coimisiún for any losses, actions, proceedings, costs, expenses, damages, claims, and liabilities incurred by An Coimisiún arising out of:

10.1.1 any injury, including fatal injury and disease, to Supplier or An Coimisiún personnel or third parties, or loss or damage to the property of third parties which is caused or contributed to by the negligence, error, omission, breach of statutory duty, breach of contract or other default of the Supplier, its employees, servants, or agents; and

10.1.2 any assertion against An Coimisiún that any member or former member of Supplier Personnel is or was an employee or worker of An Coimisiún including without limitation, any liability for income tax or Pay Related Social Insurance contributions of Supplier Personnel, or any interest or penalties thereon or any claim for breach of contract, unfair dismissal, a statutory or other redundancy payment, unlawful deductions from wages, equal pay, sex, race or disability discrimination, a protective award or any other claim.

10.2 The Supplier hereby agrees to fully and effectively indemnify, hold harmless and keep so indemnified on demand An Coimisiún from and against any liabilities whatever suffered or incurred by An Coimisiún arising out of and/or in connection with the negligence, default, act, or omission of the Supplier and/or its personnel, sub-contractors or agents. This indemnity survives the termination or expiration of this Contract for whatever reason.

10.3 The Supplier will, at its sole cost and expense, effect and maintain for the benefit of An Coimisiún during the performance of the Contract, and such further period as may be required or ought prudently to be effected and maintained after the expiration or termination of this Contract, insurance cover with reputable insurers to cover its liabilities that may arise under or in connection with this Contract including:

10.3.1 public liability insurance (if required by An Coimisiún in the Particulars of Contract) that at a minimum achieves the levels and type required in the Particulars of Contract;

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10.3.2 employer's liability insurance (if required by An Coimisiún in the Particulars of Contract) that at a minimum achieves the levels and type required in the Particulars of Contract; and

10.3.3 professional indemnity insurance/product liability (if required by An Coimisiún in the Particulars of Contract) that at a minimum achieves the levels and type required in the Particulars of Contract (which product liability/professional indemnity insurance will be kept in place for at least six (6) years from the expiration or termination of the Contract).

10.4 The policies of insurance referred to in clause 10.3 will be shown by the Supplier to An Coimisiún whenever An Coimisiún requests, together with satisfactory evidence of payment of premiums.

10.5 Where the Supplier or any sub-contractor fails to insure any risk as required by An Coimisiún, in accordance with the Contract, An Coimisiún may insure the risk in question and deduct the amount of the premiums from any monies due to the Supplier.

10.6 Where An Coimisiún has indicated in the Particulars of Contract that a Liability Cap applies to the Supplier, the Supplier's liability shall be limited to the level specified in the Particulars of Contract subject at all times to the provisions of clause **Error! Reference source not found.**.

10.7 An Coimisiún shall not be liable in any event for consequential, indirect or special losses incurred by the Supplier.

11. Confidentiality

11.1 This Contract (including any negotiations relating thereto, the subject matter, terms, or performance of this Contract) and all information relating to the affairs or business of both parties ("**Confidential Information**") shall be treated as proprietary and confidential. Both parties undertake to treat as confidential, and to cause their employees, agents, and sub-contractors to treat as confidential, any and all Confidential Information of the other party which may come into its own possession or into the possession of any of their employees, agents or sub-contractors as a result of or in connection with the provision and delivery of the Goods. The parties shall use the Confidential Information solely for the purposes of fulfilling their obligations under this Contract and shall not, subject to clause 11.3, at any time during or after expiry or termination of this Contract, disclose the said Confidential Information whether directly or indirectly to any third party without the prior written consent of the other party nor copy the said Confidential Information unless specifically permitted to do so by the other party. The parties undertake to make all relevant employees, agents, and sub-contractors aware of this term and to take all steps necessary to ensure compliance with the obligations under this clause.

11.2 In protecting such Confidential Information, each party shall employ the highest standard of care, which shall in no event be less than the standard of care it employs in protecting its own confidential information.

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11.3 Except with the prior written consent of the party from which it is received (the "**Disclosing Party**"), no party will disclose the other party's Confidential Information or any part thereof to any third party other than its own employees, agents or sub-contractors and then only to the extent that such disclosure is necessary for the performance of its obligations under this Contract, in which case, the party that has received the Confidential Information (the "**Receiving Party**") will take all reasonable steps to ensure that such information is treated as confidential by the person to whom it is disclosed, including requiring such person to enter into an appropriate confidentiality agreement with the Receiving Party. This paragraph and clauses herein will not apply to:

11.3.1 information required by the law of any jurisdiction to which the disclosure is subject, provided that the Receiving Party has taken all practicable legal steps to prevent such disclosure and has where practicable consulted with the other party on the manner and timing of the disclosure;

11.3.2 information disclosed to the professional advisers or auditors of the party under obligations of confidence no less stringent than those assumed by the Receiving Party hereunder (which the Receiving Party undertakes to enforce);

11.3.3 information lawfully in the possession of the recipient before the disclosure under this Contract took place;

11.3.4 information that has come into the public domain through no fault of that party or breach of confidentiality;

11.3.5 information that the other party has given prior written approval to such disclosure;

11.3.6 information lawfully obtained from a third party who is free to disclose it; or

11.3.7 information which is received or obtained by the Receiving Party without restriction on disclosure from a source free to disclose it other than the Disclosing Party or an agent of the Disclosing Party.

11.4 The restrictions contained in this clause 11 shall continue to apply after the termination of this Contract.

12. Supply and Delivery of Goods On-site

12.1 To the extent that the provision or delivery of the Goods or any part thereof involves any entry to An Coimisiún owned or controlled property then the Supplier shall comply with the following:

12.1.1 prior to commencing its obligations under this Contract, the Supplier and any sub-contractors shall have obtained all necessary information relating to the property including (without limitation) any local conditions and the facilities at the property and any other information relevant to the provision and delivery of the Goods under and in accordance with this Contract. An Coimisiún shall ensure the information provided is correct and accurate in all material respects;

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12.1.2 when on An Coimisiún property the Supplier and any sub-contractor shall comply strictly with all of An Coimisiún's regulations relating to the property in question and any other requirements An Coimisiún might have in relation to the Supplier's entry onto or presence at the property including but not limited to, health and safety, prevention of fire, use of facilities and security arrangements;

12.1.3 the Supplier shall ensure that all Supplier Personnel are dressed in a manner appropriate to the location and the work to be performed. This may include the requirement to wear safety clothing if so specified by An Coimisiún; and

12.1.4 if and to the extent required by An Coimisiún, the Supplier shall undergo induction training in relation to the regulations and requirements referred to above before entering on to the relevant property.

13. Data Protection

13.1 For Any capitalised terms used in this clause or related defined terms that are not defined in this Contract will have the meaning given to them in the Data Protection Legislation.

13.2 Each party shall comply with the data protection principles specified in Data Protection Legislation that are applicable to it in connection with the Goods or the obligations of each party under this Contract.

14. Freedom of Information

14.1 An Coimisiún is subject to the provisions of the Freedom of Information Act 2014 (as amended) and, accordingly, information furnished to An Coimisiún by the Supplier may be subject to the provisions of the Freedom of Information Act. If the Supplier considers any of the information supplied by it to An Coimisiún pursuant to this Contract should not be disclosed because of its sensitivity it should, when providing the information, identify same and specify the reasons for its sensitivity. It shall not be sufficient for the Supplier to furnish An Coimisiún with a general statement of confidentiality in respect of all information furnished to An Coimisiún.

14.2 The Supplier acknowledges that An Coimisiún may be obliged under the Freedom of Information Act 2014 to disclose information regardless of any representations made by the Supplier.

15. Publicity

15.1 The Supplier may only list or advertise An Coimisiún's name on a reference list or utilise An Coimisiún's name for purposes of advertisement or sales with the prior written permission of An Coimisiún.

15.2 The Supplier acknowledges that An Coimisiún may be required to publish the value of the Contract and/or details regarding the Supplier on eTenders, the Official Journal of the European Union or other similar publications and systems.

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16. Audit

16.1 An Coimisiún or its authorised representatives shall have the right to audit all costs, rates and expenses relating to the Contract and the provision of the Goods.

16.2 The Supplier shall maintain all records relevant to the Contract during the performance of the Contract and for at least three (3) years after the termination of the Contract howsoever terminated.

16.3 The Supplier will maintain the aforesaid records either physically or by electronic media and An Coimisiún or its authorised representatives shall have the right to reproduce and retain copies of any of the aforesaid records.

17. Settlement

An Coimisiún shall be at liberty in settling and valuing the amount due to the Supplier to take into consideration any deficiency in the quality of the Goods or in the quality of the materials and labour employed in the manufacture or provision thereof, and to make, on account of the said deficiency, such reduction in price or prices as it may consider reasonable.

18. Termination at will

An Coimisiún may terminate this Contract or cancel its order for any Goods in whole or in part with thirty (30) days prior written notice without having to show cause.

19. Termination for cause or on insolvency

19.1 An Coimisiún may immediately terminate this Contract without liability for compensation or damages (in addition to any other rights it may have under this Contract and any other rights it has at law) on the happening of any of the following:

19.1.1 a material breach or persistent breach of the Contract by the Supplier which is not remedied within fifteen (15) days (if capable of remedy);

19.1.2 if the Supplier becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;

19.1.3 in circumstances where An Coimisiún becomes aware of any conflict of interest on the part of the Supplier which cannot, in the opinion of An Coimisiún, be removed by other means;

19.1.4 in circumstances where An Coimisiún becomes aware of any registrable interest on the part of the Supplier;

19.1.5 any of the exclusion grounds set out in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 apply to the Supplier;

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19.1.6 the Supplier (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);

19.1.7 the Supplier brings (or is likely to bring) An Coimisiún into disrepute;

19.1.8 any of the circumstances of Regulation 73 of the European Union (Award of Public Authority Contracts) Regulations 2016 apply in the opinion of An Coimisiún; or

19.1.9 the Supplier is unable to provide the supply of Goods for any reason for a period in excess of five (5) Business Days.

19.2 An Coimisiún shall be at liberty, upon breach of any of the terms and conditions of the Contract, or on the Supplier becoming bankrupt or insolvent, or making any assignment for the benefit of creditors forthwith, or being unable to provide the Goods for any reason for a period in excess of two (2) weeks, to terminate the Contract altogether and to withhold from the Supplier as absolutely forfeited all monies which the Supplier might otherwise have claimed under the terms and conditions of the Contract and to do all things that An Coimisiún shall consider proper for having the Contract completed by another supplier and to recover from the Supplier, or deduct from any monies of the Supplier in An Coimisiún's hands, the extra expense occasioned thereby.

19.3 If An Coimisiún considers that a breach of any of the terms and conditions of the Contract is capable of remedy and steps can be taken by the Supplier to prevent its recurrence, An Coimisiún may, at its absolute discretion and by notice in writing, grant the Supplier a period of fifteen (15) days within which the Supplier will have the opportunity to remedy the breach. The termination provision in clause 19.2 shall apply in the event of any failure by the Supplier to remedy the breach within the fifteen (15) day period (or any extension that An Coimisiún may in its absolute discretion grant to the Supplier).

20. Consequences of termination

20.1 On any termination of this Contract, howsoever occasioned, the Supplier shall promptly return to An Coimisiún all of An Coimisiún's product, samples and data in its possession or under its control and delete any and all of An Coimisiún's data and information, (confidential or otherwise), from its systems and, if and to the extent requested by An Coimisiún, fully and promptly co-operate with An Coimisiún and provide reasonable assistance to ensure the smooth transfer of the provision of the Goods from the Supplier to a new goods provider.

20.2 Unless An Coimisiún expressly agrees otherwise, such return shall be completed within one (1) calendar month of the termination of this Contract.

20.3 On termination of this Contract, the Supplier will refund to An Coimisiún any Charges already paid to the Supplier under the terms of this Contract for Goods to be delivered but which have not or cannot then be so delivered for reasons of termination of this Contract.

21. Dispute Resolution

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21.1 Without prejudice to any party's right to terminate, the parties shall try to settle quickly and amicably any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity, or termination.

21.2 The dispute shall, in the first instance, be discussed by the parties in an attempt to reach an amicable solution. If such attempt fails within 48 hours from the first written notice by one party to the other party that a dispute exists, the matter may be submitted by either party in writing to the highest-ranking directors or senior personnel of the Supplier and An Coimisiún who have responsibility for the provision or use of the Goods to which the dispute relates. Such directors or senior personnel shall consult with the goal of attaining a solution satisfactory to both parties within 48 hours of submission.

21.3 If no satisfactory solution is attained pursuant to the process outlined at clause 21.2 the parties will have the option to terminate the Contract by mutual agreement.

21.4 The operation of this clause shall not prevent An Coimisiún from taking any formal action or proceedings at any time.

22. Force Majeure

22.1 Neither party shall be liable for any breach of its obligations under this Contract resulting from the circumstances of Force Majeure.

22.2 Each party shall use its reasonable endeavours to give notice to the other upon becoming aware of an event of Force Majeure which materially affects its ability to perform its obligations, such notice to contain details of the circumstances giving rise to the event of Force Majeure.

22.3 The party unable to perform its obligations by reason of the event of Force Majeure shall be excused performance in accordance with this clause 22.

22.4 In the event that the Force Majeure continues for a period of more than thirty (30) calendar days An Coimisiún may terminate the Contract at fourteen (14) days' notice to the Supplier.

22.5 In the event the Supplier is unable to perform its obligations by reason of the event of Force Majeure An Coimisiún shall be relieved from any obligation to make payments under this Contract.

23. Assignment and Sub-contracting

23.1 This Contract shall not be assigned or transferred or sub-contracted in whole or in part by the Supplier without the prior written consent of An Coimisiún.

23.2 All sub-contract documents and sub-supplier selection shall be subject to written approval by An Coimisiún prior to award of each sub-contract. No such approval shall create any contractual relationship between An Coimisiún and any sub-supplier.

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23.3 The Supplier shall be fully responsible for those elements performed by its sub-suppliers and for the acts and omissions of all its sub-suppliers to the same extent as it is for the acts and omissions of persons directly employed by it.

23.4 The Supplier shall maintain all sub-contract records and documentation, including without limitation, correspondence between the Supplier and its sub-suppliers and shall preserve such documents for three (3) years after termination of the Contract or such other period as An Coimisiún may request. The Supplier shall make such records and documentation available to An Coimisiún as part of An Coimisiún's rights of audit under the Contract.

24. Waiver

24.1 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall:

24.1.1 affect that right, power or remedy; or

24.1.2 operate as a waiver of it.

24.2 The single or partial exercise of any right, power or remedy provided by law or under this Contract shall not preclude any other or further exercise of it or the exercise of any other right, power, or remedy.

24.3 No waiver of any right, power or remedy provided by law or under this Contract shall take effect unless it is in writing and signed by authorised representatives of the party giving the waiver.

25. Supplier Personnel

25.1 An Coimisiún and the Supplier acknowledge that the arrangements described in this Contract are such that no contractual relationship will exist either expressly or impliedly between any Supplier Personnel and An Coimisiún.

25.2 The Supplier shall ensure that all Supplier Personnel shall adhere to any and all health and safety rules and regulations and other requirements of An Coimisiún notified to it from time to time.

25.3 The Supplier shall ensure that all Supplier Personnel shall adhere to any and all monitoring procedures and any other monitoring requirements of An Coimisiún notified to it from time to time.

25.4 The Supplier shall ensure that all Supplier Personnel shall irrevocably and with full title guarantee assign any and all right, title and interest in the products of their services and all related rights and properties hereunder to the Supplier to hold absolutely throughout the world in perpetuity.

25.5 The Supplier shall indemnify, keep indemnified and hold harmless, An Coimisiún and its officers, employees, contractors and agents from and against all proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and

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demands in respect of, caused by, or arising from any default or breach of Supplier Personnel of the obligations set out in clauses 25.2 to 25.4 above.

26. No Partnership

26.1 Nothing contained in this Contract and no actions taken by the parties under this Contract shall constitute a partnership, joint venture, association or other co- operative entity between the parties or authorise either party to represent the other or to contract on behalf of the other party.

26.2 The Supplier is acting solely as an independent contractor and is not an agent of An Coimisiún, nothing in this Contract shall render the Supplier an employee, worker, agent or partner of An Coimisiún and the Supplier shall not hold itself out as such.

26.3 This Contract constitutes a contract for the provision of goods and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify An Coimisiún for and in respect of:

26.3.1 any income tax, national insurance and/or social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the provision or delivery of the Goods, where such recovery is not prohibited by law. The Supplier shall further indemnify An Coimisiún An Coimisiún against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by An Coimisiún in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

26.3.2 any liability for any employment-related claim or any claim based on employment status (including reasonable costs and expenses) brought by the Supplier or any agent, employee or sub-supplier of the Supplier against An Coimisiún arising out of or in connection with the Goods.

26.4 An Coimisiún may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Supplier.

27. Notices

27.1 Any notice under this Contract shall be delivered personally or by courier, or by registered post or recorded delivery or by email (save for any notice required under clause 19) in accordance with the provisions of this clause 27.

27.2 Notices given to the Supplier shall be delivered to the Supplier Contact identified in An Coimisiún in the Particulars of Contract. Notices given to the Supplier shall be delivered to the Supplier Contact identified in An Coimisiún in the Particulars of Contract.

27.3 All notices shall be deemed to have been served as follows:

27.3.1 if personally delivered or by courier, at the time of delivery (provided that the time of delivery took place on a Business Day, otherwise they shall be deemed to have been delivered at 9am on the following Business Day);

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27.3.2 if posted by registered post or recorded delivery, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); or

27.3.3 if communicated by email, on the next Business Day following transmission.

27.4 Any notice given pursuant to this Contract shall be deemed to have been given or received in the case of dispatch by swift post on the fourth calendar day from and including the date of posting or in the case of dispatch by pre-paid registered or recorded post on the third Business Day from and including the date of dispatch and immediately in the case of actual delivery to the address specified above for the giving of notices. Any notice sent by fax and confirmed by swift post shall be deemed to have been given the next Business Day following the day of transmission.

27.5 A party may change its notice details on giving notice to the other party of change in accordance with this clause 27. The notice shall only be effective on the date falling three (3) clear Business Days after the notification has been received or such later date as may be specified in the notice. Notices delivered personally, by courier, registered post or recorded delivery shall be delivered to the registered offices of An Coimisiún and Supplier as noted in the Particulars of Contract unless otherwise notified under this clause 27.

28. Severability & Counterparts

28.1 Any provision of this Contract, which is held to be void, illegal or unenforceable shall to the extent of such invalidity be deemed severable and the offending provisions excluded, and the remaining provisions of this Contract will be unaffected by such severance and shall continue to be valid and enforceable to the fullest extent of the law.

28.2 This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

28.3 Transmission of an executed counterpart of this Contract (but for the avoidance of doubt, not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "*wet-ink*" counterpart of this Contract. If this method is adopted, without prejudice to the validity of the Contract thus made, each party shall on request provide the other with "*wet-ink*" hard copy originals of their counterpart.

29. Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of Ireland and shall be subject to the jurisdiction of the Irish courts.

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