Appendix 4

Services Contract

relating to the Provision of Services pursuant to the request for admission to establish a

DYNAMIC PURCHASING SYSTEM

for the Provision of

Enterprise Service Management (ESM) Solutions and Associated Services

concluded between the Parties and on the date as stated further herein

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This agreement (the "**Contract**") is made on the date as specified in the Annex 1 hereto between the Contracting Authority and the Contractor as specified in the Annex 1 hereto (individually "**Party**" and jointly "**Parties**").

IT IS AGREED AS FOLLOWS:

1. Definitions, Structure and Interpretation

Term	Definition
Admission Information	means the DPS Admission Information document that lays out the scope, eligibility requirements, terms and conditions and tender procedure for Interested Parties.
Charges	means the prices (exclusive of any VAT as and if applicable), payable to the Contractor by the Contracting Authority under a Services Contract in consideration of the full and proper performance by the Contractor of its obligations under the relevant Services Contract.
Confidential Information	means any information, however it is conveyed, that relates to the business, affairs, developments, trade secrets, know-how, personnel and suppliers of the Parties, including intellectual property rights, together with all information derived from the above, and any other information clearly designated as being confidential (whether or not it is marked as "confidential") or which ought reasonably to be considered to be confidential.
Contract	means this agreement, the Services Contract, and all annexes to this agreement.
Contractor	means supplier/economic operator who are awarded a contract under the DPS.
Data Controller	has the meaning given under the Data Protection Laws.
Data Processor	has the meaning given under the Data Protection Laws.
Data Protection Laws	means the Irish Data Protection Acts 1988 to 2018, the General Data Protection Regulation (EU) 2016/679, any other applicable law or regulation relating to the processing of personal data and to privacy, including the E-Privacy Directive and European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (the "General Data Protection Regulation"), as such legislation may be supplemented, amended, revised or replaced from time to time.
Data Subject	has the meaning given under the Data Protection Laws.
Data Subject Access Request	means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data.
Personal Data	has the meaning given under the Data Protection Laws.
Processing	has the meaning given under the Data Protection Laws.
Services	means the services detailed in Annex 2.

Definitions and rules of interpretation shall have the meanings given to them in the Contract. This Contract comprises its clauses and the Appendices listed in the table below.

1.1 This Contract comprises its clauses and the Annexes listed in the table below.

Annex	Title
1	a) Contract Details and b) Tender Response
2	Services
3	Charges
4	Contract Change Form
5	Contracting Authority´s Additional Terms and Conditions
6	Contractor´s Terms and Conditions Governing the Service
7	Data Processing Agreement

1.2 In the event of, and only to the extent of, any conflict or ambiguity between the clauses of this Contract, any document referred to in the clauses of this Contract and any other document forming part of the Contract, the conflict shall be resolved in accordance with the following order of precedence:

a) the clauses of this Contract (excluding all Annexes);
b) Annex 2 – The Services (the Order), if any;
c) Annex 1 – Contract Details and Contractor's Tender Response;
d) Annex 5 – Contracting Authority´s Additional Terms and Conditions, if any;
e) the remaining Annexes:
    - Annex 3 – the Charges
    - Annex 4 – Contract Change Form
    - Annex 7 – Data Processing Agreement
f) Annex 6 – Contractor´s Terms and Conditions Governing the Service as supplied by the Contractor, if any;
g) any other document referred in this Contract.

2. Subject Matter of the Contract

The Contractor agrees in accordance with the relevant provisions of this Contract to supply the Services to the Contracting Authority, or to its Users, as applicable.

3. Term of the Contract

This Contract shall become effective and shall terminate on the dates stated in Annex 1, unless terminated in accordance with the terms of this Contract.

4. Contractor Obligations

4.1 The Contractor shall perform this Contract in accordance with:

a) the terms of this Contract;
b) Good Industry Practice;
c) all Applicable Laws (and shall not cause the Contracting Authority to breach any Applicable Laws); Without prejudice to clause 11 (Assignment and Subcontracting), the Contractor shall ensure that any person associated with Contractor who is performing Services in connection with this Contract does so only on the basis of a written contract which imposes on and secures from such person obligations equivalent to those imposed on the Contractor. The Contractor shall be responsible for the observance and performance by such persons of the Relevant Terms and shall be directly liable to the Contracting Authority for any breach by such persons of any of the Relevant Terms. The Contractor shall, if called upon to do so, make available to the Contracting Authority, copies of such subcontracting agreements in order to evidence compliance with this clause.

4.2 The Contractor shall:

a) obtain, maintain and comply with all Consents;
b) allocate sufficient resources to deliver the Services in accordance with the terms of this Contract;
c) provide reasonable assistance to and co-operate with other Contractors and service providers to the Contracting Authority and/or Authorised Users and with all other relevant third parties, in each case to the extent reasonably necessary for the smooth provision of (and the Contracting Authority's and Authorised Users' enjoyment of) this Contract and the services provided to the Contracting Authority and Authorised Users by their other Contractors and service providers; and
d) comply with all reasonable directions of the Contracting Authority in so far as is necessary for the provision of the services.

4.3 The Contractor shall, throughout the Term, monitor its compliance with its obligations under this Contract. If the Contractor becomes aware of any breach by it of its obligations under this Contract then, without limiting or affecting the Contracting Authority's rights and entitlements under or pursuant to this Contract, the Contractor shall promptly:

a) Notify the Contracting Authority of such breach; and
b) use all reasonable endeavours to remedy such breach.

5. Warranties, Representations and Undertakings

5.1 The Contractor acknowledges, warrants, represents and undertakes that:

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

c) it is entering into this Contract with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
d) it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
e) it has taken all and any action necessary to ensure that it has the power to execute and enter into this Contract;
f) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 15 below) that are necessary for the performance of its obligations under this Contract and for the Contracting Authority to obtain the benefit of the Services for its business purposes;
g) it has inspected the Contracting Authority's premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Contract;
h) it retains and shall maintain for the Term insurances for the nature and amount specified in the Call for Tender. The Contractor undertakes to advise the Contracting Authority forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Contracting Authority with regard to compliance with this clause 5.1 (h); and,
i) the Contracting Authority shall be under no obligation to purchase any minimum number or value of Services.

5.2 The Contractor shall indemnify and keep indemnified the Contracting Authority, its agents, employees and officers in full against any liability whatsoever, including, without limitation, losses, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Contracting Authority or any other person indemnified under this clause (whether to its own customers or otherwise) directly arising from or in connection with any breach by the Contractor of any warranty or provision of this Contract and arising out of any act or omission of the Contractor or its employees, agents or sub-contractors in performing its obligations under this Contract or arising out of the failure of the Contractor or its employees, agents or sub-contractors to adequately and safely perform any of its obligations under this Contract.

5.3 The Contractor undertakes to notify the Contracting Authority forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 5.1 and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of this Contract.

6. Services

The Services to be provided by the Contractor under this Contract are listed in Annex 2.

7. User Subscription and Licence

7.1 Without limiting or affecting clause 15 (Intellectual Property Rights), the Contractor grants the Contracting Authority and all Authorised Users an irrevocable, non-transferable (except as permitted in this Contract) and non-exclusive licence to access and use (including the right to load, store, transmit, display, copy (for the purposes of loading, execution, storage, transmission or display), modify, adapt, enhance and otherwise utilise) the SaaS Solution during the Term.

7.2 To the extent that the Contractor is required to obtain rights, licenses, permissions, clearances, approvals and/or attribution information necessary for the Contractor to license or use the SaaS Solution in any manner, the Contractor undertakes that it has done and will continue to do so. The Contractor has made and will continue to make all payments to third parties necessary to obtain the right to license or use the SaaS Solution. Upon the Contracting Authority's request, the Contractor shall deliver to the Contracting Authority all evidence necessary to show that the Contractor has properly obtained the rights to license or use the SaaS Solution.

7.3 The Contractor shall provide the Contracting Authority and each Authorised User with access to the SaaS Solution.

7.4 The Contracting Authority shall not, and shall take reasonable steps to ensure that no Authorised User shall:

a) sell, license, assign, or transfer any part of the SaaS Solution licensed to it in accordance with this Clause 7; or
b) decompile, disassemble, or reverse engineer any part of the SaaS Solution licensed to it in accordance with this Clause 7 (except to the extent permitted by Applicable Laws or otherwise expressly permitted and provided for under this Contract).

7.5 The Parties acknowledge and agree that the Contractor shall only have a direct contractual relationship with the Contracting Authority and not any other Authorised User. The Contractor shall not present any terms and conditions, including any licence terms, to any Authorised User, including when granting access to the SaaS Solution. In addition, unless providing Services in accordance with the terms of this Contract, the Contractor shall not contact any Authorised User (except for the Contracting Authority Contact) without the Contracting Authority's prior written consent.

8. Data Protection and Security

8.1 The Contractor shall comply with, and shall ensure that, each Subcontractor who Processes any Contracting Authority Personal Data complies with, all applicable requirements of the Irish/EU Data Protection Laws. This clause is in addition to, and does not relieve, remove or replace the Contractor's obligations or rights under the Data Protection Laws.

8.2 The Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller of the Contracting Authority's Personal Data ("the Data Controller").

8.3 The Data Controller has agreed to appoint a Data Processor for the purpose of the provision of the Services. The Contracting Authority hereby appoints the Contractor as a Data Processor on behalf of the Data Controller. The Contracting Authority Contact shall act as sole point of contact with the Contractor on behalf of the Data Controller. The Parties acknowledge that, for the purposes of Article 28 of the GDPR, processing by the Contractor on behalf of the Data Controller shall be governed by this Contract.

8.4 In relation to the Contracting Authority Personal Data, Annex 7 (Data Processing Agreement) sets out the scope, nature and purpose of Processing that is permitted by Contractor (and each Subcontractor approved in accordance with this clause 8 to Process Contracting Authority Personal Data), the duration of the Processing, the types of Personal Data and the categories of Data Subject.

8.5 Without prejudice to the generality of clause 8.1, Contractor shall, in relation to any Contracting Authority Personal Data which is Processed in connection with the performance by Contractor (including Personnel) of its obligations under this Contract:

a) Process the Contracting Authority Personal Data only on the written instructions of the Contracting Authority, unless Contractor is required by Applicable Laws to otherwise Process the Contracting Authority Personal Data. Where the Contractor is relying on Applicable Laws as the basis for Processing the Contracting Authority Personal Data, the Contractor shall promptly notify the Contracting Authority of this before performing the Processing required by the Applicable Laws unless those Applicable Laws prohibit the Contractor from so notifying the Contracting Authority;

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

c) ensure that all Personnel who have access to and/or Process the Contracting Authority Personal Data are obliged to keep the Contracting Authority Personal Data confidential unless required to do so by Union or Member State law to which the Data Processor is

subject. In such a case, the Data Processor shall inform the Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;

d) not transfer Contracting Authority Personal Data outside of the European Economic Area (EEA) unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled:

i) appropriate safeguards are in place in relation to the transfer, to ensure that Contracting Authority Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

ii) the Data Subject has enforceable rights and effective legal remedies;

iii) The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Contracting Authority Personal Data that is transferred; and

iv) The Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the Processing of the Contracting Authority Personal Data.

8.6 The Contractor shall promptly, and in any event within 48 hours of receipt of any request or correspondence, notify the Contracting Authority if it receives a Data Subject Access Request to have access to Contracting Authority Personal Data or any other complaint, correspondence, notice, request, any order of the Court or any request of any regulatory or government body relating to the Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request (including by allowing Data Subjects to have access to their Personal Data).

8.7 The Contractor shall, unless prohibited by Union or Member State law to which the processor is subject, promptly notify the Contracting Authority if it receives any complaint, correspondence, notice, order of the Court or request of any regulatory or government body relating to the Personal Data and/or the Parties' obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request.

8.8 The Contractor shall without undue delay, but in all cases within 24 hours, report by email (and confirm in writing) to the Contracting Authority any Contracting Authority Personal Data compromise, or any circumstances that could have resulted in unauthorised access to or disclosure of Contracting Authority Personal Data.

8.9 Contractor shall at the written direction of Contracting Authority, amend, delete or return Contracting Authority Personal Data and copies of Contracting Authority Personal Data to Contracting Authority on termination of this Contract unless Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to Contractor to store the Contracting Authority Personal Data.

8.10 The Contractor shall ensure that its Subcontractors who Process any Contracting Authority Personal Data shall, maintain complete and accurate records and information at all times to demonstrate its compliance with the Data Protection Laws and this clause 8, provide the Contracting Authority with copies of such records and information upon request and without delay. The Contractor shall permit the Contracting Authority (upon the provision of reasonable notice and no more than once in any twelve (12) month period), the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services (as directed by the Contracting Authority both during the Term and for seven (7) Years after termination or expiry of this Contract) and immediately inform the Contracting Authority if, in the opinion of the Contractor, an instruction infringes the Data Protection Laws. The Contractor shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review. The Contractor shall, upon request, also provide evidence of any relevant internal or independent audits/self-assessments performed periodically by or on behalf of the Contractor. In relation to any audit requested by the Contracting Authority:

a) the Contracting Authority shall first consider the contents of the most recent independent audit performed on behalf of the Contractor;

b) the Parties shall agree the nature and scope of any such audit which shall be set out in an audit plan;

c) each Party agrees to bear their own costs; and

d) the Contracting Authority agrees to appoint auditors that are suitably qualified and are not a direct competitor of the Contractor.

Any finding by any such audit that the SaaS Solution does not comply with this clause 8 shall be resolved by the Contractor to the satisfaction of the Contracting Authority, at no cost to the Contracting Authority, within a timescale to be specified by the Contracting Authority.

8.11 The Contractor shall:

a) take all reasonable precautions to preserve the integrity of any Contracting Authority Personal Data which it Processes and to prevent any corruption or loss of such Contracting Authority Personal Data;

b) ensure that a back-up copy of any and all such Contracting Authority Personal Data is made to enable backup restoration to any point in the previous 30 days, and to the first backup of each payroll cycle for the previous Year, or as otherwise may be agreed between the parties.

c) ensure that all copies are recorded on media from which the Contracting Authority Personal Data can be reloaded if there is any corruption or loss of the Contracting Authority Personal Data; and

d) in such an event and if attributable to any default by Contractor or any Subcontractor, promptly restore the Contracting Authority Personal Data at its own expense or, at Contracting Authority's option, reimburse Contracting Authority for any reasonable expenses it incurs in having the Contracting Authority Personal Data restored by a third party.

8.12 The Contractor shall provide appropriate training to Personnel with respect to:

a) the correct handling of Contracting Authority Personal Data so as to minimise the risk of security breaches; and

b) the requirements of Data Protection Laws.

8.13 The Contracting Authority does not consent to the Contractor appointing any third-party Processor of Contracting Authority Personal Data under this Contract unless expressly agreed between the Parties in writing in advance of the Processing. For the purposes of this clause, the Subcontractors shall be considered to be pre-approved in relation to the Processing identified to be conducted by that Subcontractor. For the purposes of this clause, the Subcontractors identified in Clause 11 (Subcontracting and Assignment) shall be considered to be pre-approved in relation to the Processing identified to be conducted by that Subcontractor. Any such consent shall be conditional on Contractor confirming that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 8. The Contracting Authority reserves the right to call upon the Contractor to provide evidence of any such written agreement to verify compliance with this clause 8.13. As between the Contracting Authority and the Contractor, the Contractor shall remain fully liable for all acts and omissions of any third-party Processor of Contracting Authority Personal Data appointed by it pursuant to this clause.

8.14 The provisions of this clause 8 shall survive termination and or expiry of this Contract for any reason. All the obligations on the Contractor in this clause 8 relating to the processing of Personal Data shall apply to the processing of all Data.

9. Contract Charges, VAT and Payment

9.1 In consideration for the provision of access to the SaaS Solution and the provision of Services, the Contracting Authority shall pay the Charges to the Contractor in accordance with Annex 3.

9.2 All payments to the Contractor shall be payable following receipt of the Contractor invoices which shall be presented when specified in Annex 3. All invoices submitted by the Contractor shall be valid VAT invoices and shall be accompanied by such information as reasonably requested by the Contracting Authority.

9.3 In consideration of the Contractor's performance of its obligations under this Contract, the Contracting Authority shall pay the Charges according to the prices set out in Annex 3 and following the Contractor's invoice issued after the provision of Services following the relevant period specified in Annex 3.

9.4 The Contracting Authority shall have the right to withhold payment against any invoice which is not submitted in accordance with this Contract or which, acting reasonably, it otherwise disputes.

9.5 The Contracting Authority shall discharge the Charges subject to being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all applicable EU and domestic taxation law and requirements.

9.6 All Charges shall be exclusive of VAT, which the Contractor shall add to its invoices at the appropriate rate (if applicable).

9.7 The Charges shall be discharged as provided for in this clause subject to the retention by the Contracting Authority in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

9.8 Subject to clause 9.2, each Party shall be entitled to charge interest in respect of any undisputed amounts which are overdue, such interest to be calculated in accordance with The European Communities (Late Payment in Commercial Transactions) Regulations 2012. The Parties acknowledge and agree that this clause provides them with a substantial remedy in respect of any late payment of sums due under this Contract.

9.9 Where, upon termination of this Contract for any reason, any credit note remains recoverable from or payable by the Contractor to the Contracting Authority, the Contractor agrees to pay such credit note(s) as a monetary sum to the Contracting Authority within 14 days.

9.10 Contractors should note that prices are as per the Charges stipulated in Annex 3 of this Contract for the Term of the Contract.

10. Change Procedure

10.1 Either Party may initiate requests for any changes to this Contract. Parties shall use the form provided in Annex 4.

10.2 A completed form provided in Annex 4 shall be submitted direct to the receiving Party in two (2) copies signed by the requesting Party. The receiving Party shall within twenty (20) days evaluate and either:

a) request from the requesting Party further information, or a longer period of time to prepare, evaluate or agree on the request; or

b) arrange for two (2) copies of the form to be signed by or on behalf of the receiving Party and return one of the copies to the requesting Party; or
c) notify the requesting Party of the rejection (and, if the receiving Party is the Contractor, it shall state the reasons for the rejection in it).

10.3 Once the form provided in Annex 4 is signed by both Parties, it constitutes an amendment to this Contract effective as of the date proposed and accepted.

10.4 Any work undertaken by the Contractor, or its Staff, in connection with any proposed Contract change, shall be undertaken at no additional cost to the Contracting Authority, unless agreed otherwise by the Parties.

10.5 For the avoidance of doubt, the procedure in this clause 10 shall not apply to changes to Contractor's terms and conditions as amended by the Contractor unilaterally from time to time.

11. Subcontracting and Assignment

11.1 Without releasing it from any of its obligations or duties hereunder, the Contractor will be entitled at any time and without notice, to use companies in its Group, Contractors or subcontractors set out in its Tender to perform the Services provided the Contractor's Group companies and subcontractors comply with all the obligations of the Contractor as set out in this Contract. The Contractor shall be liable for the acts and omissions of any such Group companies, Contractors and/or subcontractors as though they were its own.

11.2 Subject to clause 11.3, neither Party shall be entitled to assign, novate or otherwise dispose of any or all of its rights and obligations under this Contract without the prior written consent of the other Party. The Contractor is not allowed to subcontract the whole or any part of its obligations under this Contract or to change a subcontractor stated in the Annex 1 hereto, except with the express prior written consent of the Contracting Authority, such consent not to be unreasonably withheld. In all cases of change of Contractor's subcontractor, or if a Party assigns, novates or otherwise disposes of any or all of its rights and obligations under this Contract, Parties shall comply with the requirements of the law governing the Contract.

11.3 Provided that the Contracting Authority has given prior written consent, the Contractor shall be entitled to novate this Contract where:
a) the specific change in Contractor was provided for in the procurement process for admission to the DPS;
and/or
b) there has been a universal or partial succession into the position of the Contractor, following a corporate restructuring, including takeover, merger, acquisition or insolvency, by another economic operator that meets the Eligibility Requirements set out in the DPS Admission Information.

12. Insurance

12.1 The Contractor shall take out and maintain (for the duration of the Contract and any agreed extensions) the insurance policies specified in the CFT with a reputable insurer in relation to the liabilities of Contractor arising under or in connection with this Contract and all losses, claims, demands, proceedings, damages, costs, charges and expenses for injuries or damage to any person or property which may result from the fault or negligence of Contractor in carrying out or purporting to carry out its obligations under or in connection with this Contract.

12.2

Type of Insurance	Indemnity limit
Employer's liability	€12.7 million
Public liability	€6.5 million
Professional indemnity	€6.5 million
Product liability	€6.5 million
Cyber security insurance	€1 million

12.3 The Contractor shall ensure that insurances for employers' liability and public liability include an indemnity to principal's clause.

12.4 The Contractor shall provide certificates of insurance evidencing the insurances required under clause 12.1 to the Contracting Authority on request.

13. Contract Management

13.1 The Contracting Authority's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Contract and to agree milestones, compliance schedules and operational protocols as required by the Contracting Authority from time to time. If requested in writing by the Contracting Authority the Contractor shall meet formally with the Contracting Authority to report on progress and shall comply with all written directions of the Contracting Authority.

13.2 The Contractor agrees to:

a) liaise with and keep the Contracting Authority's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Contract;
b) maintain such records and comply with such reporting arrangements and protocols as required by the Contracting Authority from time to time;
c) comply with all reasonable directions of the Contracting Authority; and
d) comply with the service levels and performance indicators set out in the Service Level Agreement (SLA).

13.3 The Contracting Authority or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Contract) with

due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Contract. The Contractor shall comply with all reasonable directions of the Contracting Authority thereby arising.

14. Force Majeure

14.1 For the purposes of this clause 14, force majeure means any cause preventing either Party from performing any of its obligations which are not within the reasonable control of the Parties and which could not have been avoided including:

a) war (whether declared or undeclared), invasion, armed conflict or act of foreign enemy;

b) revolution, riot, insurrection or other civil commotion;

c) acts of terrorism, sabotage, criminal damage or the threat of such acts;

d) nuclear explosion, radioactive or chemical contamination or ionising radiation; and

e) any effect of the natural elements, including flood, wind, storm, unusually heavy or prolonged rain or accumulation of snow or ice.

14.2 Neither Party shall be liable for any delay in performing or failure to perform its obligations under this Contract to the extent that such delay or failure results from force majeure.

14.3 Notwithstanding clause 14.1, each Party shall use all reasonable endeavours to continue to perform its obligations under this Contract for the duration of such force majeure. However, if the force majeure in question prevents either Party from performing its material obligations under this Contract for a period in excess of one hundred and twenty (120) calendar days, either Party may terminate this Contract with immediate effect by notice in writing to the other Party.

15. Intellectual Property Rights

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

15.2 Pre-existing IPR means all IPR existing prior to the date of this Contract and all IPR in any materials, acquired or developed by or for Contractor or Contracting Authority independently of this Contract, and any IPR in Contractor's standard hardware and software products or modifications or updates to such products.

15.3 All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Contract (collectively the "Materials") (or any part or parts thereof) shall vest in the Contracting Authority and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such IPR title or interest may be deemed by law to reside in it in the Materials to the Contracting Authority absolutely.

15.4 The Contracting Authority grants to the Contractor a royalty-free non-exclusive licence to use the Contracting Authority's pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Contract. Save as expressly set out in this clause 15 all pre-existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.

15.5 The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Contract.

15.6 Nothing in this Contract shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.

15.7 The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Contract (to include but not be limited to ensuring that the Contracting Authority shall be vested with all necessary rights so as to enable the Contracting Authority to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Contracting Authority and shall keep and hold the Contracting Authority harmless from and in respect of all and any losses (whether direct, indirect or consequential) liability, damages, claims, costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Contract.

15.8 At the request of the Contracting Authority for and in respect of any such breach, the Contractor shall at its expense and option:

a) procure the necessary rights for the Contracting Authority to continue use;

b) replace the relevant deliverable with a non-infringing equivalent;

c) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or

d) if the Contractor cannot obtain the remedies in (a), (b) or (c) above, it may direct the return of the deliverable and refund to the Contracting Authority Charges paid for such deliverable less a reasonable amount for the Contracting Authority's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, together with all losses (whether direct, indirect or consequential) thereby accruing to the Contracting Authority as a result of the breach.

15.9 Upon the termination of this Contract for whatever reason, the Contractor shall immediately deliver up to the Contracting Authority all the Materials prepared up to the date of termination. The provisions of this clause 15 will survive the expiration or termination of this Contract for any reason.

16. Confidentiality

16.1 The Parties shall keep confidential and shall not disclose to any person any Confidential Information which has been or may be disclosed to it ("Receiving Party") by or on behalf of the other Party ("Disclosing Party"), except insofar as the Confidential Information is required:

a) by its professional advisers; or

b) by a person employed or engaged by the receiving party in connection with the proper performance of this Contract; or

c) to be disclosed under Applicable Laws (including as required under clause 16.6 below); or

d) as otherwise permitted in this clause 16; or

e) in the case of the Contracting Authority, by request of any person or body or authority:

   i) which has a lawful basis to request disclosure of the Confidential Information;

   ii) whose request the Contracting Authority considers it necessary to so comply; and

   iii) the Contracting Authority makes the recipient aware of any potentially commercially sensitive information and has put in place a confidentiality agreement, if necessary.

16.2 Any disclosure of Confidential Information permitted under clause 16.1, including to any Subcontractor, shall be in confidence and shall only be to the extent that any persons to whom the information is disclosed need to know the same for the performance of their duties. The receiving party shall be obliged to ensure that all such persons are aware of the obligations of confidentiality and that they are obliged to comply with equivalent obligations in accordance with a contract that are no less onerous than as set out in this clause 16.

16.3 Each Party hereby undertakes to the other to use the Confidential Information disclosed to it by or on behalf of the other Party solely in connection with the performance of this Contract and not otherwise for its own benefit or the benefit of any third party.

16.4 Confidential Information does not include information which:

a) is, or becomes, generally available to the public otherwise than as a direct or indirect result of disclosure by the receiving party or a person employed or engaged by the receiving party contrary to their respective obligations of confidentiality or by any third party in breach of any obligation of confidentiality applicable to them; or

b) is, or was, made available or becomes available to the receiving party otherwise than pursuant to this Contract and free of any duty of confidence or other restrictions as to its use or disclosure; or

c) is independently developed by the receiving party without access to or use of the Confidential Information.

16.5 The Contractor acknowledges that the security of Ireland and its information is of paramount importance to the Contracting Authority. The Contractor confirms that it shall, if reasonably requested by the Contracting Authority from time to time, provide full contact details of Personnel to the Contracting Authority. The Contractor further acknowledges that checks may be carried out in relation to such Personnel by police authorities and the Contractor shall comply with all reasonable directions of the Contracting Authority which may arise from such checks.

16.6 In circumstances where the Contracting Authority is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Contracting Authority receiving a request for information related to this Contract, the Contracting Authority shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that it reasonably considers is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. The Contracting Authority shall consult the Contractor about this confidential or commercially sensitive information before making a decision as to whether to disclose such information under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information it provides under such legislation which is subsequently released (irrespective of notification) or in respect of any consequential damage which may be suffered as a result of such disclosure.

16.7 Without prejudice to any other rights or remedies that the disclosing party may have, the receiving party acknowledges and agrees that the disclosing party shall, without proof of special damage, be entitled to an injunction, specific performance or other equitable relief for any threatened or actual breach of the provisions of this clause 16, in addition to any damages or other remedy to which it may be entitled.

16.8 The Contractor shall not make any media releases, public announcements or public disclosures relating to this Contract or its subject matter, including any promotional or marketing material, without the prior written approval of the Contracting Authority, except as required by Applicable Laws or by any regulatory authority. The terms of this clause 16 shall survive expiry, completion or termination for whatever reason of this Contract.

17. Limitation Of Liability

Any limitations of liability set out in Annex 5 – Contracting Authority's Additional Terms and Conditions – will be incorporated into this Contract and govern the total respective liability of each of the Parties under both this Contract.

18. Termination

18.1 This Contract may be terminated by the Contracting Authority, without liability for compensation or damages, by serving <insert months> written notice to the Contractor. This Contract may be terminated by the Contractor, without liability for compensation or damages, by serving <insert months> written notice to the Contracting Authority.

18.2 The Contracting Authority may terminate this Contract by serving written notice on the Contractor with effect from the date specified in such notice where, in the opinion of the Contracting Authority, the Contractor commits a material breach and:

a) the Contractor has not remedied the material breach to the satisfaction of the Contracting Authority within <insert calendar days>, or other such period as may be specified by the Contracting Authority, after issue of a written notice specifying the material breach and requesting it to be remedied; or

b) the material breach is not, in the reasonable opinion of the Contracting Authority, capable of remedy.

18.3 A material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the Contracting Authority would otherwise derive from a substantial portion of this Contract; or any of the Contractor's obligations under this Contract, over the term of this Contract. In deciding whether any breach is material, no regard shall be had to whether it occurs by accident, mishap, mistake or misunderstanding.

18.4 Either Party shall have the right (in addition to its rights under clause 18.1 and any other rights which it has at law) to terminate this Contract immediately and without liability for compensation or damages on the happening of any of the following:

a) if the other Party 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;

b) where the Contractor undergoes a change of control;

c) if any of the provisions of Regulation 73 of the Regulations apply;

d) if the Contractor is no longer able or capable of providing the required Services to the Contracting Authority;

e) if any statement made by the Contractor in connection with the procedure by which this Contract was awarded to the Contractor was untrue when made or subsequently ceases to be true;

f) in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Contracting Authority, be removed by other means; and

g) in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the Contractor.

18.5 The Contracting Authority shall have the right, in addition to any other rights which it has at law, to terminate this Contract immediately and without liability for compensation or damages in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.

18.6 Termination of this Contract shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Contract which is expressly or by implication intended to come into or continue in force on or after such termination.

18.7 If requested by the Contracting Authority, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Contracting Authority ("Employment Information").

18.8 Notwithstanding the service of a notice to terminate this Contract, the Contractor shall continue to fulfil its obligations under the Contract until the date of expiry or termination of the Contract or such other date as required by the Contracting Authority.

18.9 Termination or expiry of this Contract shall be without prejudice to any rights, remedies or obligations of either party accrued under this Contract.

19. Severance

19.1 If any provision or part-provision of this Contract is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Contract.

19.2 If any provision or part-provision of this Contract is invalid, illegal or unenforceable, the Parties shall negotiate in good faith to amend such provision so that, as amended, it is legal, valid and enforceable, and, to the greatest extent possible, achieves the intended commercial result of the original provision.

20. Dispute Resolution Procedure

20.1 The obligations of the Parties under this Contract shall not cease, or be suspended or delayed due to a Dispute.

20.2 The Parties shall use their reasonable endeavours to negotiate and settle amicably any Dispute. If a Dispute cannot be settled through negotiations by the Representatives of each of the Parties, either Party may give to the other a notice in writing (a "Dispute Notice").

20.3 Within fifteen (15) Business Days of a Dispute Notice being given by one Party to the other Party (or such longer period as may be agreed in writing by the Parties), the Parties shall each refer the Dispute to appropriate senior representatives nominated by the Representative of each Party, who shall meet (within this fifteen (15) Business Day period) in order to attempt to resolve the Dispute.

20.4 If the Dispute is not wholly resolved within five (5) Business Days of the meeting referred to in clause 20.3, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

20.5 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty one (21) calendar days from the date of the proposal to appoint a mediator or within twenty one (21) calendar days of notice to either Party that the mediator is unable to act, apply to Centre for Effective Dispute Resolution (CEDR) Ireland to appoint a mediator.

20.6 No Party may commence any court proceedings or alternative Dispute Resolution Procedure in relation to any Dispute arising out of this Contract until it has attempted to settle the Dispute by mediation and either the mediation has terminated or the other Party has failed to participate in the mediation, provided that the right to issue proceedings is not prejudiced by a delay.

20.7 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.

20.8 If the Dispute is not settled by agreement in writing between the Parties within fifteen (15) Business Days of the appointment of a mediator, it shall be resolved:

a) if the Dispute is of a financial or technical nature, by an expert appointed under clause 20.9; and

b) (b) in any other case, by the courts of Ireland.

20.9 Any Dispute to be resolved in accordance with clause 20.8 shall be referred by either Party to:

a) a person agreed between the Parties; or

b) in default of agreement, within five (5) Business Days of a notice from one Party to the other Party requesting such agreement, to a person chosen (on the application of either Party) by CEDR Ireland. Such person shall:

i) act as an expert and not as an arbitrator and shall act fairly and impartially;

ii) decide on the procedure to be followed in the determination (provided that, in any event, the expert shall give all Parties a full opportunity to make such representations as they may reasonably require) and be required to deliver his or her determination in writing to the Parties within four (4) weeks of his or her appointment; and

iii) determine how and by whom the costs of the determination, including his or her fees and expenses, are to be paid. The general principle shall be that costs shall follow the event except where it appears to the expert (for example, in the light of the Parties' conduct of the Dispute) that this would not be appropriate.

20.10 In the absence of manifest error or fraud, the decision of an expert appointed under clause 20.9 shall be final and binding.

20.11 Each Party shall provide to any expert appointed under clause 20.9 all information reasonably requested by the expert to aid the expert's determination of the Dispute.

20.12 All negotiations connected with a mediation or expert determination under this clause 20 shall be conducted in complete confidence and the Parties undertake not to disclose details of such negotiations to any third party, except to their professional advisers who have been advised of such confidentiality. All such negotiations shall be without prejudice to the rights of the Parties in any future proceedings.

20.13 Nothing in this clause 20 shall prevent either Party from seeking an injunction, specific performance or other equitable relief for any threatened or actual breach of the terms of this Contract, or for bringing any claim for breach of an indemnity given under this Contract.

21. Waiver

21.1 No failure or delay by a Party to exercise any right or remedy provided under this Contract or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy. No single or partial exercise of such right or remedy shall prevent or restrict the further exercise of that or any other right or remedy.

21.2 Unless otherwise provided in this Contract, rights and remedies under this Contract are cumulative and do not exclude any rights or remedies provided by law, in equity or otherwise.

22. Non-Solicitation

For the Term and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither the Contracting Authority nor the Contractor shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

23. Relationship of the Parties

23.1 Except as expressly provided otherwise in this Contract, nothing in this Contract, nor any actions taken by the Parties pursuant to this Contract, shall create a partnership, joint venture or relationship of employer and employee or principal and agent between the Parties, or authorise

either Party to make representations or enter into any commitments for or on behalf of any other Party.

23.2 The Parties acknowledge and agree that the Contractor shall only have a direct contractual relationship with the Contracting Authority and not any other Authorised User. The Contractor should not present any terms and conditions, including any license terms, to any Authorised User, including when granting access to the ESM Solution. If the Contractor does present any terms and conditions, these shall not apply. In addition, unless providing Services in accordance with the terms of this Contract, the Contractor should not contact any Authorised User (except for the Contracting Authority Contact) without the Contracting Authority's prior written consent.

24. Entire Agreement

24.1 This Contract, including all schedules, annexes, appendices, and any documents expressly referenced herein, constitutes the entire agreement between the Parties in relation to its subject matter and governs the relationship of the Parties to the exclusion (to the extent permitted by law) of any other terms and conditions.

24.2 Except as expressly provided in this Contract, no additional terms and conditions contained in any invoice, order form, licence, or other document of the Contractor shall apply to the subject matter of this Contract.

24.3 Neither Party has been given, nor entered into this Contract in reliance on, any warranty, statement, promise or representation other than those expressly set out in this Contract.

24.4 Nothing in this clause shall exclude any liability in respect of misrepresentations made fraudulently.

25. Notices

25.1 Except as otherwise expressly provided within this Contract, no notice or other communication from one Party to the other shall have any validity under this Contract unless made in writing by or on behalf of the Party sending the communication and sent to the address of the Party mentioned in Annex 1.

25.2 Each Party can change the address by serving a notice thereof in accordance with this clause.

25.3 The following table sets out the method by which notices, or other communication may be served under this Contract and the respective deemed time of receipt:

Method of Service	Deemed time of receipt
Email	First (1st) Working Day after being sent, or, if earlier, when the recipient acknowledges receipt.
By registered post or courier	Four (4) Working Days after the day on which the letter was posted or couriered or, if earlier, when the recipient acknowledged the receipt.

25.4 Communications shall not be deemed received if they are returned as undelivered.

25.5 Representatives nominated by the Parties in Annex 1 shall have power to speak for and bind his employer for the purposes of this Contract. In the event of a representative becoming unavailable, or for any other reason whatsoever, original representative or a legal or statutory representative of the Party shall nominate someone to take his or her place and notify the other Party in accordance with this clause.

26. Governing Law and Jurisdiction

26.1 This Contract and any dispute or claim arising out of or in connection with it or its subject matter (including non-contractual disputes or claims) shall be governed by and construed in accordance with Irish Law.

26.2 Each Party agrees to submit to the exclusive jurisdiction of the courts of Ireland and for all disputes to be conducted in Ireland.

Signed for and on behalf of the Contracting Authority	Signed for and on behalf of the Contractor
Signature:	**Signature:**
<Full Name>	**<Full Name>**
<Job Title>	**<Job Title>**
<Date>	**<Date>**

Annex 1 – Contract Details and Tender Response

1 (a) Contract Details

Term	Details
Contracting Authority	Name: <INSERT NAME>
	Full address including country of legal seat: <INSERT ADDRESS>
	VAT, registration or ID number: <INSERT NUMBER>
Contractor	Name: <INSERT NAME>
	Full address including country of legal seat: <INSERT ADDRESS>
	VAT, registration or ID number: <INSERT NUMBER>
The Contract is made pursuant to the request for admission into the Dynamic Purchasing System with an admissions date of	<INSERT DATE>
Contract effective date	<INSERT DATE>
Contract termination date	<INSERT DATE>
Currency	**EURO**
Contractor's Subcontractor(s)	<INSERT NAMES, IF ANY>
Contracting Authority Representative Name	<INSERT NAME>
Contracting Authority Representative Email	<INSERT EMAIL>
Contractor Representative Name for Services Contract Operations	<INSERT NAME>
Contractor Representative Email for Services Contract Operations	<INSERT EMAIL>

1 (b) Contractor's Tender Response

Annex 2 – Services

Annex 3 – The Charges

Annex 4 – Contract Change Form

Annex 5 – Contracting Authority Additional Terms and Conditions

Annex 6 – Contractor's Terms and Conditions Governing the Service

Annex 7 – Data Processing Agreement

Data Processing Agreement under Article 28 GDPR