ASIERA CLG

and

[●]

CALL-OFF CONTRACT
TERMS AND CONDITIONS

THIS AGREEMENT is made on the day of 20

BETWEEN:

1. **Asiera CLG** of 3rd Floor, North Dock 2, 93/94 North Wall Quay, Dublin 1, D01 V8Y6, Ireland company registration number 275301 ("the **Client**"); and

2. [**Contractor Name**], of [address] with company registration number [●] ("the **Contractor**").

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

WHEREAS

A. The Client has conducted a public procurement process for the establishment of a framework for the provision of [insert details] services. The public procurement process was advertised in the Official Journal of the European Union, OJEU Notice Number [●] of [●] dated [●].

B. Following the evaluation of tenders, the Client and the Contractor entered into a framework agreement dated [●] (the "**Framework Agreement**") identifying the means by which the Client may procure required services from time to time, subject to and in accordance with the terms and conditions of the Framework Agreement.

C. [The Contractor submitted a response to the RFT dated [●] (the "**Submission**"). References to the Submission shall include any clarifications issued by the Contractor in writing to the Client in respect of its Submission (the "**Submission Clarifications**"). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.]/[The Contractor has accepted the Call-Off Order and the Parties are entering this Agreement to reflect the terms and conditions governing the provision of the Services.][1]

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
   i. This Agreement and Schedules A to F attached hereto;
   ii. [The RFT (including the RFT Clarifications)]/[The Call-Off Order];[2] and
   iii. [The Submission (including the Submission Clarifications).][3]

2. The Contractor agrees to provide the Services described in Schedule B (the "**Services**") to the Client in accordance with this Agreement (the "**Agreement**"). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the [RFT and the Submission]/[the Call-Off Order] (the "**Specification**").

1

3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (the "**Charges**"). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.

4. For the purposes of this Agreement, the Client's contact is [name of contact person] of [address of contact person]; the Contractor's contact is [Contractor contact name] of [Contractor contact address].

5. This Agreement shall take effect on the date of this Agreement (the "**Effective Date**") and shall expire on [Insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties ("the "**Term**").

6. The Client reserves the right to extend the Term for a period or periods of up to [●] months with a maximum of [●] such extensions permitted subject to its obligations at law.

7. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in Framework Agreement.

8. Headings are included for ease of reference only and shall not affect the construction of this Agreement.

9. Unless the context requires otherwise, words in the singular may include the plural and vice versa.

10. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

11. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

12. In the event of any conflict between the Framework Agreement and this Agreement, the terms of this Agreement shall prevail.

Signed for and on behalf of the Client

_____ _____

Authorised Signatory Witness

Signed for and on behalf of the Contractor

_____	_____
Authorised Signatory	Witness

SCHEDULE A

TERMS AND CONDITIONS

1. CONTRACTOR'S OBLIGATIONS

1.1. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and subcontractors. The Contractor shall require its agents and subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and subcontractors under this Agreement.

1.2. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:

1.2.1. provide the Services in accordance with the Specification, the [CFT]/[Call-Off Order], the Client's directions and the terms of this Agreement;

1.2.2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;

1.2.3. comply with all local security and health and safety arrangements as notified to it by the Client; and

1.2.4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "**Regulations**"). The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.

1.3. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its subcontractors and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1.2.4 above, to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its subcontractors.

1.4. Without prejudice to clause 1.3, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any subcontractor, the Client reserves the right to require the Contractor to immediately replace such subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the subcontractor and a requirement that the subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

1.5. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.

1.6. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "TUPE Regulations") and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

2. KEY PERSONNEL

2.1. The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission ("**Key Personnel**"), assigned by it to provide the Services shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. In the event that any of the Key Personnel assigned by the Contractor to provide the Services under this Agreement becomes unable to provide the Services for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("**Replacement Personnel**"). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3. PAYMENT

3.1. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.

3.2. Within five (5) working days of the end of the previous month, the Service Provider shall provide a draft invoice to the Client's Contact for review and approval. The draft invoices should identify the purchase order number (if available), a detailed breakdown of hours worked by personnel carrying out such work, a narrative of the work undertaken, details of the personnel involved in the work and such other information as the Client may reasonably require.

3.3. The Client's Contact will have fourteen (14) days to consider the draft invoice. The Client's Contact may raise queries and/or challenge the draft invoice and is not obliged to accept it. The Client's Contact may also identify what they believe the value of the invoice should be. Once the fee note has been agreed by the Client's Contact, the Contractor will issue a final invoice for the agreed amount. This final invoice shall be issued to the Client's Contact so that they can arrange payment.

3.4. Discharge of the Charges is subject to:

3.4.1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 10.1 from time to time;

3.4.2. Draft and approved invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties); and

3.4.3. The Client 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.

3.5. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments.

3.6. Wherever any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Client may set off any such sums due to it against any Charges or monies due by the Client to the Contractor from time to time. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

3.7. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.

3.8. The Charges shall be discharged as provided for in this clause subject to the retention by the Client 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.

3.9. The Client may, at any time and at its sole discretion, reduce the scope or remove certain elements of the Services. The Client shall notify the Contractor of such reduction or removal prior to the Contractor commencing such Services and the Client may reduce the Charges to reflect the revised scope of services. The Contractor will not be entitled to compensation (including loss of profit) in respect of any reduction or removal of the scope of Services unless otherwise agreed in writing with the Client.

4. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

4.1. The Contractor acknowledges, warrants, represents and undertakes that:

4.1.1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;

4.1.2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;

4.1.3. it is entering into this Agreement 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;

4.1.4. 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;

4.1.5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;

4.1.6. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;

4.1.7. it has inspected the Client'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 Agreement;

4.1.8. it retains and shall maintain for the Term insurances for the nature and amount specified in the [RFT]/[the Framework Agreement]. The Contractor undertakes to advise the Client 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 Client with regard to compliance with this clause 4.1.8; and

4.1.9. the Client shall be under no obligation to purchase any minimum number or value of Services.

4.2. The Contractor shall indemnify and keep indemnified the Client, 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 Contractor (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 Agreement and arising out of any act or omission of the Contractor or its employees, agents or sub-contractors in performing its obligations under this Agreement 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 Agreement.

4.3. The Contractor undertakes to notify the Client 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 4.1 and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

5. REMEDIES

5.1. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 5.1 shall survive termination of this Agreement for any reason.

5.2. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6.7, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and

expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.

5.3. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.

5.4. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

5.5. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows:

5% ("the "**Retention Amount**") which Retention Amount shall not at any given time exceed [number] per cent of the Charges. In such event the Client shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5.8 shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

5.6. Time of delivery shall be of the essence and if the Contractor fails to deliver the Services within the time period promised or specified in the Specification, the Client may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Services and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.

5.7. Without prejudice to the foregoing, in circumstances where the Contractor has failed to provide the Services for 8 weeks, the Client shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor.

6. Not Used

7. CONFIDENTIALITY

7.1. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("**Confidential Information**") and shall not disclose same to any third party except to:-

7.1.1. its professional advisers subject to the provisions of this clause 7; or

7.1.2. as may be required by law; or

7.1.3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or

7.1.4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

7.2. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as set out in the tender documents ("the **Confidentiality Agreement**").

7.3. The obligations in this clause 7 will not apply to any Confidential Information:

7.3.1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or

7.3.2. which is or becomes public knowledge other than by breach of this clause; or

7.3.3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or

7.3.4. is lawfully received by the disclosing Party from a third party (with full right to disclose).

7.4. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.

7.5. In circumstances where the Client 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 Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Client accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

7.6. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

8. FORCE MAJEURE

8.1. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 8.2 below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.

8.2. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "**Affected Party**") shall promptly notify the other Party in writing specifying:

8.2.1. the nature of the Force Majeure Event;

8.2.2. the anticipated delay in the performance of obligations;

8.2.3. the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

8.3. If the Force Majeure Event continues for 28 calendar days either Party may terminate at 14 days' notice. For the avoidance of doubt, this right shall exist whether notice has been given under clause 8.2 or not.

8.4. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

9. TERMINATION

9.1. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving three (3) months' written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving three (3) months' written notice to the Client.

9.2. The Client may terminate this Agreement by serving written notice on the Contractor with effect from the date specified in such notice where, in the opinion of the Client, the Contractor commits a material breach and:

9.2.1. the Contractor has not remedied the material breach to the satisfaction of the Client within 10 days, or other such period as may be specified by the Client, after issue of a written notice specifying the material breach and requesting it to be remedied; or

9.2.2. the material breach is not, in the reasonable opinion of the Client, capable of remedy.

9.3. 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 Client would otherwise derive from a substantial portion of this Agreement; or any of the Contractor's obligations under this Agreement, over the term of this Agreement. In deciding whether any breach is material, no regard shall be had to whether it occurs by accident, mishap, mistake or misunderstanding.

9.4. Either Party shall have the right (in addition to its rights under clause 9.1 and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:

9.4.1. 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;

9.4.2. where the Contractor undergoes a change of control;

9.4.3. if any of the provisions of Regulation 73 of the Regulations apply;

9.4.4. if the Contractor is no longer able or capable of providing the required Services to the Client;

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

9.4.6. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and

9.4.7. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.

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

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

9.7. If requested by the Client, 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 Client ("**Employment Information**"). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

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

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

10. CONTRACT MANAGEMENT

10.1. The Client'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 Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If

requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.

10.2. The Contractor agrees to:

10.2.1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;

10.2.2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;

10.2.3. comply with all reasonable directions of the Client; and

10.2.4. comply with the service levels and performance indicators set out in Schedule D.

10.3. The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising.

11. DISPUTES

11.1. In the event of any dispute arising out of or relating to this Agreement (the "**Dispute**"), the Parties shall first seek settlement of the Dispute as set out below.

11.2. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.

11.3. If the Dispute has not been resolved within fifteen (15) business days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

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

11.5. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) business days of his/her appointment.

11.6. 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.

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

12. GOVERNING LAW, JURISDICTION AND EXECUTION

12.1. This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

12.2. This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

13. NOTICES

13.1. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 13.

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

13.2.1. if personally delivered, at the time of delivery;

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

13.2.3. if communicated by email, on the next calendar day following transmission.

14. ASSIGNMENT AND SUBCONTRACT

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

14.2. Subject to a party's obligations at law, any sub-contract of a party's rights or obligations under this agreement requires the prior written consent of the other part, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void.

15. ENTIRE AGREEMENT

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

16. SEVERABILITY

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

17. WAIVER

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

18. NON EXCLUSIVITY

18.1. Nothing in this Agreement shall preclude the Client from purchasing services (or Services) from a third party at any time during the currency of the Agreement.

19. MEDIA

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

20. CONFLICTS, REGISTERABLE INTERESTS AND CORRUPT GIFTS

20.1. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, or if the Client otherwise becomes aware of a potential or actual conflict of interest, the Client may, in its absolute discretion, (i) request further information from the Contractor, (ii) impose conditions on the Contractor in respect of dealing with the conflict and/or (iii) terminate this Agreement immediately and without liability for compensation or damages.

20.2. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.

20.3. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or

any other public contract. Any breach of this clause or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

21. ACCESS TO PREMISES

21.1. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

21.2. The Contractor shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for the Client under this Agreement.

22. EQUIPMENT

22.1. Following receipt of an order from Asiera, Tenderer should liaise directly with schools for delivery and installation. Equipment that arrives without notice will be turned away by the school staff at those locations. With regards to equipment that is to be installed at an Asiera datacentre, Tenderer should liaise with Asiera to make delivery arrangements with our data centres. Equipment that arrives without notice at any Asiera datacentre will be turned away by the security staff at those locations. Asiera will – given sufficient notice – arrange both access to the loading bay and for the receipt of the equipment. Equipment is normally either delivered to the Asiera caged area(s) or a locked equipment storage space in the data centre.

22.2. The Contractor shall provide all equipment and materials necessary for the provision of the Services ("**Equipment**").

22.3. All Equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client's premises and the removal of Equipment when no longer required at its sole cost.

22.4. Title in the Equipment shall pass upon delivery of such equipment to Client's premises – unless payment is made prior to delivery in which case title shall pass to the Client once payment has been made. All Goods shall be delivered free of encumbrances or retention of title clauses or similar provision.

22.5. The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.

22.6. The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:

22.6.1. remove from the Client's premises any and all Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and

22.6.2. replace such item with a suitable substitute item of Equipment.

22.7. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or subcontractors.

23. NON SOLICITATION

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

24. CHANGE CONTROL PROCEDURE

24.1. At any time during the Term of this Agreement, either Party may propose a change or changes to the scope of the Services. An agreed change to the scope shall not vitiate this Agreement.

24.2. A change control notice ("**Change Control Notice**") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("**Impact Assessment**").

24.3. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.

24.4. The Parties must indicate their acceptance or rejection of the Change Control Notice and/or Impact Assessment within a reasonable timeframe of its submission, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.

24.5. On approval of Change Control Notice, the parties shall proceed in line with the agreed changes.

24.6. In the event that the receiving Party rejects the Change Control Notice, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement unaltered.

25. DATA PROTECTION AND SECURITY

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

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

"**Data Controller**" has the meaning given under the Data Protection Laws;

"**Data Processor**" has the meaning given under the Data Protection Laws;

"**Data Protection Laws**" means 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 Data Protection Laws;

"**Processing**" has the meaning given under the Data Protection Laws;

25.2. The Contractor shall comply with all applicable requirements of the Data Protection Laws.

25.3. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.

25.4. Without prejudice to the generality of clause 25.2, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-

25.4.1. only process such Personal Data in accordance with the Data Protection Laws and solely as necessary for the performance of its obligations in the provision of the Services or otherwise in accordance with documented instructions received from the Client from time to time;

25.4.2. ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures;

25.4.3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

25.4.4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;

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

ii. the data subject has enforceable rights and effective legal remedies;

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

iv. the Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

25.5. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

25.6. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

25.7. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.

25.8. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.

25.9. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.

25.10. The Contractor shall:-

25.10.1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

25.10.2. ensure that a back-up copy of any and all such Personal Data is made on a weekly basis and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and

25.10.3. in such an event and if attributable to any default by the Contractor or any sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

25.11. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

26. INSURANCE

26.1. The Contractor shall procure and maintain adequate insurance cover in respect of its provision of the Services, for the types and minimum levels of cover stated at Schedule F hereto and to the reasonable satisfaction of the Client, with a reputable and well established insurance company against all insurable liability under this Agreement in respect of the Services, without prejudice to the generality of the foregoing, in respect of any loss or damage to the Services and all claims by third parties for death, injuries, loss or damage to property, and against all actions, suits, claims, demands, costs and expenses whatsoever, by reason of, or arising out of any claim by any of the Contractor's employees, agents or servants, in respect of any accident, death, injury or damage sustained in connection with or arising out of this Agreement.

26.2. The said insurance policy or policies shall be furnished, duly completed, to the Client prior to the commencement of the Services and maintained for the duration of the provision of the Services and, in the case of professional indemnity insurance (or equivalent insurance cover which meets the satisfaction of the Client), for 6 years following the completion of the Services and up-to-date copies forwarded to the Client each year.

26.3. The Contractor shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

Schedule B: Services: The Specification

[As identified in the RFT/Call-Off Order and to be inserted before execution]

Schedule C: Charges

[Rates tendered by succesful tenderer to be inserted before execution]

Schedule D: Service Levels

[If used]

Schedule E: Data Protection

[complete when completing the contract]

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1 Subject matter of processing

1.2 Nature of processing

1.3 Purpose of processing

1.4 Duration of the processing

2. Types of personal data

3. Categories of data subject

Schedule F: Insurances

The Contractor is required, in accordance with Clause 26 of the Agreement, to procure and maintain the following types and minimum levels of insurance cover (for each and every claim) in respect of the provision of the Services:

Insurance Type[4]	Minimum Level	Additional Requirements
Employers Liability		
Public Liability		
Professional indemnity		
Product Liability		
Cyber Insurance (including loss of data)		