EPA Terms and Conditions for the Purchase of Services & Service Providers

These terms of service for the supply of services (the "**Agreement**") is made on [insert date] 202 ___ ("**Effective Date**").

BETWEEN

(1) **ENVIRONMENTAL PROTECTION AGENCY** having its registered office at PO BOX 3000 Johnstown Castle Estate, Wexford, Ireland (the "**EPA**"); and

(2) [**INSERT SUPPLIER FULL COMPANY NAME**], a company incorporated under the laws of [insert relevant Country e.g. Ireland] (registered number [insert]) and having its registered office at [insert address] ("**Supplier**").

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

RECITALS

(A) The Supplier wishes to provide services to the EPA on the terms set out in this Agreement.

(B) The EPA has agreed to purchase services from the Supplier, from time to time, on a non-exclusive basis on the terms set out in this Agreement (although this Agreement does not commit the EPA to purchase any services from the Supplier).

IT IS AGREED AS FOLLOWS:

Each and every order for services placed by the EPA will be placed pursuant to this Agreement and will form a separate contract between the EPA and the Supplier which will be made up of:

- this Agreement; and
- any Schedules or documents attached to this Agreement or specifically incorporated by reference relating to the provision of such services by the Supplier (other than the terms within the Supplier's invoices).

This Agreement prevails over, supersedes and excludes any terms or conditions contained in or referred to in any correspondence or documentation which the Supplier generates, provides to the EPA or otherwise references (including, without limitation, within the Supplier's invoices or set out on the Supplier's website).

1 DEFINITIONS

In this Agreement, unless otherwise stated:

"Acceptance Tests" means any tests formulated by the EPA (on criteria developed by the EPA, acting reasonably) to confirm the EPA acceptance of any Services from the Supplier pursuant to this Agreement.

"Applicable Laws" means all applicable laws, regulations, regulatory requirements, directives, orders and codes of practice or guidelines of any relevant jurisdiction, as amended from time to time.

"Background IP" means the Intellectual Property Rights in any materials,products including hardware and software products (and including any modifications or updates to such materials and/or products) created by or acquired by a party in the ordinary course of business that already exist at the date of the Agreement.

"Best Industry Practice" means the exercise of that degree of skill, care and diligence as would be expected from a skilled expert and experienced provider of the Services.

"Charges" means the charges for the provision of Services as set out in Schedule 2.

"Commercially Reasonable Rates" means rates constituting no more than 150% of the rates payable by the Supplier for professional indemnity insurance in the previous year, exclusive of any increases brought about as a result of the Suppliers claims record or otherwise through any negligence, act or omission of the Supplier.

"Control" means the ability to directly or indirectly control or direct the affairs of another whether by the ownership of 50% (or more) of the voting rights exercisable at general meetings, or by contract, or otherwise.

"Confidential Information" means all and any information or data in whatever form (including written, oral, visual or electronic, or on tape or disk), however conveyed or presented, that relates whether directly or indirectly to the business, affairs, operations, customers, processes, budgets, pricing policies, products, strategies, developments, opportunities, trade secrets, know-how, designs, marketing, commercial, personnel and suppliers of the disclosing party, together with all information derived by the receiving party from any such information and any other information clearly designated by a party as being confidential to it (whether or not marked "confidential"), or which ought reasonably be considered to be confidential.

"Data Protection Law" means:

a) the Data Protection Acts 1988 - 2018; and
b) the General Data Protection Regulation (EU) 2016/679 and any Irish statute which implements any provisions of the same.

"Data Protection Legislation" means all applicable data protection and privacy legislation, regulations, guidance and codes of practice, including:

a) the Data Protection Law and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011;
b) any secondary legislation pursuant to the Data Protection Law; and
c) any national implementing laws, regulations and secondary legislation, as amended or updated from time to time, in Ireland in respect of any of the foregoing.

"Deliverables" means all documents, products and materials developed by the Supplier or its agents, contractors and employees as part of or in relation to the Services in any form or media, including without limitation: drawings, maps, plans, diagrams, designs, pictures, computer programs, data, specifications and reports (including drafts).

"Delivery Location" means the location set out in the Schedule 1 or to such other location notified to the Supplier by the EPA (acting reasonably) for delivery.

"Insolvency Event" means:

a) a party becomes bankrupt, has a petition presented for its winding up, has a liquidator appointed to it or has a receiver or an examiner appointed to it or over part or all of its assets or enters into a composition with its creditors (save for the purposes of a bona fide reconstruction or amalgamation on terms approved in advance by the other party);
b) a party is unable to pay its debts as they fall due; or
c) any analogous proceedings or events similar to those specified above are instituted or occur in relation to a party in another jurisdiction.

"Intellectual Property Rights" means any current and future intellectual property rights, including, without limitation, copyright and copyright 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, trade dress, business and product names, logos, slogans, domain names, rights in logos and get-up, inventions, confidential information, moral rights, trade secrets and know-how (including commercial know-how), design rights, design model, patents and patent rights, industrial models, utility models, rights in the nature of unfair competition rights and rights to sue for passing off, all rights of whatsoever nature in computer software and data, rights in databases and privacy rights in every case in any part of the world and whether or not registered or capable of registration 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.

"The EPA Materials" means:

a) any materials or products supplied by the EPA to the Supplier pursuant to the provisions of Schedule 1; and
b) the Deliverables.

"Schedule(s)" means the schedules attached to this Agreement.

"Services" means the services to be provided by the Supplier (if any) which are set out in Schedule 1 to this Agreement.

"Specification" means any specification and/or description of the Services to be provided as set out in Schedule 1, or if no such specification or description is specified, the standard specification for such Services as would ordinarily apply to the supply of such Services in accordance with Best Industry Practice.

2 TERM

2.1 The initial term of this Agreement shall commence on the Effective Date and continue in full force for a period of [•] years ("Initial Term") unless it is terminated earlier in accordance with Clause 14.

[UPDATE **CLAUSE 2.2 WITH THE PROPOSED EXTENSIONS AS SET OUT IN THE REQUEST FOR TENDER**] **IF NO EXTENSIONS PROPOSED DELETE THIS CLAUSE.**

2.2 If the EPA wishes to extend the Initial Term, it may do so by providing at least thirty (30) days written notice to the Supplier to such effect. Any such extension shall be for a period of [twelve (12) months] and any such notice may include any suggested variations to this Agreement. Upon receipt of any such notice, the Supplier may inform the EPA if it is agreeable to so extending this Agreement or if it wishes to discuss any variations to the Services which may be ordered by the EPA pursuant to this Agreement or any changes to any of the Charges. If any such matters have not been agreed prior to the end of the then current Term, the EPA may inform the Supplier that it does not wish to renew this Agreement after it has expired.

3 SUPPLIER'S OBLIGATIONS

3.1 The Supplier undertakes to perform its obligations arising from the Agreement with due care, skill and diligence in the supply of the Services and generally in the carrying out of its obligations under the Agreement and in the appointment, monitoring and retention of its personnel. The Supplier shall require its personnel (including employees and subcontractors) to exercise due care, skill and diligence in the supply Services and generally in the carrying out of obligations allocated by the Supplier to its personnel under this Agreement.

3.2 In consideration of the payment of the Charges, and subject to clause 6 of this Agreement, the Supplier shall:

a) supply the Services in accordance with the terms of this Agreement and the EPA's directions from time to time;
b) comply with and implement any policies, guidelines and/or project governance protocols issued by the EPA from time to time and notified to the Supplier in writing;
c) to the extent applicable, comply with all local security and health and safety arrangements as notified to it by the EPA;
d) be responsible for the taking of all disciplinary action in respect of the personnel and for paying any salaries, taxes, contributions and charges payable in respect of Supplier's personnel;
e) disclose any registrable interest involving the Supplier (and any personnel or agent as the case may be) and the EPA, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives and this must be fully disclosed to the EPA immediately upon such information becoming known to the Supplier (and any employee or agent as the case may be) and the Supplier shall comply with the EPA's directions in respect thereof, to the satisfaction of the EPA;
f) 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 its duties and obligations under this Agreement; and
g) comply with this Agreement.

3.3 The Supplier warrants that it has no conflict of interest arising out of or in connection with the Services or this Agreement other than any expressly notified in writing to the EPA by express reference to this clause.

4 SUPPLY OF SERVICES

4.1 The Supplier must provide the Services on or before the dates specified in Schedule 1.

4.2 The Supplier warrants and represents that the Services (and any Deliverables developed as a result of the Services) shall:

a) be provided with all reasonable levels of professional skill, care and diligence;
b) be provided in a safe and professional manner to ensure the absolute safety at all times of the EPA and its employees, agents, and contractors;
c) comply with all Applicable Laws;
d) be provided in accordance with Best Industry Practice;
e) conform with any Specifications; and
f) be of satisfactory quality. The deliverables will be suitable and will meet the requirements detailed in Schedule 1.

4.3 In providing the Services, the Supplier undertakes that it must:

a) obtain and at all times maintain all necessary licenses, consents and permissions;
b) co-operate fully with the EPA in all matters relating to the Services;
c) not interfere with the EPA's activities or those of the EPA's other suppliers or contractors;
d) use personnel who are suitably skilled and experienced to perform tasks assigned to them, and a sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Agreement;
e) provide all equipment, tools and vehicles and such other items as are required to provide the Services;
f) ensure all written information provided in connection with the Services and Deliverables is accurate and comprehensive in all material respects;
g) comply at all times with the EPA's health and safety, security standards and site procedures and any lawful instructions and other policies or guidelines issued by the EPA from time to time; and
h) co-operate fully with other suppliers who provide other services to the EPA.

4.4 The Supplier must provide the Services in line with any service levels or key performance indicators agreed between the parties from time to time.

4.5 Notwithstanding any other term of this Agreement, the Supplier shall exercise all reasonable skill and care in the performance of the Services and shall not be subject to any fitness for purpose obligation unless expressly agreed between the parties.

5 ACCEPTANCE OF SERVICES

5.1 In the absence of there being any specified Acceptance Tests, if the EPA determines (in its sole discretion), within a reasonable time after performance of the Services, that the Services (or part of them, including any Deliverables):

a) are not in accordance with this Agreement;
b) do not comply with the Specification;
c) are not of satisfactory quality; or
d) are in breach of any of the warranties or undertakings provided by the Supplier,

then the EPA has the right to reject those Services or any of them and, without prejudice to any of the EPA's other rights or remedies, require the Supplier to (at its discretion) either promptly refund the Charges paid by the EPA in relation to such Services or reperform the Services.

5.2 The acceptance of any Services will be without prejudice to any rights or remedies that the EPA may have after acceptance relating to any breach of the representations or warranties made by the Supplier pursuant to this Agreement.

6 CHARGES AND PAYMENT

6.1 Subject to the Supplier providing the Services in accordance with the terms of this Agreement, the EPA will pay to the Supplier the Charges as set out in Schedule 2. The Charges are not subject to any increase without the prior written approval of the EPA.

6.2 Unless otherwise agreed in writing, the Charges are exclusive of any applicable VAT (which is payable by the EPA subject to receipt by the EPA of a valid VAT invoice).

6.3 Any additional costs or expenses over and above the Charges must be approved in advance by the EPA in writing. No costs and/or expenses over and above the agreed Charges may be invoiced by the Supplier unless or until approved in writing and in advance by the EPA. The Supplier must provide all such evidence of any such costs and expenses as the EPA may reasonably require.

6.4 A valid invoice must be sent by the Supplier to the EPA upon completion of performance of the Services to the satisfaction of the EPA (unless specified otherwise in the Schedule 2).

6.5 Unless there is a dispute relating to the amount of the invoice, the EPA will pay any such invoice within 30 days following the date of receipt of the invoice. If there is a bona fide dispute relating to an invoice, the EPA is entitled to postpone payment of the disputed amount until the matter is resolved. For the avoidance of doubt, failure to pay an invoice in the case of a bona fide dispute is not a breach of this Agreement by the EPA.

6.6 If the EPA fails to pay to the Supplier any sum payable by the EPA on the due date for payment (other than in the case of a bona fide dispute), the Supplier is entitled to charge the EPA interest on the overdue sum for the period from and including the due date of payment up to the date of actual payment of the full amount (after as well as before judgment) at a rate of 8% above the European Central Bank base rate from time to time.

6.7 The EPA may at any time, without limiting its other rights or remedies, set off any liability of the Supplier to the EPA against any liability of the EPA to the Supplier.

6.8 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.

7 INTELLECTUAL PROPERTY RIGHTS

7.1 Each party retains ownership of all of its Background IP. The Supplier hereby grants to the EPA a worldwide, royalty free, perpetual and irrevocable licence (including the right to sub-license) of any such Background IP to the extent necessary for the EPA to use and exploit the Services (including the Deliverables) in the manner contemplated by this Agreement.

7.2 All rights, title and interest in the Intellectual Property Rights and all other rights in the products of the Services, including the Deliverables (but not any of the Supplier's Background IP), vests in the EPA. If and to the extent the Supplier owns any such rights, including Intellectual Property Rights (other than the Supplier's Background IP), the Supplier hereby assigns to the EPA with full right, title and interest and free from all third party rights, all Intellectual Property Rights and all other rights in the products of the Services (including the Deliverables) now existing (including those created prior to the date of the this Agreement, other than the Background IP) and hereafter to be created of whatsoever nature and howsoever arising (including by way of a present assignment of future rights).

7.3 The Supplier shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.

7.4 Without limiting Clause 7.2 above, the Supplier will ensure that all personnel (including employees and subcontractors) involved in the provision of the Services assign on creation and with full right, title and interest in all Intellectual Property Rights in the products of the Services (including the Deliverables) to the EPA and, to the maximum extent permitted by applicable law, waive any moral, author's and/or performer's rights (if any) in respect of such Intellectual Property Rights.

7.5 Nothing in this Agreement shall prohibit or be deemed to prohibit the Supplier from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Supplier 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.

7.6 The Supplier 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 Agreement (to include but not be limited to ensuring that the EPA shall be vested with all rights assigned to the EPA in accordance with Clause 7.2 and all necessary rights so as to enable the EPA to enjoy the benefit of the Services for its business purposes). The Supplier warrants and undertakes that the manufacture, supply or use of the Services (and the products of any of the Services, including the Deliverables and the EPA Materials (to the extent not provided by the EPA) and the use of the same by the EPA, does not and/or will not infringe the rights (including Intellectual Property Rights) of any third party.

7.7 In the event of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement, at the request of the EPA for and in respect of any such breach, the Supplier shall at its expense and option:

7.7.1 procure the necessary rights for the EPA to continue use;

7.7.2 replace the relevant deliverable with a non-infringing equivalent;

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

7.7.4 if the Supplier cannot obtain the remedies in (7.7.1), (7.7.2) or (7.7.3) above, it may direct the return of the deliverable and refund to the EPA Charges paid for such deliverable less a reasonable amount for the EPA'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 EPA as a result of the breach.

7.8 Upon the termination of this Agreement for whatever reason, the Supplier shall immediately deliver up to the EPA all the Deliverables prepared up to the date of termination. The provisions of this Clause 7 will survive the expiration or termination of this Agreement for any reason.

8 WARRANTIES

8.1 The Supplier 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 Agreement and to provide the Services hereunder;

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

c) it holds all licences, permissions and consents necessary to carry out its obligations under this Agreement;

d) 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;

e) 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 Supplier;

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

g) none of the excluding grounds listed in Regulation 57 of the Regulations apply to the Supplier;

h) it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under this Agreement and for the EPA to obtain the benefit of the Services for its business purposes;

i) [it has inspected the EPA'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;]1

j) it retains and shall maintain for the insurances for the nature and amount specified in this Agreement. The Supplier undertakes to advise the EPA 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 Supplier shall carry out all directions of the EPA with regard to compliance with this Clause 8.1(i);

k) the EPA shall be under no obligation to purchase any minimum number or value of Services; and

l) the Employment Information provided by the Supplier (and any updates thereto) shall be complete, correct and accurate as at the date that it is provided to the EPA.

8.2 The Supplier undertakes to notify the EPA forthwith of any material change to the status of the Supplier with regard to the warranties, acknowledgements, representations and undertakings as set out at Clause 8.1 and to comply with all

[1] Delete if not applicable

reasonable directions of the EPA with regard thereto which may include termination of this Agreement.

8.3 The EPA warrants and represents that:

a) it has the full right, power and authority to enter into this Agreement and to carry out its obligations under this Agreement; and
b) it holds all licences, permissions and consents necessary to carry out its obligations under this Agreement.

9 INDEMNITY

9.1 The Supplier is an independent contractor to the EPA for all purposes, including without limitation for tax purposes, with regard to the delivery of the Services hereunder. The Supplier shall not be entitled to any salary, pension, bonus, or other employment benefits from the EPA.

9.2 This Agreement constitutes a contract for the provision of services and not a contract of employment and accordingly:

(a) the Supplier hereby agrees to indemnify and hold harmless the EPA, against any claims or demands that may be made by the relevant authorities in respect of income tax, PRSI, USC, penalties and/or interest relating to such liabilities arising or accruing in respect of the provision of the Services and payment of the Charges;

(b) the Supplier hereby agrees to indemnify and hold harmless the EPA, against any claims, proceedings, actions, loss, damage, cost (including legal costs) or expense whatsoever as a result of its acting deliberately or with reckless disregard to the interests of the EPA or any other party or otherwise acting in a manner which is negligent or in wilful default of any terms of, or its obligations under, this Agreement or which arises as a result of its own acts, default or negligence in the provision of the Services save to the extent such losses were caused or contributed to by the EPA; and

(c) the Supplier hereby agrees to indemnify and hold harmless the EPA, against any liability arising from any employment related claim or any claim based on employment status (including reasonable costs and expenses), whether brought by the Supplier and/or its personnel and/or any third party against the EPA, arising out of or in connection with the provision of the Services.

9.3 The Supplier indemnifies (including reasonable legal expenses) the EPA, save to the extent such losses were caused or contributed to by the EPA, in full on demand against any and all liabilities, losses, costs, expenses, claims or damages suffered or incurred by a member of the EPA as a result of or in connection with:

a) any breach by the Supplier of Clauses 4.2 and 4.3, 7 (Intellectual Property Rights), 8.1 and 8.2 (Warranties), 12 (Confidentiality) or 13 (Data Protection);
b) any damage to real or personal property which is caused by the acts or omissions of the Supplier, its employees, agents or subcontractors;
c) any personal injury or illness, including resulting in death, caused by the acts or omissions of the Supplier, its employees, agents or subcontractors; or
d) any fraud, wilful default, wilful misconduct or gross negligence by the Supplier its employees, agents or subcontractors.

10 INSURANCE

10.1 Without prejudice to its liability to indemnify the EPA (and its employees, agents or subcontractors) as set out elsewhere in this Agreement, the Supplier must (at its own cost) effect and maintain with a reputable insurance company satisfactory to the

EPA a policy or policies of insurance and on the terms set out below, from the earlier of (a) commencement of the Term; and (b) commencement of the Services in respect of the following:

a) where the Supplier provides Services comprised of knowledge or skill (including but not limited to the provision of advice, design, specifications, IT consultancy and similar), professional indemnity insurance (including for breach of intellectual property rights, breach of data protection, libel and slander, contractual liability and non-performance) at all times during the Term as set out in Clause 2 and for a period of 6 years from completion of the Services with the minimum liability cover of €1M in respect of any and all claims in aggregate arising in any twelve month period provided that such insurance is available at Commercially Reasonable Rates; and

b) in relation to all Contracts the Supplier shall maintain the following insurances until the later of (a) the Term of this Agreement or (b) completion of the Services:

(i) public/product liability insurance with the minimum liability cover of €6.5M in respect of any one claim or series of claims arising out of a single occurrence;

(ii) employer's liability insurance with the minimum liability cover of €13M in respect of any one claim or series of claims arising out of a single occurrence(;

(iii) all property belonging to the EPA and in the possession of the Supplier, to a value not less than its full replacement value against all usual risks of loss, damage or destruction by fire, theft or accident, or breakdown and such other risks as the EPA may from time to time nominate in writing;

(iv) Cyber Insurance with a minimum liability cover of €[●] in the aggregate per insurance year; and

(v) any other compulsory insurance as may be required by law in any territory in which the Services (or part thereof) will be delivered or performed.

10.2 All such insurance policies must specifically cover the EPA's (and its employees, agents or subcontractors) losses, liabilities, claims and costs, and additionally in respect of those insurance policies referred to in Clauses 10.1(b)(i), 10.1(b)(ii) and 10.1 (b)(iv), contain indemnity to principal wording. The Supplier must provide written evidence from its insurers of such cover on or prior to the date of this Agreement, within 10 days of receiving a request from the EPA and within 10 days of a renewal of any such insurance (as appropriate). If the Supplier does not provide the EPA with such insurance certificate(s) in accordance with this Clause 10.2 and/or such insurance is not satisfactory to the EPA at its sole discretion, the EPA is entitled to terminate this Agreement immediately on written notice to the Supplier.

10.3 If, for any period, the Suppliers professional indemnity insurance is not available at Commercially Reasonable Rates, the Supplier shall forthwith inform the EPA and the Supplier shall take out and maintain the next best level of insurance which is available at Commercially Reasonable Rates. In the event that the Supplier obtains professional indemnity insurance below the level and basis of professional indemnity insurance set out at Clause 10.1(a) pursuant to this Clause and the level and basis of professionally indemnity insurance set out at Clause 10.1(a) subsequently becomes available to the Supplier at Commercially Reasonable Rates, then the Supplier shall then take out and maintain such professional indemnity insurance at the level specified in Clause 10.1(a) as soon as reasonably practicable but no later than at the expiry of the existing professional indemnity insurance policy.

11 LIMITATION OF LIABILITY

11.1 Subject to Clause 11.3 and Clause 11.4, the total liability of the Supplier under or in connection with each Contract, whether arising from contract, tort (including negligence), breach of statutory duty, or otherwise, is limited to the higher of:

a) The minimum liability cover specified in Clause 10 for which the applicable insurance is intended to respond; and
b) The sum of 150% of the total Charges payable by the EPA under this Agreement.

11.2 Subject to Clause 11.3, the total liability of the EPA under or in connection with each Contract, whether arising from contract, tort (including negligence), breach of statutory duty, or otherwise, is limited to 100% of the total Charges paid by the EPA.

11.3 Neither party is liable to the other party, whether in contract, tort (including negligence), breach of statutory duty, or otherwise, for any indirect or consequential loss arising under or in connection with this Agreement.

11.4 The limitations and exclusions of liability set out in this Clause 11 do not apply to:

a) Death, illness or personal injury caused by negligence;
b) the EPA's obligations to pay the Charges in accordance with the terms of this Agreement;
c) either party's liability arising out of fraud, fraudulent misrepresentation, wilful default or gross negligence; and
d) any other liability which cannot be limited or excluded by law, to which no limit applies.

12 CONFIDENTIALITY

12.1 Each Party undertakes to the other that during the term of this Agreement and thereafter it will hold confidential and keep secret any Confidential Information learned by the recipient party or disclosed to the recipient party by such other party pursuant to or otherwise in connection with this Agreement and will not without the prior written consent of the other party disclose such Confidential Information to any third party except to:-

12.1.1 Its legal and professional advisors subject to the provisions of this Clause 12; or
12.1.2 As may be required by law; or
12.1.3 As may be necessary to give effect to the terms of this Agreement subject to the provisions of this Clause 12;
12.1.4 in the case of the EPA by request of any public body or public authority

12.2 The Supplier undertakes to comply with all reasonable directions of the EPA with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as issued to the Supplier on their appointment to the framework (the "**Confidentiality Agreement**"). The obligations of confidentiality in this Clause 12 does not extend to any information or matter which either party can show:

a) is in, or has become part of, the public domain other than as a result of unauthorised disclosure (including a breach of the obligations of confidentiality under this Agreement);
b) was independently disclosed to it by a third party entitled to disclose the same; or is required to be disclosed under any Applicable Law or any regulatory authority, or by order of a court or governmental body or other authority of competent jurisdiction.

12.3 Without prejudice to any other rights or remedies of the disclosing party, the recipient party acknowledges and agrees that damages may not be an adequate remedy for any breach by it of the provisions of this Agreement and that the

disclosing party may be entitled to seek the remedies of injunction, specific performance and other equitable relief from a court of competent jurisdiction for any threatened or actual breach of any such provision by the recipient party, and no proof of special damages are necessary for the enforcement of the rights under this Agreement.

12.4 The Supplier must not without the prior written consent of the EPA advertise, publish or announce (or knowingly allow to be advertised or published or announced) that the Services are to be or have been supplied under this Agreement or that the Supplier has any business relationship with the EPA.

12.5 In circumstances where the EPA 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 2018, then in the event of the EPA receiving a request for information related to this Agreement, the EPA shall consult with the Supplier in respect of the request. The Supplier 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 EPA will consult the Supplier about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The EPA 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.

12.6 The terms of this Clause 12 shall survive expiry, completion or termination for whatever reason of this Agreement.

13 DATA PROTECTION

13.1 In this Clause 13, the following definitions and rules of interpretation shall apply:

"Appropriate Safeguards" means the measures set out in Article 46 GDPR.

"Appropriate Technical and Organisational Measures" has the meaning given to such term in Data Protection Legislation (including, as appropriate, the measures referred to in Article 32(1) of the GDPR).

"Authorised Person" the personnel authorised on the EPA's behalf to provide instructions to the Supplier in relation to the Processing provisions in this Agreement

"Business Day" a day other than a Saturday, Sunday or public holiday in Ireland when banks are open for business.

"Business Purpose" Is the scope of services set out in Clause 4 and Schedule 1 of this Agreement.

"Confidential Information" all confidential information (however recorded or preserved) disclosed by a Party or its Representatives to the other Party and that Party's Representatives in connection with the Agreement, which is either labelled as such or else which should reasonably be considered as confidential because of its nature and the manner of its disclosure.

"EPA Data" the EPA Data (NPD) and the EPA Data (PD) provided by the EPA or any User to the Supplier or accessed by the Supplier on the EPA System in the course of providing the Services, and any other Personal Data Processed by the Supplier (as Data Controller) on behalf of the EPA.

"EPA Data (NPD)" all non-Personal Data supplied by the EPA to the Supplier from time to time other than the EPA Data (PD) during the Term.

"EPA Data (PD)" the Personal Data supplied by the EPA to the Supplier from time to time during the Term.

"EPA System" any information technology system or systems owned or operated by the EPA from which EPA Data is received (or accessed) by the Supplier in accordance with this Agreement.

"Data" any data or information, in whatever form, including but not limited to images, still and moving, and sound recordings.

"Data Controller" has the meaning given to such term in Data Protection Legislation.

"Data Processor" has the meaning given to such term in Data Protection Legislation.

"Data Protection Legislation" means the Data Protection Acts 1988 - 2018 and the General Data Protection Regulation (EU) 2016/679 ("GDPR") (and laws implementing or supplementing the GDPR, and laws amending or supplementing the E-Privacy Regulations), any other applicable law or regulation relating to the processing of personal data and to privacy (including the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 ("E-Privacy Regulations"), as such legislation shall be amended, revised or replaced from time to time.

"Data Protection Officer" a data protection officer appointed pursuant to Data Protection Legislation.

"Data Subject" an individual who is the subject of Personal Data (including any User).

"Delete" to remove or obliterate Personal Data such that it cannot be recovered or reconstructed.

"EEA" European Economic Area.

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

"Normal Business Hours" 9.00 am to 5.30 pm GMT on a Business Day.

"DPC" The Data Protection Commission, Canal House, Station Road, Portarlington, Co. Laois, R32 AP23, Ireland.

"Personal Data" has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the EPA is the Data Controller, and in respect of which the Supplier is the Data Processor under this Agreement.

"Personal Data Breach" means any "personal data breach" as defined in the GDPR in respect of the Personal Data caused by the Supplier.

"Processing" has the meaning given to such term in Data Protection Legislation, and Processed and Process shall be interpreted accordingly.

"Representatives" a Party's employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services.

"Restricted Transfer" any transfer of Personal Data to countries outside of the EEA which are not subject to an adequacy decision by the European Commission, where such transfer would be prohibited by Data Protection Legislation.

"Security Features" any security feature, including any encryption, pseudonymisation, key, PIN, password, token or smartcard.

"Services" the Processing of EPA Data by the Supplier for the Business Purpose, details of which are more particularly set out in Schedule 1.

"Specific Instructions" instructions meeting the criteria set out in Clause 13.2.3.
"Standard Contractual Clauses" the contractual clauses dealing with the transfer of Personal Data outside the EEA, which have been approved by (i) the European Commission under Data Protection Legislation, or (ii) by the DPC or an equivalent competent authority under Data Protection Legislation.

"Sub-processor" has the meaning given to such term in Clause 13.13.

"Supplier" [ ]

"Supplier System" any information technology system or systems owned or operated by the Supplier to which EPA Data is delivered or on which the Services are performed in accordance with this Agreement.

"Term" the term of the Agreement.

"Users" end users of the EPA's app/website/products/services.

13.1.1 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

13.1.2 A reference to a statute or statutory provision shall include all subordinate legislation made from time to time under that statute or statutory provision.

13.1.3 References to Clauses and Appendices in this Schedule are to the Clauses and Appendices of this Schedule.

13.1.4 In the event that (i) either Party is required to enter into the Standard Contractual Clauses in accordance with this Agreement, and (ii) there is any conflict or ambiguity between any provision contained in this Schedule and any provision contained in such Standard Contractual Clauses, the Standard Contractual Clauses shall take precedence.

13.2 **SERVICES**

13.2.1 In consideration of the mutual obligations set out in the Agreement, during the Term the Supplier shall supply the Services to the EPA. For the purposes of this

Agreement, the EPA is the Data Controller and the Supplier is the Data Processor. The EPA hereby grants a non-exclusive, non-transferrable, non-sub licensable licence to the Supplier to the use of all copyright and database rights in the EPA Data for the duration of the Term to enable the Supplier to provide the Services, and to transfer to the Supplier all the EPA Data for the same purpose, in accordance with the terms of this Agreement.

13.2.2 The Supplier shall not act on any specific instructions given by the EPA from time to time during the Term in respect of Processing unless they are:

a) in writing (including by electronic means); and
b) Given by an Authorised Person.

13.2.3 The Supplier shall Process the EPA Data (PD) for the Business Purpose only and in compliance with the EPA's instructions from time to time, which may be:

a) Specific Instructions; or
b) the general instructions set out in Schedule 1

unless required to do otherwise by law, in which case, where legally permitted, the Supplier shall inform the EPA of such legal requirement before Processing.

13.2.4 The types of Personal Data to be Processed pursuant to this Agreement shall include but is not limited to all information, whether in oral or written (including electronic) form, created by or in any way originating with by the EPA and/or any Supplier (including but not limited to his/her 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 EPA and/or any Supplier provided under the Agreement which relates to an identified or identifiable natural person; and the categories of Data Subject to whom such Personal Data relates shall include but is not limited to Users/employees, applicants, tenderers, consultees, consultants, service providers, researchers, reviewers, evaluators, students, staff of organisations funded by or associated with the EPA Research Programme, steering committee members, EPA licensees.

13.2.5 The EPA reserves the right to alter the technical arrangements relating to the format, presentation and distribution of the EPA Data and it shall be a matter solely for the Supplier to adjust their systems and business accordingly. For the avoidance of doubt, it shall be the responsibility of the Supplier to ensure that the EPA Data format, presentation and provision by the EPA is suitable and satisfactory to meet the business requirements of the Supplier.

13.3 **SUPPLIER'S OBLIGATIONS**

13.3.1 The Supplier shall:

a) only make copies of the EPA Data to the extent reasonably necessary for the Business Purpose (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the EPA Data);
b) not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the EPA Data other than for the Business Purpose; and
c) not do anything that may materially damage the reputation of the EPA.

13.3.2 The Supplier shall notify the EPA in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of the Supplier to Process the EPA Data (PD) as set out in this Agreement.

13.3.3 The Supplier shall promptly comply with any request from the EPA requiring the Supplier to amend, transfer or Delete any of the EPA Data.

13.3.4 At the EPA's request, the Supplier shall provide to the EPA a copy of all EPA Data held by the Supplier in the format and on the media reasonably specified by the EPA.

13.3.5 At the EPA's request, the Supplier shall provide to the EPA such information and such assistance as the EPA may reasonably require, and within the timescales reasonably specified by the EPA, to allow the EPA to comply with its obligations under Data Protection Legislation, including but not limited to assisting the EPA to:

a) comply with its own security obligations with respect to the Personal Data;
b) discharge its obligations to respond to requests for exercising Data Subjects' rights with respect to the Personal Data;
c) comply with its obligations to inform Data Subjects about serious Personal Data Breaches;
d) carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Personal Data; and
e) the consultation with the DPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Personal Data would result in a high risk to Data Subjects.

13.3.6 Any proposal by the Supplier to in any way use or make available the EPA Data other than as provided for pursuant to this Agreement shall be subject to prior written approval of the EPA.

13.4 **SUPPLIER'S EMPLOYEES**

13.4.1 The Supplier shall ensure that access to the EPA Data is limited to those employees who need access to the EPA Data strictly to meet the Supplier's obligations under this Agreement and/or to comply with Data Protection Legislation; and in the case of any access by any employee, such part or parts of the EPA Data as is strictly necessary for performance of that employee's duties.

13.4.2 The Supplier shall ensure that all employees that have access to the EPA Data:

a) are informed of the confidential nature of the EPA Data and are subject to an appropriate statutory obligation of confidentiality or have committed themselves to a binding duty of confidentiality in respect of such EPA Data;
b) have undertaken training in the laws relating to handling Personal Data; and
c) are aware both of the Supplier's duties and their personal duties and obligations under Data Protection Legislation and this Agreement.

13.4.3 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees (or approved agents/contractors) who have access to the EPA Data.

13.5 **RECORDS**

13.5.1 The Supplier shall keep at its normal place of business detailed, accurate and up-to-date records (including in electronic form) relating to all categories of Processing activities carried out on behalf of the EPA containing;

a) details of the purposes of such processing;
b) a general description of the security measures taken in respect of the Personal Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;
c) the name and contact details of the Supplier; any sub-processor; where applicable, the Supplier's representatives; and where applicable any Data Protection Officer appointed by the Supplier;

d) the categories of Data Subjects and categories of Personal Data Processed by the Supplier on behalf of the EPA;
e) the time limits for erasure of the Personal Data; and
f) details of any non-EEA Personal Data transfers, and the safeguards in place in respect of such transfers.

13.6 **AUDITS**

13.6.1 The EPA shall have the right to examine and review the use by the Supplier of the EPA Data provided to the Supplier by the EPA for the purposes of ascertaining that such EPA Data has been used and Processed in accordance with the terms of this Agreement.

13.6.2 The Supplier shall grant to the EPA (or representatives of the EPA) on reasonable advance notice a right of access to the Supplier's premises during Normal Business Hours for the purposes of such examination and review, and the Supplier shall give all necessary assistance to the conduct of such examinations/audits during the Term. The requirement to give reasonable advance notice will not apply if the EPA believes that the Supplier is in breach of any of its obligations under this Agreement.

13.6.3 The examination and review by the EPA of the use by the Supplier of the Personal Data may include, but shall not be limited to a review of the existing internal compliance regime of the Supplier in relation to:
a) business processes and nature of interactions with customers;
b) existing audit procedures on business activities and financial reporting, and the governance of such procedures;
c) staff vetting, hiring and training procedures;
d) data access requests and the purpose/duration for which Personal Data is Processed/kept;
e) reporting of data breaches; and
f) the named director or senior person (or Data Protection Officer (if applicable to the Supplier)) within the organisation with responsibility for audit and business process rigour.

13.6.4 After each audit, the EPA may (but shall not be obliged to) provide a report to the Supplier detailing the extent of compliance with the provisions of this Agreement. The Supplier shall respond as required to the findings and recommendations of any EPA audit report and shall provide information requested by the EPA on the implementation by the Supplier of any required actions.

13.6.5 In the event that the audit process determines that the Supplier is non-compliant with the provisions of this Agreement, the EPA may, by notice in writing, deny further access to the EPA Data and the termination provisions in the Agreement may be, by notice in writing, invoked.

13.6.6 Without prejudice to the EPA's right of audit under this Clause, to the extent permitted under Data Protection Legislation, the Supplier may demonstrate its and, if applicable its Sub-processors', compliance with its obligations under this Agreement through its compliance with a certification scheme or code of conduct approved under Data Protection Legislation.

13.7 **DATA SUBJECT REQUESTS**

13.7.1 The Supplier shall co-operate with and assist the EPA, including but not limited to employing Appropriate Technical and Organisational Measures, in respect of the fulfilment of the EPA's obligations to respond to requests from a Data Subject exercising his/her rights under Data Protection Legislation.

13.7.2 The Supplier shall notify the EPA within twenty-four (24) hours if it receives:

a) a request from a Data Subject for access to that person's Personal Data;
b) any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of the Personal Data; or
c) any complaint or any claim for compensation arising from or relating to the Processing of the Personal Data.

13.7.3 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the EPA or as provided for in this Agreement, or as required by law, in which case the Supplier shall to the extent permitted by law inform the EPA of that legal requirement before the Supplier discloses the Personal Data to any Data Subject or third party.

13.7.4 The Supplier shall not respond to any request from a Data Subject except on the documented instructions of the EPA or Authorised Person or as required by law, in which case the Supplier shall to the extent permitted by law inform the EPA of that legal requirement before the Supplier responds to the request.

13.8 **DATA PROTECTION OFFICER**

13.8.1 The Supplier shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide the EPA with the contact details of such Data Protection Officer

13.9 **SECURITY**

13.9.1 The Supplier shall, in accordance with its requirements under Data Protection Legislation, implement Appropriate Technical and Organisational Measures and Security Features to safeguard the EPA Data (PD) from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage, and that, having regard to the state of technological development and the cost of implementing any measures (and the nature, scope, context and purposes of Processing, as well as the risk to Data Subjects),such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage and to the nature of the Personal Data to be protected.

13.9.2 The Supplier shall ensure that the EPA Data provided by the EPA can only be accessed by persons and systems that are authorised by the Supplier and necessary to meet the Business Purpose, and that all equipment used by the Supplier for the Processing of EPA Data shall be maintained by the Supplier in a physically secure environment.

13.9.3 The Supplier shall make a back-up copy of the EPA Data every week and record the copy on media from which the EPA Data can be reloaded in the event of any corruption or loss of the EPA Data.

13.10 **BREACH REPORTING**

13.10.1 The Supplier shall promptly inform the EPA if any EPA Data is copied, modified, lost or destroyed or becomes damaged, corrupted, or unusable, or if there is any accidental, unauthorised or unlawful disclosure of or access to the EPA Data. In such case, the Supplier will restore such EPA Data at its own expense, and will comply will all of its obligations under Data Protection Legislation in this regard.

13.10.2 The Supplier must inform the EPA of any Personal Data Breaches, or any complaint, notice or communication in relation to a Personal Data Breach, without undue delay, provide sufficient information and assist the EPA in ensuring compliance with its

obligations in relation to notification of Personal Data Breaches (including the obligation to notify Personal Data Breaches to the DPC within seventy two (72) hours), and communication of Personal Data Breaches to Data Subjects where the breach is likely to result in a risk to the rights of such Data Subjects. The Supplier shall co-operate with the EPA and take such reasonable commercial steps as are directed by EPA to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

13.10.3 In the event of a personal data breach or any data breach involving the services, the supplier shall not make any announcement to the media in respect of such breach without first consulting with the EPA.

13.11 **INTELLECTUAL PROPERTY RIGHTS**

13.11.1 The Supplier acknowledges that all Intellectual Property Rights in the EPA Data are and will remain the property of the EPA and the Data Subjects, as the case may be; and that the Supplier shall have no rights in or to the EPA Data other than the right to use it for the purposes set out in this Agreement.

13.11.2 To the extent that the Supplier may have any Intellectual Property Rights in respect of the EPA Data Processed pursuant to this Agreement, the Supplier assigns to the EPA, and shall assign to it, all such Intellectual Property Rights. The Supplier shall execute such confirmatory assignments as the EPA may require in this regard.

13.12 **RESTRICTED TRANSFERS**

13.12.1 A Restricted Transfer may not be made by the Supplier without the prior written consent of the EPA, and if such consent has been obtained, such Restricted Transfer may only be made where there are Appropriate Safeguards in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, binding corporate rules, or any other model clauses or transfer mechanism approved by the DPC).

13.12.2 Subject to Clause 13.12.3, in the event of any Restricted Transfer by the Supplier to a contracted Sub-processor, to any affiliate of the EPA or otherwise (“Data Importer") for which consent has been obtained, the Parties shall procure that (i) the EPA (where the Restricted Transfer is being made at the request of the EPA) or the Supplier acting as agent for and on behalf of the EPA (where the Restricted Transfer is being made at the request of the Supplier), and (ii) the Data Importer, shall enter into the Standard Contractual Clauses in respect of such Restricted Transfer. The Party who is entering into the Standard Contractual Clauses with a Data Importer shall comply with the guidance of any relevant regulatory authority on Restricted Transfers in particular with respect to the use of Standard Contractual Clauses and any additional measures required to be taken in the context of any such Restricted Transfers.

13.12.3 Clauses 13.12.1 or 13.12.2 shall not apply to a Restricted Transfer if other compliance steps (which may include, but shall not be limited to, obtaining explicit consents from Data Subjects) have been taken to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Legislation.

13.13 **SUB-PROCESSORS**

13.13.1 The Supplier shall not engage a sub-processor (including any third party, affiliate or contractor of the Supplier, but excluding Supplier employees) to Process Personal Data without the prior written consent of the EPA. In the case of general written authorisation given, the Supplier shall inform the EPA of any intended changes concerning the addition or replacement of other sub-processors, thereby giving the EPA the opportunity to revoke its consent in respect of such changes.

13.13.2 Where the Supplier is authorised pursuant to Clause 13.13.1 to engage a sub-processor in connection with the Processing of Personal Data pursuant to this Agreement (the "Sub-processor"), the Supplier must enter into a data processing contract with the Sub-processor (and provide the EPA with an executed copy of such contract on request) which:

a) places the same data protection obligations on the Sub-processor as the Supplier has in this Agreement (in particular, providing sufficient guarantees to implement Appropriate Technical and Organisational Measures in such a manner that the Processing will meet the requirements of Data Protection Legislation); and
b) terminates automatically on termination of this Agreement for any reason or on expiry of the Term.

13.13.3 With respect to each approved Sub-processor, the Supplier shall, before the Sub-processor first Processes EPA Data (PD), carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for EPA Data required by this Agreement.

13.13.4 The Supplier will remain fully liable to the EPA in respect of any failure by the Sub-processor to fulfil its data protection obligations in this regard.

13.14 **WARRANTIES**

13.14.1 The Supplier warrants, represents and undertakes to the EPA that:

a) the Supplier will Process the EPA Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including Data Protection Legislation);
b) the Supplier will maintain Appropriate Technical and Organisational Measures against the unauthorised or unlawful Processing of EPA Data (PD) and against the accidental loss or destruction of, or damage to, EPA Data (PD); and
c) the Supplier will discharge its obligations under this Agreement with all due skill, care and diligence.

13.14.2 The EPA does not warrant that the EPA Data:

a) is or are accurate, complete, reliable, secure, useful, fit for purpose or timely;
b) has or have been tested for use by the Supplier or any third party; or
c) will be suitable for or be capable of being used by the Supplier or any third party.

13.15 **INDEMNITIES**

13.15.1 The Supplier shall indemnify the EPA against all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the EPA arising out of or in connection with any breach by the Supplier of Clause 13 of this Agreement or the Processing of the EPA Data (PD) by the Supplier, its employees or agents in breach of this Agreement, contrary to the instructions of the EPA or in contravention of Data Protection Legislation (including but not limited to claims by Data Subjects relating to loss of control over Personal Data or limitation of rights, discrimination, financial loss, damage to reputation, loss of confidentiality of EPA Data and any other significant economic or social disadvantage).

13.15.2 The Supplier shall take out insurance sufficient to cover any payment that may be required under the indemnity contained in Clause 13.15.1 and produce the policy and receipt for premium paid, to the EPA on request.

13.15.3 This Clause 13.15 is intended to apply to the allocation of liability for losses relating to Data Protection Legislation as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary, except:

a) to the extent not permitted by applicable law (including Data Protection Legislation); and
b) that it does not affect the liability of either Party to any Data Subject.

13.16 **LIMITATION OF LIABILITY**

13.16.1 To the extent permitted by law, the EPA shall not under any circumstances be liable to the Supplier for any costs of the Supplier (other than the payment of Charges properly due) relating to this Clause 13.

13.16.2 Unless required to do so by the DPC or any other competent supervisory authority, the Supplier shall not make any payment or any offer of payment to any Data Subject in response to any complaint or any claim for compensation arising from or relating to the Processing of the EPA Data, without the prior written agreement of the EPA.

14 TERMINATION

14.1 A party ("Non-Defaulting Party") is entitled to terminate any Contract with immediate effect by serving written notice on the other party ("Defaulting Party") if the Defaulting Party:

a) materially defaults in or commits any material breach of any of its obligations under this Agreement and (where capable of remedy) fails to remedy such breach at the written request of the Non-Defaulting Party within 30 days of notification by the Non-Defaulting Party; or
b) suffers an Insolvency Event; or
c) a Force Majeure Event continues for a continuous period of 30 days.

14.2 The EPA is entitled to terminate this Agreement at any time and for any reason, without penalty, by serving not less than 30 days' written notice on the Supplier, in which event the EPA's sole liability is to pay any outstanding sums (if any) to the Supplier for the Services performed before the date of termination.

14.3 The EPA may also terminate this Agreement immediately by giving written notice to the Supplier if the Supplier undergoes a change of Control.

14.4 On termination or expiry of this Agreement for any reason the Supplier must:

a) immediately return to the EPA or arrange for immediate destruction of, as directed by the EPA, all material or documents belonging to the EPA or relating to the EPA (including any Deliverables, the EPA Materials and/or Confidential Information); and
b) reimburse the EPA on demand in respect of any and all amounts pre-paid by the EPA in respect of the Services not yet provided at the date of termination / expiry.

14.5 Termination or expiry of this Agreement for any reason will not affect the rights or liabilities accrued prior to termination or expiry, or any terms intended expressly or by implication to survive termination or expiry. For the avoidance of doubt the benefit of any indemnity given under this Agreement survives termination or expiry.

15 AUDIT

15.1 The Supplier must maintain, in accordance with Best Industry Practice, complete, accurate and up to date accounting books, records and supporting documentation in connection with this Agreement (“Records"). The Supplier must retain such Records for the duration of this Agreement and for a minimum period of two years thereafter, or such longer period as required by Applicable Laws.

15.2 The EPA (and its authorised representatives) have the right on reasonable notice during normal business hours, to inspect, audit and (where deemed necessary by the EPA) copy the Records and (subject to giving appropriate confidentiality undertakings) agreements to verify the accuracy of payments due and compliance with the Supplier's obligations under this Agreement at no charge to the EPA.

16 NOTICES

16.1 Any notice required or authorised to be given under the Agreement must be in writing and may be served:

a) by personal delivery;
b) by registered/special delivery post; or
c) by recognised international courier.

to the addresses given at the top of this Agreement.

16.2 A notice is deemed served:

a) in the case of a notice delivered personally, at the time of delivery; or
b) in the case of a notice sent by registered post, two business days after the day of posting.

17 DISPUTES

17.1 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.

17.2 A party may give the other notice of a dispute, including details of the claims made by the Party giving the notice.

17.3 Within ten (10) Business Days after notice of dispute has been given, senior representatives of each party shall meet and attempt to resolve the dispute. A senior representative means the chief executive or equivalent of the Supplier, or another senior executive nominated by him or her and a relevant senior representative of the EPA.

17.4 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.

17.5 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) 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 Chairman of the Chartered Institute of Arbitrators, Irish Branch to appoint a mediator.

17.6 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.

17.7 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.

17.8 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 Supplier shall comply fully with the requirements of the Agreement at all times.

18 ASSIGNMENT AND SUBCONTRACTING

18.1 Neither party will assign, novate, transfer or otherwise deal in its rights or obligations under this Agreement without the prior written consent of the other party, save that the EPA is entitled to assign, transfer and/or sub-license its rights and obligations under this Agreement to any part of the EPA or to a successor governmental authority, ministry, body or agency, howsoever described, of the EPA without the Supplier's consent.

18.2 The Supplier must not subcontract any of its obligations under this Agreement without the prior written consent of the EPA. The Supplier's appointment of a subcontractor with the consent of the EPA does not relieve the Supplier from any of its obligations under this Agreement and the Supplier is responsible for the acts and omissions of any such subcontractor howsoever arising.

19 FORCE MAJEURE

19.1 Neither party will be in breach of this Agreement nor liable for any delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from a Force Majeure Event as defined in this Clause.

19.2 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 19.3 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, but excluding industrial action of whatever nature or cause (strikes, lockouts and similar) by the Supplier's employees or personnel (or by a subcontractor or agent or the Supplier and/or that subcontractor or agents employees or personnel).

19.3 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:

19.3.1 the nature of the Force Majeure Event;

19.3.2 the anticipated delay in the performance of obligations;

19.3.3 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.

19.4 If the Force Majeure Event continues for 14 calendar days either Party may terminate at 14 days notice. In circumstances where the Supplier is the Affected Party, the EPA 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 Supplier in accordance with the terms and conditions of this Agreement.

20 WAIVER

20.1 Either party's rights under this Agreement are in addition to any rights or conditions implied under statute or common law. No waiver by a party of any breach of this Agreement by the other will be considered as a waiver of any subsequent breach or default and no other action by a party in respect of a breach will bind the other party to take the same action in respect of future breaches.

20.2 No forbearance delay or indulgence by either Party in enforcing this Agreement shall prejudice or restrict the rights of that Party nor shall any waiver of its rights operate as a waiver of any subsequent breach and no right, power or remedy conferred upon or reserved for either Party under this Agreement is exclusive of any other right, power or remedy available to that Party and each such right, power or remedy shall be cumulative.

21 SEVERABILITY

21.1 If any term or provision of this Agreement is held to be illegal, invalid or unenforceable by any judicial or other competent authority:

a) all other provisions of this Agreement will remain in full force and effect, and
b) if such invalid term or provision would be valid or enforceable if some part of the provision were deleted, the provision in question will apply with the minimum modifications necessary to make it valid and enforceable.

22 NON-EXCLUSIVITY

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

23 TUPE

23.1 During this Agreement the Supplier shall be an independent contractor and not an employee of the EPA. 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 Supplier are not and shall not hold themselves out to be (and shall not be held out by the Supplier as being) servants or agents of the EPA for any purposes whatsoever.

23.2 The Supplier shall co-operate with the EPA and/or any new supplier or outgoing supplier in ensuring the handover and continued operation of the Services during such handover. The Supplier shall perform the Services in accordance with the implementation plan (if any) which may be put in place by the EPA to facilitate the handover of the Services or any part thereof.

23.3 The Supplier 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 material breach of this Agreement. The Supplier shall indemnify, save harmless and keep the EPA, its agents, employees and officers indemnified from and against any and all liabilities whatsoever, including without limitation, wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments,

health contributions, levies, losses, claims, demands, actions, fines, penalties, interest, awards, (including legal expenses on an indemnity basis) awarded against or incurred or paid by the EPA arising from or in connection with any claims, demands, or proceedings made against the EPA under the TUPE Regulations by any Affected Employees or otherwise as a result of the Suppliers failure or incapacity to fulfil its obligation under the TUPE Regulations and/or under this Agreement. Affected Employees shall mean those employees in respect of whom the TUPE Regulations may be deemed to apply in connection with this Agreement.

23.4 Where any employee-related information has been provided by a former or incumbent service provider to the EPA for the purpose of compliance with obligations under the TUPE Regulations on the commencement of this Agreement, the EPA acts as a conduit only in providing such information to the Supplier and does not warrant the accuracy and/or completeness of the said information and bears no responsibility and no liability for any errors or omissions in relation to any such information.

23.5 If requested by the EPA, the Supplier shall promptly (and in any event no later than 30 days prior to termination of this Agreement) furnish such anonymised information relating to the terms and conditions of the employment, custom and practice and applicable policies/work practices of all persons providing the Services as may be required by the EPA ("Employment Information"). The Supplier agrees that the EPA 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. The Supplier shall provide updated Employment Information when reasonably requested by the EPA.

24 ENTIRE AGREEMENT

24.1 This Agreement contains the whole agreement between the Parties hereto relating to the transactions provided for in this Agreement and supersedes all previous agreements (if any) between such Parties in respect of such matters and each of the Parties to this Agreement acknowledges that in agreeing to enter into this Agreement it has not relied on any representations or warranties except for those expressly set out in this Agreement.

25 COUNTERPARTS

25.1 This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all counterparts together shall constitute one and the same instrument

26 JURISDICTION

This Agreement and all non-contractual obligations arising from or connected with them are governed by and construed in accordance with, and all disputes between the Parties arising out of or in any way relating to this Agreement or any disputes between the Parties in any way connected with the subject matter of this Agreement (whether contractual or non-contractual) are governed by, the laws of Ireland. subject to Clause 17 each of the Parties to this Agreement hereby submits to the exclusive jurisdiction of the Irish Courts. Nothing contained in this clause limits the right of the EPA to bring enforcement proceedings in another jurisdiction on foot of an Irish order or to seek interim, protective or provisional relief in the courts of another jurisdiction.

This Agreement has been entered into on the date stated at the beginning of it:

Signed for and on behalf of ENVIRONMENTAL PROTECTION AGENCY:

.....(Signature)

.....(Name)

.....(Job Role)

.....(Date)

Signed for and on behalf of [INSERT SUPPLIER FULL COMPANY NAME]:

.....(Signature)

.....(Name)

.....(Job Role)

.....(Date)

SCHEDULE 1 (Details of Services to be provided)

Populate this section with the following information which can be found in the original Request for Tender document & the Successful Tenders responses.

[Specification]

[Description]

[Supplier Personnel]

SCHEDULE 2 (CHARGES)

Populate this section with details of the proposed charges as detailed in the Tenders response document.