FOR INFORMATION PURPOSES ONLY.

NOT FOR COMPLETION UNTIL CONTRACT CONCLUSION STAGE.

CONTRACT TERMS AND CONDITIONS

SERVICES

Cork Education & Training Board

and

Insert successful Tenderer's full legal name - to be completed on signing

AGREEMENT

Relating to the provision of Services pursuant to

The Provision of a backup Solution for CETB Microsoft Office 365 tenant including Microsoft Entra ID Configuration

IMPORTANT NOTE:

The following terms are provided as an indication of the intended format for the Contract to be signed with the successful tenderer in accordance with the terms of the Competition. Tenderers are not requested to sign these terms as part of their tender submission but should review them carefully.

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THIS AGREEMENT IS MADE ON THE [insert date: e.g. 1st DAY OF [MONTH] 20[year] BETWEEN

Cork Education & Training Board, of [address] ("the Contracting Authority");

and

Insert successful Tenderer's full legal name - to be completed on signing, of [address] ("the Contractor")

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

WHEREAS:

A. By Call for Tenders advertised on the Irish government website www.etenders.gov.ie on [insert date of issue of CFT] ("the CFT"), the Contracting Authority invited tenders from economic operators ("Tenderers") for the provision of the services described in Appendix 2 to the CFT (the "Services"). References to the CFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie prior to the closing date of [insert tender closing date] (the "CFT Clarifications"). The CFT (including the CFT Clarifications) is hereby incorporated by reference into this Agreement.

B. The Contractor submitted a response to the CFT dated [insert date of Tender] ("the Tender"). References to the Tender shall include any clarifications issued by the Contractor in writing to the Contracting Authority (the "Tender Clarifications"). The Tender (including the Tender Clarifications) is hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of, and to the extent of, conflict of wording, the Agreement shall be construed in the following order of priority:

    i. This Agreement and Schedules A to D attached hereto;

    ii. The CFT;

    iii. The Tender.

2. The Contractor agrees to provide the Services described in Schedule B ("the Services") to the Contracting Authority in accordance with this Agreement ("Agreement"). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the CFT and the Tender ("the Specification").

3. Subject to the terms and conditions of this Agreement, the Contracting Authority 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 Contracting Authority'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").

Delete and replace with "Not Used" if not applicable:

The Contracting Authority reserves the right to extend the Term for a period or periods of up to [Insert Number] months with a maximum of [Insert Number] such extensions permitted subject to its obligations at law

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

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

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

9. 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.

10. 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.

SIGNED for and on behalf of the Contracting Authority	
_____	_____
(being a duly authorised officer)	Witness
SIGNED for and on behalf of the Contractor	
_____	_____
	Witness

Schedule A: Terms and Conditions

1 CONTRACTOR'S OBLIGATIONS

A. 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.

B. In consideration of the payment of the Charges and subject to Clause 3 the Contractor shall:

1. provide the Services in accordance with the Specification, the CFT, the Contracting Authority's directions and the terms of this Agreement;

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

3. comply with all local security and health and safety arrangements as notified to it by the Contracting Authority;

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; and

5. comply with any additional conditions under Clause 25 hereof.

C. 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 Tender 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 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to Clause 14, the Contractor shall notify the Contracting Authority as soon as possible of any changes to the name, contact details and legal representatives of its subcontractors.

D. Without prejudice to Clause 1C, where the Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any subcontractor, the Contracting Authority 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 or any of the circumstances set forth in Regulation 73 of the Regulations 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.

E. During this Agreement, the Contractor shall be an independent contractor and not the employee of the Contracting Authority. 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 Contracting Authority for any purposes whatsoever.

F. The Contracting Authority acknowledges that the Contractor may from time to time be dependent on the Contracting Authority to facilitate the Contractor in the carrying out of its duties under this Agreement. The Contracting Authority agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with Clause 10.

G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Contracting Authority to the Office of Government Procurement ("OGP") and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.

H. 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 Contracting Authority indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Contracting Authority under the TUPE Regulations by any Affected Employees. Affected Employees shall mean those employees in respect of whom the TUPE Regulations may be deemed to apply in connection with this Agreement.

I. Without prejudice to Clause 5A, the Contractor shall indemnify and keep indemnified the Contracting Authority and its agents and other State Authorities or Public Bodies and their agents to any claims by any persons under the TUPE Regulations or other social, labour or environmental law (EU or international including under Schedule 7 of the Regulations) for which the Contractor or its subcontractors are responsible and the Contractor shall procure that any subcontractor, in turn, shall include a provision having the same effect in any subcontract which it might award.

2 KEY PERSONNEL

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Tender ("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 Contracting Authority. 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 Contracting Authority in writing of the inability of any Key Personnel (subject to the consent in writing of the Contracting Authority which consent shall not be unreasonably delayed [or withheld]) and replace that person with a person of not less than equivalent experience and expertise ("Replacement Personnel"). The Contractor shall provide to the Contracting Authority such details as the Contracting Authority may reasonably require in writing regarding any Replacement Personnel. The Contracting Authority shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3 PAYMENT

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

B. Discharge of the Charges is subject to:

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 10A from time to time;

2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Contracting Authority from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;

3. Invoices being submitted to the Contracting Authority's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Contracting Authority's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Contracting Authority or upon such deemed acceptance the invoice shall be payable by the Contracting Authority. Payment is subject to any rights reserved by the Contracting Authority under any other provision of this Agreement; and

4. The Contracting Authority being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements.

C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Authority in respect of any breach of this Agreement), the Contracting Authority may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Contracting Authority. 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.

E. 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.

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

G. The Client (like all Irish Public Bodies) no longer sends cheques to businesses in Ireland. To receive payment for your supply to the Client the business bank details must be submitted to [insert relevant email address e.g. accountspayable@xxxx.ie]

4 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

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

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;
2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
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. 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;
5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” dated [insert date], which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
7. it owns, has obtained or is able to obtain and maintains and retains, 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 Contracting Authority to obtain the benefit of the Services for its business purposes;

8. Delete and replace with “Not Used” if not applicable:

   it has inspected the Contracting Authority’s premises, lands and facilities before submitting its Tender 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;

9. it retains and shall maintain for the Term insurances for the nature and amount specified in the CFT. The Contractor undertakes to advise the Contracting Authority forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Contracting Authority with regard to compliance with this Clause 4A(9); and

10. the Contracting Authority shall be under no obligation to purchase any minimum number or value of Services.

B. The Contractor undertakes to notify the Contracting Authority forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at Clause 4A and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of this Agreement.

5 REMEDIES

A. The Contractor shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which the Contracting Authority may suffer due to and arising 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 5A shall survive termination of this Agreement for any reason.

B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor’s indemnity under Clause 6G, 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.

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

D. 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.

E. Delete and replace with “Not Used” if not applicable:

   Save in respect of fraud, personal injury or death or in respect of the Contractor’s indemnity under Clause 6G (for which no limit applies), the limit of the Contractor’s aggregate liability to the Contracting Authority under this Agreement whatsoever and

howsoever arising shall not under any circumstances exceed [insert amount – e.g. [number] per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement] regardless of the number of claims.

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

[Insert] ("the Retention Amount") which Retention Amount shall not at any given time exceed [number] per cent of the Charges. In such event the Contracting Authority 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 Contracting Authority or resolution of outstanding queries. The Contracting Authority shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this Clause 5F shall be without prejudice to and not be in substitution for any remedy of the Contracting Authority under this Agreement.

G. Select either G or H and replace with "Not Used" if not applicable:

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 Contracting Authority 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 Contracting Authority.

H. Select either G or H and replace with "Not Used" if not applicable:

Without prejudice to any general right to damages under this Agreement where the Contractor does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Contracting Authority may, at its discretion, deduct [insert number] per cent per week, or part thereof, for each week of late delivery of the value of the entire relevant invoice or order as liquidated damages up to a maximum amount of [insert number] per cent of the Charges (or invoice or order) price for the relevant Services (the "Liquidated Damages Threshold").

Where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Contracting Authority shall be entitled to:

1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and

2. without prejudice to Sub-Clause (1), the Contracting Authority shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor

6 INTELLECTUAL PROPERTY

A. Intellectual Property Rights ("IPR") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and

copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

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

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

D. The Contracting Authority grants to the Contractor a royalty-free non-exclusive licence to use the Contracting Authority's Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this Clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.

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

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

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

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

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

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

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

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

H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Contracting Authority all the Materials prepared up to the date of termination. The provisions of this Clause 6 will survive the expiration or termination of this Agreement for any reason.

7 CONFIDENTIALITY

A. 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:-

1. its professional advisers subject to the provisions of this Clause 7; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this Clause 7; or
4. in the case of the Contracting Authority by request of any person or body or authority whose request the Contracting Authority or persons associated with the Contracting Authority (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

B. The Contractor undertakes to comply with all reasonable directions of the Contracting Authority with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 7 to the CFT ("the Confidentiality Agreement").

The obligations in this Clause 7 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
2. which is or becomes public knowledge other than by breach of this clause; or
3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
4. is lawfully received by the disclosing Party from a third party (with full right to disclose).

C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Contracting Authority. Accordingly, the Contractor confirms that it will, if requested by the Contracting Authority, from time to time, submit full personal details of its personnel (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 Contracting Authority arising therefrom.

D. In circumstances where the Contracting Authority is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2018, then in the event of the Contracting Authority receiving a request for information related to this Agreement, the Contracting Authority shall consult with the Contractor in respect of the request. The Contractor shall 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 Contracting Authority will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation.

E. The Contractor undertakes to comply with all requirements of data protection law and such guidelines as may be issued by the Data Protection Commission from time to time including but not limited to (i) the Data Protection Acts 1988 to 2018; and (ii) all EU requirements arising (including but not limited to provisions relating to the processing of data, ensuring the security of data and restrictions on transfer of data abroad) and any legislation and regulations implementing same.

F. The parties will enter into a data processing agreement pursuant to the requirements under Article 28 of the GDPR.[1]

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

8 FORCE MAJEURE

A. 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 8B 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.

B. 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:

1. the nature of the Force Majeure Event;

[1] Procurement personnel should contact their ETB's Data Protection Officer for the appropriate and up to date documentation. (Delete this note prior to publication)

2. the anticipated delay in the performance of obligations;

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.

C. If the Force Majeure Event continues for [insert number] calendar days either Party may terminate at 14 days' notice.

D. In circumstances where the Contractor is the Affected Party, the Contracting Authority 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

A. This Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving [insert period of time months] written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving [insert period of time months] written notice to the Contracting Authority.

B. Either Party shall have the right (in addition to its rights under Clause 9A 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:

1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement or of applicable law and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;

2. 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;

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

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

C. The Contracting Authority 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 Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor, or if any of the circumstances set forth in Regulation 73 of the Regulations apply to the Contractor or any of its subcontractors or agents, or if the Contractor (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

D. 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.

E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Contracting Authority which is in its possession.

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

10 CONTRACT MANAGEMENT

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

B. The Contractor agrees to:

1. liaise with and keep the Contracting Authority's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
2. maintain such records and comply with such reporting arrangements and protocols as required by the Contracting Authority from time to time;
3. comply with all reasonable directions of the Contracting Authority; and
4. comply with the service levels and performance indicators set out in Schedule D.

C. The Contracting Authority or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this 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 Contracting Authority thereby arising. The cost of inspection shall be borne by the Contracting Authority.

11 DISPUTES

A. 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.

B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Contracting Authority contact] within the Contracting Authority, respectively.

C. If the Dispute has not been resolved within fifteen (15) Business Days (being days other than weekends or public holidays in Ireland) (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.

D. 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 CEDR Ireland to appoint a mediator.

E. 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.

F. 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.

G. 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, CHOICE OF JURISDICTION AND EXECUTION

A. 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.

B. 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.

C. References in this Agreement to statutory and EU Law provisions shall be deemed to include any amendments, re-enactments or replacements thereof.

13 NOTICES

A. 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.

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

1. if personally delivered, at the time of delivery;
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
3. if communicated by email, on the next calendar day following transmission.

14 ASSIGNMENT AND SUBCONTRACT

Subject to a Party's obligations at law, any assignment to a third party, subcontract 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.

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. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Contracting Authority may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

15 ENTIRE AGREEMENT

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

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

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

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

19 MEDIA

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 Contracting Authority.

20 CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

A. 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 Contracting Authority immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Contracting Authority's

directions in respect thereof. In the event of such notification, the Contracting Authority 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.

B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Contracting Authority, 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 Contracting Authority immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Contracting Authority's directions in respect thereof, to the satisfaction of the Contracting Authority. In the event of such disclosure, the Contracting Authority 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.

C. 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 20C 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 Contracting Authority 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

A. Any of the Contracting Authority's premises made available from time to time to the Contractor by the Contracting Authority 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.

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

22 EQUIPMENT

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

B. All Equipment brought onto the Contracting Authority's premises shall be at the Contractor's own risk and the Contracting Authority 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 Contracting Authority's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.

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

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

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

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

E. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Contracting Authority's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Contracting Authority'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

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

24 CHANGE CONTROL PROCEDURE

A. At any time during the Term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.

B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Contracting Authority proposes the change.

C. 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").

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

E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and its Tender for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.

F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.

G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.

H. The Contractor and the Contracting Authority will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Contracting Authority's request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

25 ADDITIONAL CONDITION(S)

A. 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 all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation"), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland.

"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;

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

C. 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.

D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-
(1) process that Personal Data only on the written instructions of the Client;

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

(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;

E. 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).

F. 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.

G. 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.

H. 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.

I. The Contractor shall permit the Client, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.

J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.

K. 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.

L. The Contractor shall:-
(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;

(2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] 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

(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.

M. (IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)
The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

(OR IF USING A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

the Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 25 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

N. Save for clauses 25B, 25C, 25D(4) and 25E, all the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.

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

26 ADDITIONAL CONDITION(S)

A. Delete and replace with “Not Used” if not applicable:

[This is a free text area to allow the Contracting Authority to include any additional conditions to the Contract, for example a price review clause. Such additional conditions can be set out here by the Contracting Authority]

Schedule B: Services: The Specification

[Insert when completing contract]

[Note: check if “Specification” will be different from the “Tender”]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels / Service Level Agreement

[Insert at CFT stage, if applicable, or when completing contract]

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