



**Fáilte
Ireland**

An tÚdarás Náisiúnta
Forbartha Turasóireachta
National Tourism
Development Authority

Supply of Services Contract



Fáilte Ireland

and

Company Name

**Agreement for the Supply of
Services**

for

Tender Name

Tender Reference

Guidance Notes

This is Fáilte Ireland's single standard terms and conditions document for the supply of services.

Completion of Agreement:

The schedule section of the document will be completed by Fáilte Ireland, and a copy will be sent to the Contractor (in soft copy format) for review and signing.

The Contractor should return a copy of this signed document to the Fáilte Ireland nominee who issued the document. On receipt, Fáilte Ireland will countersign copies and return a copy to the Contractor.

Queries:

Any queries in relation to the standard terms and conditions should be addressed to the Procurement Unit of Fáilte Ireland - procurement@failteireland.ie.

Further to the acknowledgement and acceptance provided by the Contractor in the Tender Documentation, the Contractor may not amend this Agreement nor any of the Schedules hereto. Fáilte Ireland will not enter into negotiations with the Contractor in respect of this Agreement.

BETWEEN:

- (1) National Tourism Development Authority (also known as **Fáilte Ireland**), a statutory body established by the National Tourism Development Authority Act, 2003 whose principal place of business is at 88-95 Amiens Street, Dublin 1 (the "**Client**"); and
- (2) **[Insert successful Tenderer's full name]** whose principal place of business is at **[address]** (the "**Contractor**")

(together the "**Parties**").

BACKGROUND:

- A. By Request for Tender dated **[insert date of ITT]** the Client invited tenders for the provision of services (the "**ITT**") (which document is attached hereto in Schedule E). References to the ITT shall include any clarification issued by the Client and same are attached hereto in Schedule E.
- B. The Contractor submitted a response dated **[Date of Tender]** to the ITT which is attached hereto in Schedule F (the "**Submission**"). References to the Submission shall include any clarifications issued by the Contractor and same are attached hereto in Schedule F.

IT IS HEREBY AGREED AS FOLLOWS:

1. The Contractor agrees to provide the Services described in Schedule B (the "**Services**") on a non-exclusive basis in accordance with the terms of this Agreement ("**Agreement**") to the Client. Schedule B details the nature, quality, time of delivery, key personnel and specifications of the Services in accordance with the ITT and the Submission (the "**Specification**").
2. The Client agrees to pay the Prices to the Contractor as stipulated in Schedule B (the "**Prices**"). The Prices are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice. For the purposes of this Agreement, the Client's Contact is **NAME**, name@failteireland.ie; and the Contractor's Contact is **[Contractor contact name & email]**.
3. The Parties agree that no Services are to be performed unless a purchase order is produced by the Client and issued to the Contractor (the "**Purchase Order**"). Nothing herein shall oblige the Client to issue any Purchase Order or order any particular Services from the Contractor.
4. This Agreement is governed by the terms and conditions as set out in Schedule A and consists of the following documents, and in the case of a conflict of wording, in the following order of priority:
 - i. **this Agreement and Schedules A to D attached hereto;**
 - ii. the ITT (Schedule E);
 - iii. the Submission (Schedule F).
5. This Agreement shall take effect on the date specified in schedule B (the "**Effective Date**") and shall expire on the date specified in Schedule B (the "**Expiry Date**") unless it is otherwise terminated in accordance with the provision of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (the "**Term**").

The Client reserves the right to extend the Term for a period or periods as specified in Schedule B ("**Additional Period**").

Signed by authorised signatory
For and on behalf of
THE NATIONAL TOURISM DEVELOPMENT AUTHORITY

Authorised Signatory

Position

Date

Signed by authorised signatory
For and on behalf of
CONTRACTOR:

Authorised Signatory

Position

Date

Schedule A

Terms And Conditions

1. CLIENT'S OBLIGATIONS

- 1.1 The Client is the Data Controller and determines the purposes for which Relevant Data are or will be processed, and the manner in which they are or will be processed. **The Contractor is the Data Processor for the purposes of this Agreement.**
- 1.2 The Data Controller agrees and confirms that:
- 1.2.1 it has taken measures concerning the Relevant Data to ensure compliance with its personal data security and other obligations prescribed by Applicable Data Protection Law for data controllers;
- 1.2.2 it has taken measures to establish a procedure for the exercise of the rights of individuals whose Relevant Data was collected;
- 1.2.3 it only processes Relevant Data that have been lawfully and validly collected and that such data will be relevant and proportionate to respective uses;
- 1.2.4 after assessment of the requirements of Applicable Data Protection Law, the security and confidentiality measures implemented for the Relevant Data are reasonably suitable for protection of the Relevant Data against any accidental or unlawful destruction, accidental loss, alteration, unauthorised or unlawful disclosure or access, in particular when processing involves data transmission over a network, and against any other forms of unlawful or unauthorised processing; and
- 1.2.5 it will take reasonable steps to ensure compliance with the provisions of this Agreement by its personnel and by any person accessing or using Relevant Data on its behalf.

2. CONTRACTOR'S OBLIGATIONS

- 2.1 The Contractor undertakes to perform its obligations arising from this Agreement 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 employees, agents and subcontractors ("Personnel"). The Contractor shall require its Personnel to exercise due care, skill and diligence in the provision of Services and generally in the carrying out of obligations allocated by the Contractor to its Personnel under this Agreement.
- 2.2 In consideration of payment of the Prices and subject to Clause 6 the Contractor shall:
- 2.2.1 provide the Services according to the Specification and in accordance with the Client's directions and the terms of this Agreement;
- 2.2.2 comply with and implement any policies and/or guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
- 2.2.3 to the extent applicable, comply with all local security arrangements as notified to it by the Client;
- 2.2.4 provide the Services in accordance with good industry practice and comply with all rules, regulations, codes of conduct and applicable laws with particular, but not exclusive regard to the requirements of the Safety Health and Welfare at Work Act 2005, child protection legislation, the Data Protection Acts 1988 to 2018, the Freedom of Information Act 2014 and any applicable employment legislation. The Contractor will 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;
- 2.2.5 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 "Regulations") and failure to so comply shall constitute a material breach of this Agreement; and

- 2.2.6 comply with the Special Conditions (if any) as set out in Schedule C ("**Special Conditions**").
- 2.3 The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the delivery of the Services and shall assume all the duties, responsibilities and obligations associated with the position of the prime contractor. The Contractor shall not sub-contract any aspect of the provision of Services to any third party without the prior written consent of the Client. In the event that the Client does consent to a sub-contractor, the Contractor shall remain fully responsible for the acts and omissions of that sub-contractor as if they were its own. The Contractor as prime contractor under the Submission, hereby assumes liability for its subcontractors and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Agreement to the extent that it or they are retained by the Contractor.
- 2.4 During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers and Personnel of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) officers and Personnel of the Client for any purposes whatsoever.
- 2.5 The Contractor shall indemnify, hold harmless and keep the Client 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 Client (whether under the Regulations or otherwise) by any Affected Employees. "**Affected Employees**" shall mean those employees in respect of whom the Regulations may be deemed to apply in connection with this Agreement.
- 2.6 The Contractor shall indemnify the Client and/or any subsequent contractor engaged to provide the same or similar services to the Services referred to in this Agreement ("Subsequent Contractor") and keep those parties indemnified against all costs, claims, losses, liabilities and expenses (including legal costs) which either of those parties may incur arising from any of the following:
- 2.6.1 claims (including but not limited to a claim for income tax, PRSI, employment and training levies, income tax and health contribution levies and any interest, duties and/or penalties thereon) which may be made against the Client / Subsequent Contractor by the Revenue Commissioners or the Department of Social Protection or other lawful authority for sums due to such authorities for the performance of the Services by the Contractor and the Personnel;
- 2.6.2 any act, omission, breach or default by the Contractor of any of its obligations in relation to any of the Personnel (including but not limited to any liability arising out of any non-payment of monies, wages, salaries, commission, subsistence allowance, sick pay, holiday pay and pension contributions or any act, omission, breach or default by the Contractor relating to the injury, illness, treatment, termination or dismissal of any Personnel);
- 2.6.3 any claim by or on behalf of any of the Personnel or any other persons engaged by the Contractor including any employee / purported employee which relates to their employment / engagement (or the termination thereof) by the Contractor including, but not limited to, claims for unfair dismissal, wrongful dismissal, notice, redundancy or any claims for any form of termination payment;
- 2.6.4 any liability arising or which may arise as a result of any failure on the part of the Contractor to comply with its obligations under the Regulations.
- 2.7 The Contractor shall provide the indemnities in the form outlined above to the Client or to the Subsequent Contractor engaged by the Client.

3. DELIVERY OF THE SERVICES

- 3.1 The Contractor shall deliver the Services at the time(s), on the date(s) and to the location(s) specified in the Specification, or otherwise agreed in writing between the Parties.
- 3.2 The Parties acknowledge that time shall be of the essence in relation to the performance of the Services.
- 3.3 The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing.

4. PERSONNEL

- 4.1 The Client reserves the right to admit to, or remove from, any premises occupied by or on behalf of it, any Personnel of the Contractor whose admission or presence would, in the reasonable opinion of the Client, be undesirable. The reasonable exclusion of any such individual from the premises of the Client under the provisions of this clause shall not relieve the Contractor from the performance of its obligations under the Agreement.
- 4.2 The Contractor shall use its best endeavours to ensure that the Personnel are made aware of and comply with the relevant terms and conditions of this Agreement and all policies, rules, regulations and/or codes of conduct operated by or affecting the Client from time to time. The Contractor shall be liable, for all damage caused to persons or property, or any other losses caused by the default of the Personnel.
- 4.3 The Contractor shall be solely responsible for: (i) paying all salaries, wages, benefits and other compensation that the Personnel may be entitled to receive in connection with the performance of the Services, (ii) paying and reimbursing all Personnel for all related travel, housing and other expenses which such Personnel may be entitled to receive in connection with performing the Services, and (iii) withholding and paying applicable Irish and foreign payroll taxes and contributions, including but not limited to, Irish and foreign payroll taxes and contributions, including, but not limited to, Irish state and local income taxes, unemployment tax, worker's compensation insurance and disability tax, social insurance, pension contributions, or any other similar obligation.

5. KEY PERSONNEL

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

6. PAYMENT

- 6.1 The Client shall pay the Contractor such Prices as are set out in the relevant invoice (which shall be deemed to include all applicable taxes (other than VAT, which shall be separately shown), duties and levies and all packing, carriage, freight, shipping, insurance and delivery costs) and in accordance with any payment terms therein. No payments shall be made unless the Contractor quotes a valid Purchase Order number on each invoice.
- 6.2 A pricing matrix shall be set out in Schedule B which shall apply for the Term and no increase in any price may be made for any reason without the Client's consent.
- 6.3 Discharge of the Prices by the Client is subject to:

- 6.3.1 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 13.1 from time to time;
- 6.3.2 The provision by the contractor of a valid invoice (indicating the relevant Purchase Order number) following receipt of the Client's Purchase Order and all relevant supporting documentation as may be required by the Client from time to time being submitted to the Client by email to accountspayable@failteireland.ie and noting that full mailing address for any further communication as may be required is Accounts Payable, Fáilte Ireland, Unit 5, Calbro Court, Tuam Road, Galway H91 YKH4
- 6.3.3 the Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at www.finance.gov.ie. The Contractor may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by the Client.
- 6.4 Provided there is no dispute in relation to the provision of the relevant Services, payment will be made within thirty (30) days of receipt of a correct and appropriately vouched invoice. In the event of any such dispute, payment may be withheld in respect of any disputed amount until the dispute is resolved.
- 6.5 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 repaired or replaced as the case may be) must be raised by the Client within 30 calendar days of receipt of the invoice. In circumstances where no queries are raised within the said 30-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under Special Condition 2. In the event of any such dispute payment may be withheld in respect of any disputed amount until the dispute is resolved; and
- 6.6 The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and 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.
- 6.7 If, following an audit of the Contractor's books and records under Clause 13.4 the Client has a query relating to an invoice and / or the Services for any billing period the Client hereby reserves the right to notify the Contractor of such query, notwithstanding that the time periods set out in Clause 6.5 may already have passed.
- 6.8 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 Client in respect of any breach of this Agreement), the Parties 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 Client. Any overpayment by either Party, whether of the Prices 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.
- 6.9 The Contractor shall not be reimbursed for any costs or expenses incurred by it or its Personnel in the course of providing the Services unless these are agreed in advance and in writing by the Client or expressly provided for in the Purchase Order. Any permitted expenses which are claimed must be properly vouched and supporting documentation shall be provided as a condition of payment.
- 6.10 The Client shall pay the Contractor any applicable Value Added Tax (VAT) at the rate and in the manner prescribed by law from time to time, provided VAT is shown separately on the relevant invoice. The Contractor shall, upon request, provide such information, as may be reasonably required by the Client regarding the amount of VAT charged on invoices submitted.

- 6.11 Where professional Services are provided to Fáilte Ireland the payment for such services are liable to Professional Services Withholding Tax (PSWT) as defined in Part 18 Chapter One of the Taxes Consolidation Act 1997. The deduction of PSWT tax will be at the standard rate of income tax applicable on the Invoice payment date, as set by Revenue. An Electronic Payment Notification will be issued as the receipt for the deduction. The PSWT deducted can be offset / re-claimed from the Irish Revenue. This applies to both Irish Resident suppliers and Non-Resident suppliers.

7. WARRANTIES, CONFIRMATION AND UNDERTAKINGS

- 7.1 The Contractor warrants, confirms and undertakes that:
- 7.1.1 it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
 - 7.1.2 it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 - 7.1.3 it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, child protection, social and environmental protection and is capable of assuming and fulfilling those obligations;
 - 7.1.4 it has acquainted itself with and shall comply with legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
 - 7.1.5 it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 - 7.1.6 where applicable, the status of the Contractor, as declared in the "**Declaration as to Personal Circumstances of Tenderer**" in the Submission, which confirms that none of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329/2006) apply to the Contractor, remains unchanged;
 - 7.1.7 it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in Clause 9 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes; and
 - 7.1.8 it shall take out and maintain in force during the Term (and for 6 years thereafter in respect of professional indemnity insurance) adequate policies of insurance covering all usual risks which may arise pursuant to this Agreement and upon request shall produce to the Client copies of relevant policies, evidence that premia have been paid and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this Clause 7.1.8. The Contractor shall procure that the Employer's Liability insurance policy and the Public Liability insurance policy include an "Indemnity to Principals clause" in favour of the Client. Without prejudice to the foregoing, the Contractor shall take out and maintain the particular types and minimum levels of insurance set out in Schedule B; and
 - 7.1.9 if applicable, it shall ensure that a backup copy of all data and software shall be taken at the end of each week. In the event of a disaster, breakdown in or interruption to the provision of the Services, the Company shall reconstruct the data in accordance with the disaster recovery procedures set out in the Contractor's Data Recovery Plan.
- 7.2 The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at Clause 7.1 and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

8. INDEMNITY AND LIABILITY

- 8.1 The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, proceedings, demands, damages or expenses which the Client 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 care as outlined in Clause 2 or breach of this Agreement or of any warranty, or of any statutory duty by the Contractor or its Personnel. The terms of this Clause 8.1 shall survive termination of this Agreement for any reason.
- 8.2 Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, 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.
- 8.3 Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver the Services, the Client shall be entitled to recover from the Contractor any excess Prices which may be paid by the Client in connection with such services.
- 8.4 Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- 8.5 The Contractor's liability under or connection with this Agreement, whether in contract, tort, negligence, breach of statutory duty or otherwise (save in respect of personal injury or death, fraud, misrepresentation and infringement of intellectual property rights) shall be limited to the levels of insurance to be procured and maintained by the Contractor pursuant to Clause 7.1.8 above.

9. INTELLECTUAL PROPERTY

- 9.1 Intellectual Property Rights ("IPR") means all 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, design rights, 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.
- 9.2 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 the Contractor or the Client independently of this Agreement and any IPR in the Contractor's standard hardware and software products or modifications or updates to such products.
- 9.3 All IPR title and interest in all reports, data manuals and/or other materials (including without limitation all and any audio- or audio-visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams or software) produced for the purposes of this Agreement (collectively the "**Materials**") (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms same. For the avoidance of doubt, the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials appointing the Client as its Attorney to sign any document necessary to effect the assignment of IPR to the Client (including by way of present assignment of future copyright) to the extent that any such IPR title or interest may be deemed by law to reside in the Materials to the Client absolutely.
- 9.4 The Client grants to the Contractor a royalty-free non-exclusive licence to use such of the Client'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 9, all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- 9.5 The Contractor shall waive or produce a waiver of any moral rights subsisting in any Materials produced under or in performance of this Agreement.

- 9.6 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 Client hereto provided however that in doing so the Contractor is not in breach of any of the provisions of this Clause 9 and no such services shall be provided to a competitor of the Client without the Client providing its prior written consent to the provision of such services.
- 9.7 The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any liability, loss, damages, claims, costs or expenses which arise by reason of any breach of third party IPRs in so far as any such rights are used for the purposes of this Agreement.
- 9.8 At the option of the Client for and in respect of any such breach, the Contractor shall at its expense and option:
- 9.8.1 procure the necessary rights for the Client to continue using the IPR; or
 - 9.8.2 replace the relevant deliverable with a non-infringing equivalent; or
 - 9.8.3 replace the relevant deliverable to make it non-infringing while giving equivalent performance.
- 9.9 Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. As an exception to its obligations under this Clause 9.9 the Contractor may retain one copy of the Materials, in paper form, in the Contractor's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement. The provisions of this Clause 9 will survive the expiration or termination of this Agreement for any reason.

10. CONFIDENTIALITY

- 10.1 The Contractor hereby agrees and undertakes that at any time during the Term or after termination or expiry of the Agreement, it shall not disclose or allow to be disclosed any Confidential Information to any third party whatsoever without the prior written consent of the Client, except to:
- 10.1.1 its professional advisors subject to the provisions of this Clause 10; or
 - 10.1.2 as may be required by law; or
 - 10.1.3 as may be necessary to give effect to the terms of this Agreement subject to the provisions of this Clause 10; or
 - 10.1.4 in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

For the purposes of this Clause 10 "Confidential Information" shall mean all confidential and proprietary information, including without limitation, inventions, trade secrets, specifications, designs, data, databases, protocols, know-how and any improvements, modifications, derivations, or compilations thereto and other proprietary information relating to the processes, services and business of the Client and the term Confidential Information also includes: (i) any notes, analyses, compilations, memoranda or other documents prepared by the Contractor which contain, reflect or are based upon, in whole or in part, any confidential information furnished by or on behalf of the Client; and (ii) information transferred orally, visually, electronically or by any other means.

- 10.2 The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information (which may include compliance with operational protocols and/or signing of a non-disclosure agreement). The obligations in this Clause 10 will not apply to any Confidential Information:

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

- 10.3 The Contractor shall not use or attempt to use any Confidential Information for any purpose other than that for which it was generated or disclosed or in any manner which may or may be likely to injure or cause loss (either directly or indirectly) to the Client or to assist any third party to gain any commercial advantage over or knowledge in relation to the Client.
- 10.4 The Contractor shall use its best endeavours to ensure that Confidential Information is protected against theft, loss or unauthorised access by third parties and shall only be disclosed to Personnel who need to know such information in order that the Services may be provided.
- 10.5 The Contractor shall ensure that its Personnel and any Key Personnel are fully aware of and comply with these confidentiality provisions.
- 10.6 The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly, the Contractor confirms that it will, from time to time, during the currency of this Agreement as may be requested by the Client submit such personal details (including those of Personnel) who are assigned to provide the Services (or any part thereof) as are reasonably necessary under this Agreement for the purposes of the Client complying with its legal obligations in this regard. The Contractor further acknowledges that checks may be carried out in relation to all Personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.
- 10.7 In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 (the "FOI Act"), then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor acknowledges that it may be necessary for the Client to release such records to third parties to comply with requests for records made pursuant to the FOI Act. The Contractor shall identify any information that is not to be disclosed on grounds of commercial sensitivity and shall state the reasons for this sensitivity. The Client will consult the Contractor about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner, and ultimately, the Courts.
- 10.8 The terms of this Clause 10 shall survive expiry, completion or termination for whatever reason of this Agreement.

11. FORCE MAJEURE

- 11.1 A "Force Majeure Event" means an event or circumstance or combination of events and/or circumstances not within reasonable control of the Affected Party (as defined in Clause 11.2 below) without the fault or negligence of the Affected Party 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, break-out of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargos, explosions, fires, floods, unusually severe weather conditions which would not reasonably have been anticipated, tempests, or failures of supply of electrical power, or public telecommunications equipment lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or subcontractor or agent) places of business.
- 11.2 In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "Affected Party") shall promptly notify the other Party in writing specifying:
- 11.2.1 the nature of the Force Majeure Event;

11.2.2. the anticipated delay in the performance of obligations;

11.2.3 the action proposed to minimise the impact of the Force Majeure Event;

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

11.3 If the Force Majeure Event continues for fourteen (14) calendar days, the Client may terminate this Agreement by giving notice in writing to the Contractor.

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

11.5 Unless otherwise instructed by the Client, the Contractor shall recommence performance as soon as possible after the Force Majeure Event has ceased.

12. TERMINATION

12.1 Subject to any earlier termination in accordance with the provisions herein, this Agreement shall be for the Term unless the Client, at its sole discretion, wishes to extend the Term by such additional period as is specified in Schedule B hereto, in which case it shall notify the Contractor of such additional period with specified notice period, prior to the expiry of the Term, and the Agreement shall then continue until the expiry of that additional period (again, subject to any earlier termination in accordance with this Agreement).

12.2 Notwithstanding the foregoing, the Client may at any time during the Term of this Agreement on giving the Contractor such notice as is set out in Schedule B, terminate this Agreement for any reason whatsoever without liability or compensation to the Contractor. In this event, it is expressly agreed that the Contractor shall be entitled to payment in respect of Services ordered prior to the date of termination only (provided they are subsequently delivered in accordance with the agreed terms) and the Contractor shall not have any other claim or demand for payment against the Client.

12.3 This Agreement may be terminated by the Client forthwith by notice in writing to the Contractor if the Contractor (or its Personnel) shall at any time:

12.3.1 commit any serious or persistent breach or non-observance of the terms or provisions of this Agreement which either cannot be remedied or, if capable of remedy, have not been remedied by the Contractor within such period as the Client may specify; or

12.3.2 be guilty of any fraud or serious misconduct or neglect in the discharge of his duties hereunder or be convicted of any criminal offence or commit any act of dishonesty; or

12.3.3 have a receiver, manager or examiner appointed over it or over any part of its undertaking or assets, or shall pass a resolution for winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction) or have a petition presented for its winding up or for the appointment of an examiner to it or shall enter into any composition or arrangement with its creditors or cease or threaten to cease to carry on its business.

12.4 Where applicable, the Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish Law by European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329/2006) apply to the Contractor.

12.5 Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any Purchaser Order nor any provision of this Agreement which is

expressly or by implication intended to come into or continue in force on or after such termination, including for the avoidance of doubt Clauses 2.5, 2.6, 7.1.8, 8, 9, 10, 12, 13.5, 23, 26 and 32 of this Agreement.

- 12.6 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 Client which is in its possession. As an exception to its obligations under this Clause 12.6 the Contractor may retain one copy of the confidential information and records in paper form in the Contractor's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement.
- 12.7 If this Agreement expires or is terminated for any reason, the Contractor shall co-operate fully with the Client or any Subsequent Contractor to ensure an orderly migration of the Services to the Client or at the Client's request to any Subsequent Contractor.
- 12.8 If requested, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client. The Contractor agrees to the Client releasing any such anonymised information to third party tenderers 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.
- 12.9 The Contractor agrees that between notice of termination of this Agreement being served by either party and the date of termination of this Agreement, the Contractor will not vary, purport or promise to vary the terms and conditions of employment of the Personnel assigned by the Contractor to this Agreement.

13. CONTRACT MANAGEMENT AND RIGHTS OF INSPECTION AND AUDIT

- 13.1 The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client, the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- 13.2 The Contractor agrees to:
 - 13.2.1 liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations, including delivery times;
 - 13.2.2 comply with the reporting arrangements and protocols required by the Client from time to time; and
 - 13.2.3 comply with all reasonable directions of the Client.
- 13.3 The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof and the premises of any subcontractor or agent) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.
- 13.4 The Client reserves the right to carry out an audit of all appropriate books and records of the Contractor relating to the performance of this Agreement at any time, as and when the Client determines this to be necessary.
- 13.5 The Contractor shall maintain accurate records at all times. In particular the Contractor shall retain all appropriate financial, statistical, administrative and all other relevant supporting papers and records in both hard and electronic form in relation to the performance of this Agreement and shall make all such records and papers available to the Client and its authorised representatives upon reasonable notice for the duration of this Agreement and for a period of seven (7) years following the date of this Agreement, or for such longer period as the Client may request.

- 13.6 The Client may conduct the audit contemplated by this Clause 13 either with its own internal resources or by utilising the services of a third-party auditing firm, in the Client's absolute discretion. The Client may copy, at its own expense, any record mentioned by this clause.
- 13.7 The Client reserves the right to meet with the Contractor's external auditors to discuss any issues that it may identify which could impact on the delivery of the Services contemplated in this Agreement to the Client.
- 13.8 The records referred to in Clause 13.4 hereof shall include, without limitation, such information, data, ledgers, bank statements, accounts, authorities, directions and instructions to the Contractor's auditors, accountants, banks and other servants or agents, and any other papers which may be reasonably necessary to enable the Client to exercise its right of audit to satisfy itself that the Contractor has complied with the terms of this Agreement.

14. DISPUTE PROCEDURES

- 14.1 Subject to Clause 32 and to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement, amicably.
- 14.2 In the event of any dispute between the Parties in relation to this Agreement, the Client's Contact and the Contractor's Contact referred to in Schedule B shall endeavour to resolve such dispute within fourteen (14) days of the matter being referred to them. If they are unable to resolve the dispute within this period the matter shall be referred to the Second Level Representatives of the Parties referred to in Schedule B, who shall endeavour to resolve it within a further 14 days from the date it was referred to them. In the event that they are unable to resolve the dispute within this period, the Parties may seek to resolve the dispute in the Irish Courts unless they agree to use some other dispute resolution procedure.

15. NOTICES

- 15.1 Any notice or other communication required to be given under this Agreement shall be in writing addressed to the relevant Party at the address set out in this Agreement for such party and may be sent by prepaid registered post, email or facsimile transmission. Any such notice or other communication will be deemed to have been duly served or given:
- 15.1.1 if posted by registered post at the expiration of forty-eight (48) hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered);
- 15.1.2 if personally delivered, at the time of delivery; or
- 15.1.3 if sent by email, on the first day following successful transmission.
- 15.2 If notice is not given or served during usual business hours on a day other than a Saturday or Sunday or a statutory or public holiday in Ireland it will be deemed to have been given or served on the next day which is not a Saturday or Sunday or a statutory or public holiday.

16. ASSIGNMENT

This Agreement shall be assignable in whole or in part by the Client but shall not be assignable by the Contractor.

17. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and undertaking of the Parties, and any and all previous agreements, arrangements and understandings (whether written or oral) between the Parties with regard to the subject matter of this Agreement. It is expressly agreed, without prejudice to the foregoing, that any standard terms or conditions of supply of the Contractor (including those which appear on any documents furnished by the Contractor in the course of providing the Services) shall not be applicable.

18. SEVERABILITY

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

19. WAIVER

The rights of the Client shall not be prejudiced or restricted by any indulgence or forbearance extended to the Contractor, and no waiver by the Client in respect of any breach will operate as a waiver in respect of any subsequent breach. No failure or delay by the Client in exercising any rights or remedy will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy by the Client prejudice its further exercise or the exercise of any other right or remedy by Client.

20. 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 Client.

21. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

21.1 The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise the Client forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.

21.2 Any registrable interest involving the Contractor (and any subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (subcontractor or agent as the case may be) and to comply with the Client's directions in respect thereof. 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.

21.3 The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this Clause 21.3 or the commission of any offence by the Contractor, any subcontractor, agent or employee under the Prevention of Corruption Acts 1889 to 2005 shall entitle the Client to terminate this Agreement forthwith 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.

22. ACCESS TO PREMISES

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

23. NON-SOLICITATION

For the Term and for a period of twelve (12) months thereafter the Contractor shall not employ or offer employment to any of the Client's Personnel without the Client's prior written consent.

24. CHANGE CONTROL

24.1 Both Parties agree that any request for changes to the scope of the Services will be processed in writing according to the following procedure (the "Change Control Procedure").

24.2 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.

24.3 The Change Control Procedures set out herein will apply to all changes irrespective of whether the Contractor or the Client proposes the change.

24.4 A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change,

the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").

- 24.5 All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- 24.6 The Parties must indicate their acceptance or rejection of the Change Control Request and/or Impact Assessment within a reasonable timeframe of its submission for review, subject to a maximum of twenty (20) calendar days or such other period as may be agreed between the Parties.
- 24.7 On approval of an Impact Assessment, this Agreement and/or the Schedules shall be updated and revised to the extent necessary.
- 24.8 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.
- 24.9 The Contractor and the Client 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 Client'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. **SUB-CONTRACT**
The Contractor shall not sub-contract any aspect of the provision of Services to any third party without the prior written consent of the Client.
26. **SUCCESSION**
This Agreement shall ensure for the benefit of and be binding upon the respective Parties hereto and their respective heirs, administrators, successors and permitted assigns.
27. **AMENDMENT**
This Agreement may only be amended by written agreement of those authorised representatives of the Parties who are specified in Schedule B.
28. **LIABILITY OF CLIENT**
The Client's aggregate liability to the Contractor under this Agreement shall not exceed the balance of any sums which remain unpaid under any Purchase Order. Liability is not limited or excluded where this is not permitted by law.
29. **DEDUCTIONS**
If any sum of money shall be due from the Contractor to the Client, the same may be deducted from any sum then due or which at any time thereafter may become due to the Contractor under this Agreement or any other agreement with the Client.
30. **ETHICS AND OBLIGATIONS**
The Parties agree at all times in performing their obligations under this Agreement to comply with the Ethics in Public Office Acts 1995 and 2001 and the Prevention of Corruption Acts 1889 to 2010.
31. **EXECUTION**
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.
32. **GOVERNING LAW AND CHOICE OF JURISDICTION**
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.

Schedule B

Services: The Specification and Particulars of the Contractor

Contractor	
Services	
Client's Reference	
Effective Date of Agreement	
Expiry Date of Agreement	
Term of Agreement	
Additional Period	
Notice Period	30/90 days
Key Performance Indicators for Managing the Agreement	Contract Performance KPIs <u>QUALITY</u> • Fit For Purpose • Team Management and Coordination • Continual Improvement/Innovation <u>SERVICES</u> • Responsiveness • Management Information • Communication • Support • Project Delivery • Provision Of Training <u>COST</u> • Contracted Rates • Third-Party Costs • Invoice Accuracy • Cost Reduction Initiatives • Added Value/Discounts <u>ENVIRONMENTAL, SOCIAL, GOVERNANCE (ESG)</u>

Commented [SJ1]: As per the BU KPIs

	• Environmental • Social • Governance								
Frequency of Operational Contract Management Meetings	Weekly/Monthly/Quarterly								
Client's Contact - name and contact details									
Contractor's Contact - name and contact details									
Second Level Representative of the Client for dispute resolutions									
Second Level Representative of the Contractor for dispute resolutions									
Client's Representatives who are Authorised to Amend this Agreement	Jean McKinney Manager, Procurement Jean.McKinney@failteireland.ie								
Contractor's Representatives who are Authorised to Amend this Agreement									
Insurance	<table border="1"> <thead> <tr> <th>Insurance</th><th>Minimum Indemnity limit</th></tr> </thead> <tbody> <tr> <td>Employer's Liability Insurance</td><td>€13,000,000</td></tr> <tr> <td>Public Liability Insurance</td><td>€6,500,000</td></tr> <tr> <td>Professional Indemnity Insurance</td><td> €1,300,000/ €6,500,000 As indicated in the ITT </td></tr> </tbody> </table>	Insurance	Minimum Indemnity limit	Employer's Liability Insurance	€13,000,000	Public Liability Insurance	€6,500,000	Professional Indemnity Insurance	€1,300,000/ €6,500,000 As indicated in the ITT
Insurance	Minimum Indemnity limit								
Employer's Liability Insurance	€13,000,000								
Public Liability Insurance	€6,500,000								
Professional Indemnity Insurance	€1,300,000/ €6,500,000 As indicated in the ITT								
Permitted Expenses	n/a								
Additional Terms and Conditions	Insert any additional terms and conditions (if any)								
Price Matrix (ex VAT)									

Schedule C Special Conditions

These conditions are in addition to those set out in Schedule A.

A provision in this Schedule shall apply ONLY IF marked as "applies". The clauses are divided between Section A, General clauses and Section B ICT Specific Clauses. If "DOES NOT APPLY" is selected for either section, then no clause in that section applies.

SECTION A: GENERAL CLAUSES (1-5):	
☐ APPLIES (SOME OR ALL MAY APPLY)	☐ DOES NOT APPLY (NO CLAUSE FROM 1-5 APPLIES)

1. TIME OF THE ESSENCE

1.1 Failure to deliver on time:

☐ APPLIES	☐ DOES NOT APPLY
---	--

If the Contractor fails to deliver the Services within the time promised or specified in the Specification, the Client may release itself from any obligation to accept and pay for the Services and/or terminate this Agreement without prejudice to any other rights and remedies of the Client.

1.2 Right to impose liquidated damages claims where delivery dates not complied with

☐ APPLIES	☐ DOES NOT APPLY
---	--

1.2.1 Without prejudice to any general right to damages under this Services Agreement, where the Contractor does not deliver the Services materially in accordance with this Services Agreement, the Client shall be entitled to be reimbursed all funding that has been paid to the Contractor in respect of the year in which the Services were not materially delivered ("Liquidated Damages Threshold").

1.2.2 In addition, the Client shall be entitled to:

1.2.3 claim any remedy available to it (whether under this Services Agreement or otherwise) for loss or damage incurred or suffered by it as a result of the Contractor's failure to deliver the Services; and

1.2.4 terminate the Services Agreement with immediate effect by giving notice in writing to the Contractor.

2. REMEDIES

2.1 Retention for cause

☐ APPLIES	☐ DOES NOT APPLY
---	--

If for any reason the Client is dissatisfied with the performance of the Contractor an appropriate sum to be agreed between the parties may be withheld from any payment otherwise due (the "Retention Amount"). If the parties cannot agree on the Retention Amount, the matter shall be resolved in accordance with the dispute regulation procedures in the Service Agreement. In any event, the Client shall identify the particular Services with which it is dissatisfied; payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding

queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this Clause 2.1. shall be without prejudice to and not be in substitution for any remedy of the Client under this Service Agreement.

3. CLIENT DATA

☒ APPLIES ☐	☐ DOES NOT APPLY
--	--

- 3.1 Nothing in this Agreement is intended to give the Contractor any IPR in, or other rights in respect of, Client Data.
- 3.2 The Contractor must not, without the Client's prior consent, use or Develop Client Data or make Client Data available to the Contractor's Personnel or other third parties except to the extent that such personnel or third parties need Client Data for the purpose of carrying out the Services.
- 3.3 The Contractor must promptly return Client Data to the Client (or destroy it so that it is irretrievable):
- (i) if required by the Client; or
 - (ii) in accordance with the Client's data retention and destruction requirements notified to the Contractor from time to time.
- 3.4 The Contractor must not:
- (i) assert any lien or other right against or to Client Data; or
 - (ii) deal with Client Data.
- 3.5 Nothing in this Clause 3 is intended to limit the Contractor's obligations contemplated by this Agreement, including in relation to the Client's Confidential Information.

4. DATA PROTECTION PROVISIONS

☐ APPLIES	☐ DOES NOT APPLY
---	--

- 4.1 The Parties shall comply with their respective obligations under Data Protection Legislation in connection with this Agreement.
- 4.2 **Data Processing**
- 4.2.1 The Contractor is the Data Processor, and the Client is the Data Controller under this Agreement.
- 4.2.2 The Contractor shall Process the Client Data for the Business Purpose only and in compliance with the Client's instructions from time to time, which may be:
- (i) Specific Instructions; or
 - (ii) the general instructions set out in Schedule B of this Agreement;
 - (iii) unless required to do otherwise by law, in which case, where legally permitted, the Contractor shall inform the Client of such legal requirement before Processing.
- 4.2.3 The Contractor shall not act on any specific instructions given by the Client from time to time during the Term unless they are:
- (i) in writing (including by electronic means); and
 - (ii) given by an Authorised Person.

- 4.2.4 The types of Personal Data to be Processed pursuant to this Agreement shall include [], and the categories of Data Subject to whom such Personal Data relates shall include [].¹
- 4.2.5 The Client reserves the right to alter the technical arrangements relating to the format, presentation and distribution of the Client Data and it shall be a matter solely for the Contractor to adjust their systems and business accordingly. For the avoidance of doubt, it shall be the responsibility of the Contractor to ensure that the Client Data format, presentation and provision by the Client is suitable and satisfactory to meet the business requirements of the Contractor.
- 4.3 Connection**
- 4.3.1 The Parties shall use reasonable efforts to establish connectivity between the Client System and the Contractor System on the Effective Date. Each party shall bear its own costs of establishing that connectivity.
- 4.3.2** Where applicable [The Client shall promptly after the Effective Date migrate the Client Data from the Client System to the Contractor System for Processing in accordance with this Agreement.]²
- 4.4 Contractor's Obligations**
- 4.4.1 The Contractor shall:
- (i) only make copies of the Client 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 Client Data);
 - (ii) not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Client Data other than for the Business Purpose; and
 - (iii) not do anything that may materially damage the reputation of the Client.
- 4.4.2 The Contractor shall notify the Client in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of the Contractor to Process the Client Data as set out in this Agreement.
- 4.4.3 The Contractor shall promptly comply with any request from the Client requiring the Contractor to amend, transfer or delete any of the Client Data.
- 4.4.4 At the Client's request, the Contractor shall provide to the Client a copy of all Client Data held by the Contractor in the format and on the media reasonably specified by the Client.
- 4.4.5 At the Client's request, the Contractor shall provide to the Client such information and such assistance as the Client may reasonably require, and within the timescales reasonably specified by the Client, to allow the Client to comply with its obligations under Data Protection Legislation, including but not limited to assisting the Client to:
- (i) comply with its own security obligations with respect to the Client Data;
 - (ii) discharge its obligations to respond to requests for exercising Data Subjects' rights;
 - (iii) comply with its obligations to inform Data Subjects about serious Personal Data Breaches;
 - (iv) carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Client Data; and
 - (v) engage in the consultation with the ODPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Client Data would result in a high risk to Data Subjects.

¹ Details to be confirmed.

² To be confirmed how the data is actually transferred in practice.

- 4.4.6 Any proposal by the Contractor to in any way use or make available the Client Data other than as provided for pursuant to this Agreement shall be subject to prior written approval of the Client.
- 4.5 Contractor's Employees**
- 4.5.1 The Contractor shall ensure that access to the Client Data is limited to those employees who need access to the Client Data strictly to meet the Contractor'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 Client Data as is strictly necessary for performance of that employee's duties.
- 4.5.2 The Contractor shall ensure that all employees that have access to the Client Data:
- (i) are informed of the confidential nature of the Client 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 Client Data;
 - (ii) have undertaken training in the laws relating to handling Personal Data; and
 - (iii) are aware both of the Contractor's duties and their personal duties and obligations under Data Protection Legislation and this Agreement.
- 4.5.3 The Contractor shall take reasonable steps to ensure the reliability of any of the Contractor's employees (or approved agents/contractors) who have access to the Client Data.
- 4.6 Records**
- 4.6.1 The Contractor shall keep at its normal place of business detailed, accurate and up-to-date records (including in electronic form) relating to the Processing activities carried out on behalf of the Client, containing:
- (i) details of the purposes of such processing;
 - (ii) a general description of the security measures taken in respect of the Client Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;
 - (iii) the name and contact details of the Contractor; any sub-processor; where applicable, the Contractor's representatives; and where applicable, any Data Protection Officer appointed by the Contractor;
 - (iv) the categories of Data Subjects and categories of Client Data Processed by the Contractor on behalf of the Client;
 - (v) the time limits for erasure of the Client Data; and
 - (vi) details of any non-EEA Client Data transfers, and the safeguards in place in respect of such transfers.
- 4.7 Audits**
- 4.7.1 The Client shall have the right to examine and review the use by the Contractor of the Client Data provided to the Contractor by the Client for the purposes of ascertaining that such Client Data has been used and processed in accordance with the terms of this Agreement.
- 4.7.2 The Contractor shall grant to the Client (or representatives of the Client) on reasonable advance notice a right of access to the Contractor's premises during Normal Working Hours for the purposes of such examination and review, and the Contractor 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 Client believes that the Contractor is in breach of any of its obligations under this Agreement.
- 4.7.3 The examination and review by the Client of the use by the Contractor of the Client Data may include, but shall not be limited to, a review of the existing internal compliance regime of the Contractor in relation to:
- (i) business processes and nature of interactions with customers;

- (ii) existing audit procedures on business activities and financial reporting, and the governance of such procedures;
 - (iii) staff vetting, hiring and training procedures;
 - (iv) data access requests and the purpose/duration for which Client Data is Processed/kept;
 - (v) reporting of data breaches; and
 - (vi) the named director or senior person (or Data Protection Officer (if applicable to the Contractor)) within the organisation with responsibility for audit and business process rigour.
- 4.7.4 After each audit, the Client may (but shall not be obliged to) provide a report to the Contractor detailing the extent of compliance with the provisions of this Agreement. The Contractor shall respond as required to the findings and recommendations of any Client audit report and shall provide information requested by the Client on the implementation by the Contractor of any required actions.
- 4.7.5 In the event that the audit process determines that the Contractor is non-compliant with the provisions of this Agreement, the Client may, by notice in writing, deny further access to the Client Data and the provisions of Clause 4.14 (Termination) of this Schedule may be, by notice in writing, invoked.
- 4.7.6 Without prejudice to the Client's right of audit under this Clause, to the extent permitted under Data Protection Legislation, the Contractor 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.
- 4.8 Data Subject Access Requests**
- 4.8.1 The Contractor shall co-operate with and assist the Client, including but not limited to employing Appropriate Technical and Organisational Measures, in respect of the fulfilment of the Client's obligations to respond to requests from a Data Subject exercising his/her rights under Data Protection Legislation.
- 4.8.2 The Contractor shall notify the Client within twenty-four (24) hours if it receives:
- (i) a request from a Data Subject for access to that person's Personal Data;
 - (ii) any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of the Client Data; or
 - (iii) any complaint or any claim for compensation arising from or relating to the Processing of the Client Data.
- 4.8.3 The Contractor shall not disclose the Client Data to any Data Subject or to a third party other than at the request of the Client or as provided for in this Agreement, or as required by law, in which case the Contractor shall to the extent permitted by law inform the Client of that legal requirement before the Contractor discloses the Client Data to any Data Subject or third party.
- 4.8.4 The Contractor shall not respond to any request from a Data Subject except on the documented instructions of the Client or Authorised Person or as required by law, in which case the Contractor shall to the extent permitted by law inform the Client of that legal requirement before the Contractor responds to the request.
- 4.9 Data Protection Officer**
- 4.9.1 The Contractor shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation and provide the Client with the contact details of such Data Protection Officer.
- 4.10 Security**
- 4.10.1 The Contractor shall, in accordance with its requirements under Data Protection Legislation, implement Appropriate Technical and Organisational Measures and Security Features to safeguard the Client Data 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 Client Data to be protected.

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

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

4.11 Breach Reporting

4.11.1 The Contractor shall promptly inform the Client if any Client 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 Client Data. In such case, the Contractor will restore such Client Data at its own expense and will comply with all of its obligations under Data Protection Legislation in this regard.

4.11.2 The Contractor must inform the Client 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 Client in ensuring compliance with its obligations in relation to notification of Personal Data Breaches (including the obligation to notify Personal Data Breaches to the ODPC 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 Contractor shall co-operate with the Client and take such reasonable commercial steps as are directed by Client to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

4.12 Restricted Transfers

4.12.1 A Restricted Transfer may not be made without the prior written consent of the Client, and if such Client consent has been obtained, the Restricted Transfer may only be made where there are Appropriate Technical and Organisational Measures in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, Privacy Shield, binding corporate rules, or any other model clauses approved by the ODPC).

4.12.2 Subject to Clause 4.12.3, in the event that any Restricted Transfer by the Contractor to a contracted Sub-processor or otherwise ("Data Importer") is approved by the Client in accordance with Clause 4.12.1, the obligations of the Contractor in Clause 4.12.1 to ensure that there are Appropriate Technical and Organisational Measures in place will be satisfied if the contract between the Contractor and the Data Importer contains at least the same level of data protection obligations on the Data Importer as the Contractor has in this Agreement (including, but not limited to incorporating the Standard Contractual Clauses (to the extent applicable)), and such contract has been validly authorised, executed and is legally binding between the Contractor and the Data Importer.

4.12.3 Clauses 4.12.1 or 4.12.2 shall not apply to a Restricted Transfer unless its effect, together with other reasonably practicable compliance steps (which may include obtaining consents from Data Subjects), is to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Legislation.

4.13 Sub-Processors

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

4.13.2 Where the Contractor is authorised pursuant to Clause 4.13.1 to engage a sub-processor in connection with the Processing of Client Data pursuant to this Agreement (the "Sub-processor"), the Contractor must enter into a data processing contract with the Sub-processor (and provide the Client with an executed copy of such contract on request) which:

places the same data protection obligations on the Sub-processor as the Contractor 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 terminates automatically on termination of this Agreement for any reason or on expiry of the Term.

4.13.3 With respect to each approved Sub-processor, the Contractor shall, before the Sub-processor first Processes Client Data, carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Client Data required by this Agreement.

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

4.14 Termination Provisions

4.14.1 On any termination of this Agreement for any reason or expiry of the Term:

- (i) at the choice of the Client, the Contractor shall Delete or return all Customer Data to the Client and Delete existing copies of such Client Data, unless legally required to store the Client Data for a period of time. If the Client makes no such election within a ten (10) day period of termination of this Agreement or expiry of the Term, the Contractor shall Delete any of the Client Data in its possession; and
- (ii) if the Client elects for destruction rather than return of the Customer Data under Clause 4.14.1(i) the Contractor shall as soon as reasonably practicable ensure that all Relevant Data is Deleted from the Contactor System.

4.14.2 The Contractor shall provide written confirmation of compliance with this Clause in the form of a letter signed by an authorised representative no later than fourteen (14) days after termination of this Agreement or expiry of the Term.

4.15 Warranties

4.15.1 The Contractor warrants, represents and undertakes to the Client that:

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

4.15.2 The Client does not warrant that the Client Data:

- (i) is or are accurate, complete, reliable, secure, useful, fit for purpose or timely;
- (ii) has or have been tested for use by the Contractor or any third party; or
- (iii) will be suitable for or be capable of being used by the Contractor or any third party.

4.16 Indemnities

4.16.1 The Contractor shall indemnify the Client 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 Client arising out of or in connection with the Processing of the Client Data by the Contractor, its employees or agents in breach of this Agreement, contrary to the instructions of the Client or in contravention of Data Protection Legislation (including but not limited to claims by Data Subjects relating to loss of control over Client Data or limitation of rights, discrimination, financial loss, damage to reputation, loss of confidentiality of Client Data and any other significant economic or social disadvantage).

4.16.2 The Contractor shall take out insurance sufficient to cover any payment that may be required under the indemnity contained in Clause 4.16.1 and produce the policy and receipt for premium paid, to the Client on request.

4.16.3 Unless required to do so by the ODPC or any other competent supervisory authority, the Contractor 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 Client Data, without the prior written agreement of the Client.

5 EQUIPMENT

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

☐ APPLIES	☐ DOES NOT APPLY
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5.2 All Equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.

☐ APPLIES	☐ DOES NOT APPLY
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5.3 The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.

☐ APPLIES	☐ DOES NOT APPLY
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5.4 The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:

☐ APPLIES	☐ DOES NOT APPLY
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5.4.1 remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and

5.4.2 replace such item with a suitable item of Equipment.

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

☐ APPLIES	☐ DOES NOT APPLY
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SECTION B: ICT SPECIFIC CLAUSES (6-7):

☐ APPLIES (SOME OR ALL MAY APPLY)	☐ DOES NOT APPLY (NO CLAUSE FROM 6-7 APPLIES)
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6. SOFTWARE DEVELOPMENT

6.1 Software and materials

6.1.1 The Contractor shall ensure that all Source Code developed and delivered pursuant to this Agreement complies with Industry Standards and Best Practice.

☐ APPLIES	☐ DOES NOT APPLY
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6.1.2 The Contractor shall not use any third-party software or Open-Source Software in the development of the Bespoke Software other than as outlined in the Submission without the prior written consent of the Client. Applications to use third party source code should clearly outline the purpose of the software and details of the licence under which it is to be provided.

☐ APPLIES	☐ DOES NOT APPLY
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6.1.3 The Contractor shall:

- (i) develop documents in relation to each Software Module, outlining the design of each module and include a technical explanation of all the system functionality;
- (ii) develop an installation guide for each Software Module;
- (iii) release notes for the Services including agreed known issue list; and
- (iv) ensure that all documentation relating to the Software Modules be of the highest international standards in accordance with good industry practice and delivered in English.

☐ APPLIES	☐ DOES NOT APPLY
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6.1.4 The Contractor shall provide to the Client from time-to-time copies of the Materials. The Contractor shall ensure that the Materials shall:

- (i) contain sufficient information to enable the Client to make full and proper use of the Contractor Software;
- (ii) be acceptable to the Client in terms of its presentation, accuracy and scope;
- (iii) include the most current and up-to-date versions of the Materials available;
- (iv) be in "plain English" and clearly expressed; and
- (v) include adequate definitions of all key terms, words and symbols.
- (vi) The Client may make such further copies of the Materials as are necessary for the use of the Contractor Software and for training the Client's Personnel in use of the Contractor Software.
- (vii) The Client may provide copies of the Materials to any third party who needs to know the information contained in it.

☐ APPLIES	☐ DOES NOT APPLY
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6.2 Security

6.2.1 The Contractor shall ensure that all the Services delivered, and that the Source Code delivered pursuant to this Agreement, comply with industry standards and best practice.

☐ APPLIES	☐ DOES NOT APPLY
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6.3 Pre-installation testing

☐ APPLIES	☐ DOES NOT APPLY
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6.3.1 Before delivering any item of Contractor Software to the [Site(s)] [in accordance with Milestone 1], the Contractor shall carry out reasonable tests (the "Pre-Installation Tests") to ensure that such item is in operable condition and is capable of meeting the requirements of each Software Modules [as set out in the Specification] once properly installed. The Pre-Installation Test should be such tests as the Contractor deems reasonable or such tests as are agreed in accordance with the Client.

6.3.2 If any Software Module fails, in some material respect, to pass the Pre-Installation Tests this shall be reported to the Client as soon as reasonably possible, and the relevant test(s) shall be repeated and the results of any such repeated tests will also be reported to the Client as soon as reasonably possible. If the Software Module fails to pass the Pre-Installation Tests within 30 days from the date of its second submission to the Pre-Installation Tests, then the Client may, by written notice to the Contractor, choose at its sole discretion to specify (without prejudice to the Client's other rights and remedies) a new date for carrying out further tests on the Software Module. If the Software Module fails such further tests, then the Client may:

- (i) request a repeat test under this Clause 6.3;
- (ii) permit installation of the Software Module subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the agreed Price as, after taking into account all the relevant circumstances, the Client deems appropriate; or
- (iii) if the Contractor is unable to correct material defects within a period of [4] weeks from the start of Pre-Installation Tests under Clause 6, reject the Software Module as not being in conformity with the Specification and terminate the Services Agreement. The Contractor shall immediately refund all Prices (if any) paid by the Client under this Agreement. This right shall be without prejudice to the Client's other rights and remedies.

6.4 Installation testing

☐ APPLIES	☐ DOES NOT APPLY
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6.4.1 The Contractor shall deliver each Software Module to the Site(s) on or before the applicable Software Delivery Date.

6.4.2 The Contractor shall supply to the Client, within a reasonable time before any Software Delivery Date, such information and assistance as may be necessary to enable the Client to prepare the Site(s) for the installation of the relevant Software Module.

6.4.3 The Contractor shall complete installation of each Software Module at the Site(s) by the Installation Date for that Software Module.

- 6.4.4 If there is a delay regarding the date when the Contractor Software is scheduled to be Ready for Service, the Contractor shall be liable for all costs that the Client incurs as a result of such delay (See Clause 2.1 also and Clause 3 in Schedule A).

6.5 User acceptance tests

☐ APPLIES	☐ DOES NOT APPLY
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- 6.5.1 No later than 30 from the date of signature of this Agreement, the Client shall deliver to the Contractor proposed user acceptance criteria and test data for the Acceptance Tests for the Contractor Software. The criteria and data shall be such as are reasonably required to show that the Contractor Software complies with the Specification. The Contractor shall provide the Client with reasonable assistance to prepare such user acceptance criteria and test data at the Client's request. The Parties shall use best endeavours to agree the Acceptance Tests for the Contractor Software within 30 days from the date of delivery to the Contractor of the proposed criteria and data.
- 6.5.2 The Contractor shall carry out the agreed Acceptance Tests for each Software Module within 7 days of its Installation Date. The Acceptance Tests shall be started as soon as reasonably possible after installation and shall be run continuously during Normal Working Hours. The Contractor shall carry out the agreed Acceptance Tests for each Software Module unless the Client notifies the Contractor, not later than 7 days after the Installation Date, that it will carry out the Acceptance Tests. The Party carrying out the Acceptance Tests shall give the other Party at least twenty-four (24) hours' notice of the start of the Acceptance Tests and permit the other party to observe all or any part of the testing.
- 6.5.3 Notwithstanding Clause 8.3 of Schedule A, if any Software Module fails to pass the Acceptance Tests, the Client shall, within 30 days from the completion of the Acceptance Tests or any part of these tests, provide a written notice to this effect, giving details of such failure(s). The Contractor shall remedy the defects and deficiencies and the relevant test(s) shall be repeated within a reasonable time.
- 6.5.4 If any Software Module fails to pass any repeated Acceptance Tests within 30 weeks from the date of its second submission to the Acceptance Tests, then the Client may, by written notice to the Contractor, choose at its sole discretion:
- a) to fix (without prejudice to the Client's other rights and remedies) a new date for carrying out further tests on the Software Module on the same terms and conditions. If the Software Module fails, such further tests then the Client may request a repeat test under this Clause 6.5.4(a) or proceed under Clause 6.5.4 (b) or Clause 6.5.4 (c);
 - b) to accept the Software Module subject to such change of acceptance criteria, amendment of the Specification and/or reduction in the Price as, after taking into account all the relevant circumstances, the Client deems appropriate; or
 - c) if the Contractor is unable to correct the defects within a period of 30 days/month(s) from the commencement of Acceptance Tests under Clause 6.5.2, the Client shall be entitled to reject the Contractor Software as not being in conformity with the Specification, in which event the Client may terminate the Agreement and the Contractor shall immediately refund all Prices paid by the Client under this Agreement. This right shall be without prejudice to the Client's other rights and remedies.
- 6.5.5 On completion of all Acceptance Tests on the individual Software Modules as provided in Clause 6.5.2, Clause 6.5.3 and Clause 6.5.4 above, the Contractor shall carry out the agreed Acceptance Tests for the installed Contractor Software as a whole to ensure that it meets the Specification. Clause 6.5.2, Clause 6.5.3 and Clause 6.5.4 shall apply to these Acceptance Tests in the same way as they apply to Acceptance Tests for each Software Module.

6.6 Acceptance

- 6.6.1 Milestone 2 shall be deemed to have been completed successfully if the Bespoke Software operates in a live environment for a period of 30 days.

☐ APPLIES	☐ DOES NOT APPLY
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- 6.6.2 Acceptance of the Contractor Software shall be deemed to have occurred on the signing by the Client of an Acceptance Certificate for the Contractor Software following successful completion of Milestone 2 and the testing under this Clause 6.6.

☐ APPLIES	☐ DOES NOT APPLY
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- 6.6.3 The Contractor acknowledges that successful completion of the Acceptance Tests and/or the issue of an Acceptance Certificate will not diminish or otherwise reduce the Contractor's responsibility for failure of the Contractor Software to operate in accordance with the Specification.

☐ APPLIES	☐ DOES NOT APPLY
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- 6.6.4 The Client reserves the right to alter the acceptance terms upon prior written notice to the Contractor, due to altered Client requirements.

☐ APPLIES	☐ DOES NOT APPLY
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6.7 Defects

- 6.7.1 The Contractor shall be responsible without charge to the Client for rectifying within the Warranty Period, by repair or by the supply or a replacement, any defect which under proper use, care and maintenance appears in the Contractor Software. For the purposes of this Clause, a defect means any non-conformance with the warranties specified in Clause 7.2 in Schedule A.

- 6.7.2 The Client shall ensure that the defect is promptly reported to the Contractor in writing within 30 days of the Acceptance Date.

- 6.7.3 The Contractor shall without delay and free of charge remedy the defect during the Normal Working Hours, save in the case of a critical defect in which case the Contractor shall rectify it immediately.

☐ APPLIES	☐ DOES NOT APPLY
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6.8 Ownership of bespoke software

☐ APPLIES	☐ DOES NOT APPLY
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- 6.8.1 In addition to the provisions of Clause 9 of Schedule A, the IPR in the Bespoke Software (including completed and work in progress software) and the Materials (including all related materials in human readable and/or machine-readable form forms supplied by the Contractor) shall, at the Effective Date or (if later) on creation of the rights, vest in the Client. The Contractor hereby assigns (by way of present and, where appropriate, future assignment) all such IPR in the Bespoke Software and the Materials to the Client.

- 6.8.2 The Contractor shall do and execute, or arrange for the doing and executing of, each necessary act, document and thing that the Client may consider necessary or desirable to perfect the right, title and interest of the Client in and to the Intellectual Property Rights in the Bespoke Software and the Materials.

6.8.3 The Contractor shall:

- (i) procure the irrevocable waiver of all moral rights in the Materials relating to the Bespoke Software and the Materials to the extent permitted by law;
- (ii) ensure that records are maintained which are sufficient to provide evidence of the process of independent creation of the Bespoke Software and the Materials (include any tools and know-how developed by the Contractor in the course of, or as a result of, carrying out the Services); and
- (iii) be responsible for ensuring that written agreements are, subject to Clause 16 of Schedule A, entered into with, and adhered to by, subcontractors engaged in the performance of this Agreement and that, unless otherwise agreed with the Client in writing in advance, the terms of engagement of such subcontractors are consistent with, and enable the Contractor fully to comply with, the provisions as to the Bespoke Software and the Materials set out in this Agreement, including this Clause 6.8.

6.9 Training

☐ APPLIES	☐ DOES NOT APPLY
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6.9.1 The Contractor undertakes to provide the Training to the Client to the extent necessary to explain components of the Bespoke Software to the Client's Personnel.

6.9.2 Training shall be carried out at such locations as are agreed by the Client. Any special equipment necessary for the Training shall be provided by the Contractor.

7. ADDITIONAL WARRANTIES

☐ APPLIES	☐ DOES NOT APPLY
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7.1 The Contractor warrants and represents that:

- 7.1.1 the Bespoke Software and Materials are proprietary to the Contractor and that it has the right to assign absolutely all IPR in and to the Bespoke Software and Materials to the Client;
- 7.1.2 none of the Contractor Software and Materials supplied by the Contractor infringes the IPR of any third party;
- 7.1.3 the Contractor Software will meet all the requirements of the Specification;
- 7.1.4 there has not been included or used, without the prior written consent of the Client any Open-Source Software or any libraries or code licensed from time to time under the General Public Licence (as described by the Free Software Foundation and set out at <http://www.gnu.org/licenses/gpl.html>) or anything similar in, or in the development of, the Contractor Software nor does any Contractor Software operate in such a way that it is compiled with or linked to any of the foregoing;
- 7.1.5 there are not now and will not on the issue of an Acceptance Certificate by the Client be any Disabling Code or any material error in the Contractor Software, which could affect the normal functioning of the Contractor Software, as such normal functioning is described in the Documentation. If any Disabling Code is introduced, the Contractor will use best industry practice to report that introduction to the Client and to take all necessary action to eliminate the Disabling Code and promptly, at its own cost, repair any harm or destruction caused by that Disabling Code; and
- 7.1.6 the Client will receive good and valid title to the Bespoke Software and Materials, free and clear of all encumbrances and liens of any kind.

8. DEFINITIONS

8.1 The following definitions apply to the capitalised terms in Schedule C (that are not already defined in Schedule A) are:

“Acceptance Certificate”	the certificate to be signed by the Client pursuant to Clause 6.5.
“Acceptance Tests”	the tests of the Contractor Software after installation to be agreed.
“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”	As outlined in Schedule B above, and as amended from time to time in accordance with this Agreement.
“Bespoke Software”	software programs and source code related to Clause 6, Software Development in Schedule C, to be developed by the Contractor specifically for the Client under this Agreement to meet the Specification.
“Business Purpose”	As outlined in “Services” in Schedule B, above.
“Client Data”	the Personal Data supplied by the Client to the Contractor from time to time.
“Client Systems”	any information technology system or systems owned or operated by the Client from which Client Data is received by the Contractor in accordance with this Agreement.
“Contractor Systems”	any information technology system or systems owned or operated by the Contractor to which Client Data is delivered or on which the Services are performed in accordance with this Agreement.
“Contractor Software”	the Bespoke Software and /or Open-Source Software.
“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 and 2003 and Directive 95/46/EC, any other applicable law or regulation relating to the Processing of Personal Data and to privacy (including the E-Privacy Directive), as such legislation shall be amended, revised or replaced from time to time, including by operation of the GDPR (and laws implementing or supplementing the GDPR).
“Data Protection Officer”	a data protection officer appointed pursuant to Data Protection Legislation.
“Data Subject”	an individual who is the subject of Personal Data.
“Deal”	includes sell, transfer, assign, dispose of, commercialise, lease, rent or convert.

"Delete"	to remove or obliterate Personal Data such that it cannot be recovered or reconstructed.
"Develop"	in connection with a thing, includes create, add, enhance, reduce, adapt or prepare derivative works based on that thing.
"Disabling Code"	any virus, bomb, Trojan horse or computer programming code, including source and object code, which would have the effect of impairing, denying or otherwise adversely affecting access by the Client to all or any portion of the Contractor Software.
"Effective Date"	the date of this Agreement.
"GDPR"	General Data Protection Regulation (EU) 2016/679.
"Installation Date"	the estimated date by which the Contractor will complete installation of a specified Software Module as specified in the Specification.
"Laws"	any statute, regulation, by-law, ordinance or subordinate legislation in force from time to time to which a Party is subject; the common law or civil law (as applicable); any binding court order, judgment or decree; any applicable industry code, policy or standard enforceable by law; any applicable direction, policy, rule or order that is binding on a Party and that is made or given by any regulatory body having jurisdiction over a party or any of that party's assets, resources or business, in any jurisdiction that is applicable to the performance of a Party's obligations under this Agreement.
"Milestone 1"	the release of Contractor Software having all major technical elements of the solution completed, however minor features and functionality may not be present.
"Milestone 2"	the completed Contractor Software release, accepted and approved by the Client, incorporating all functional elements of the software with all known issues rectified or agreed as acceptable and signed off as part of known issues list in the software release notes.
"Normal Working Hours"	the hours 9.00am to 6.00pm GMT, Monday to Friday, except Irish Bank Holidays.
"ODPC"	Office of the Data Protection Commissioner, Canal House, Station Road, Portarlinton, Co. Laois, R32 AP23, Ireland.
"Open-Source Software"	any software programs included in the Contractor Software which are licensed under any form of open-source licence meeting the Open-Source Initiative's Open Source Definition (http://www.opensource.org/docs/definition.php).
"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 Client is the Data Controller, and in respect of which the Contractor is the Data Processor under this Agreement
"Personal Data Breach"	means any "personal data breach" as defined in the GDPR in respect of the Client Data caused by the Contractor and Personal Data Breaches shall be interpreted accordingly.

"Pre-Installation Tests"	the tests to be carried out on the Contractor Software before delivery to the Site(s) as provided for in Clause 6.3.
"Processed Data"	any Client Data that has been Processed.
"Processing"	has the meaning given to such term in Data Protection Legislation, and Process and Processed shall be interpreted accordingly
"Ready for Service"	installed, tested and having passed the Acceptance Tests.
"Restricted Transfer"	any transfer of Client Data from the Contractor to a Sub-processor or any other person or entity, or any onward transfer of Client Data from such Sub-processor, person or entity, in each case where such transfer would be prohibited by Data Protection Legislation (or by the terms of data transfer agreements put in place to address the data transfer restrictions in Data Protection Legislation). For the avoidance of doubt, this includes transfers of Client Data to countries outside the EEA which are not subject to an adequacy decision by the European Commission.
"Security Features"	any security feature, including any encryption, pseudonymisation, key, PIN, password, token or smartcard.
"Site(s)"	the location(s) at which the Contractor Software is to be installed.
"Software Module(s)"	any one of the individual software programs in the Contractor Software.
"Source Code"	the source code of the Contractor Software to which it relates, in the language in which the software was written, together with all related flow charts and technical documentation, all of a level sufficient to enable the Client's development personnel to understand, develop and maintain the Contractor Software.
"Specific Instructions"	instructions meeting the criteria set out in Clause 4.2.3 of Schedule C.
"Standard Contract 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 ODPC or an equivalent competent authority under Data Protection Legislation.
"Sub-processor"	has the meaning given to such term in Clause 4.13.2 of Schedule C.
"Tools"	any tools and know-how developed, and methods invented by the Contractor in the course of, or as a result of, carrying out the Services, whether or not developed or invented specifically or used exclusively to carry out the Services.
"Training"	the training, to be provided by the Contractor as set out in the Specification.
"Warranty Period"	the period of days from the date of the Acceptance Certificate, as outlined in clause 6, Software Development in Schedule C, above.

Schedule D
Confidentiality Agreement

**NATIONAL TOURISM
DEVELOPMENT
AUTHORITY**

AND

COMPANY NAME

CONFIDENTIALITY AGREEMENT

PARTIES:

- (1) National Tourism Development Authority (also known as **Fáilte Ireland**), a statutory body established by the National Tourism Development Authority Act, 2003 whose principal place of business is at 88-95 Amiens Street, Dublin 1 (the "**Discloser**"); and
- (2) **??**, whose principal place of business is at **??** (the "**Recipient** ")

BACKGROUND:

- (A) The Discloser wishes to disclose certain data, information and/or materials relating to the Recipient for the purpose of the **Contract/Framework Agreement** (the "**Purpose**").
- (B) In this Agreement "**Data**" shall mean the data, information and /or material referred to at A above and all confidential and proprietary information, including without limitation, inventions, trade secrets, specifications, designs, data, databases, protocols, know-how, and any improvements, modifications, derivations, or compilations thereto, and other proprietary information relating to the products, processes, services and business of the Discloser and the term Data also includes: (i) any notes, analyses, compilations, memoranda or other documents prepared by the Recipient which contain, reflect or are based upon, in whole or in part, any Data furnished by or on behalf of the Discloser; and (ii) information transferred orally, visually, electronically or by any other means. Where applicable to the purpose of the Contract, the definition of Fáilte Ireland Confidential Information shall include the confidential information of its tourism industry clients

1. NON-USE

The Data shall be identified, clearly marked and recorded as such by the Recipient on all media and in all documentation. The Recipient shall hold the Data in confidence shall not permit the unauthorised disclosure of the Data and shall not make any commercial use of the Data, or to use the Data other than for the Purpose, without the express written consent of and on such terms as required by the Discloser. The Recipient shall take all reasonable precautions to preserve the integrity and prevent any corruption or loss, damage or destruction of the Data. If required, the Recipient shall register with the office of the Data Protection Commissioner for the duration of this Agreement.

2. NON-DISCLOSURE

The Recipient shall not to disclose the Data to any third party.

- 2.1 The Recipient may only disclose the Data to those of its employees who need to know this Data for the Purpose, provided that, (i) the client informs these employees of the confidential nature of the Data before disclosure; (ii) at all times, it is responsible for these employees' compliance with the obligations set out in this Agreement; and (iii) obtain from those employees a duly binding agreement on terms as least as binding upon that party as the Recipient is bound to the Discloser hereunder which terms shall be agreed with the Discloser including the indemnities and warranties hereinafter referred to.

- 2.2 In the event that the Recipient requires the assistance of any other party other than employees, to whom disclosure of any of the Data is necessary for the Purpose, the Recipient shall first seek the approval of the Discloser and thereafter obtain from that party a duly binding agreement on terms as least as binding upon that party as the Recipient is bound to the Discloser hereunder which terms shall be agreed with the Discloser.

3. RETURN OR DESTROY INFORMATION ON REQUEST

The Recipient shall and shall direct any sub-contractors to return or destroy any documents containing Confidential Information supplied by the Discloser, or any copies from or extracts of the Data made by the Recipient upon termination or ending of the contract and erase the Data from the Recipient's (and any sub-contractors) systems and magnetic data.

4. NO COPYING

The Recipient shall not copy any documents containing the Data nor to take any extracts from such documents without the prior written consent of the Discloser, and then only on such terms as the Discloser may require.

5. RESERVATION OF RIGHTS

5.1 The Discloser reserves all rights in its Data. No rights in respect of the Discloser's Data are granted to the Recipient and no obligations are imposed on the Discloser other than those expressly stated in this Agreement.

5.2 Except as expressly stated in this Agreement, the Discloser does not make any express or implied warranty or representation concerning the Data, or the accuracy or completeness of the Data.

5.3 The disclosure of Confidential Information by the Discloser shall not form any offer by, or representation or warranty on the part of, the Discloser to enter into any further Agreement in relation to the Purpose to which the Confidential Information relates.

5.4 The Recipient acknowledges that damages alone would not be an adequate remedy for the breach of any of the provisions of this agreement. Accordingly, without prejudice to any other rights and remedies it may have in law, and equity or otherwise, the Discloser shall be entitled to seek equitable relief (including without limitation injunctive relief) concerning any threatened or actual breach of any of the provisions of this Agreement, to redress such breach together with damages and reasonable counsel fees and expenses to enforce its rights hereunder.

5.5 The Recipient shall be liable to the Discloser for the actions or omissions of its employees or representatives in relation to the Data as if they were the actions or omissions of the Recipient. The Recipient hereby warrants as to the reliability and training of its staff to ensure awareness of and compliance with their obligations under this Agreement.

6. FURTHER INFORMATION RECEIVED

The Recipient agrees that any further Confidential Information which may come to its knowledge of the Recipient as a result of any visits to the Discloser's premises, is also be included in the definition of "Confidential Information" and accordingly is protected under the terms of this Agreement.

7. SCOPE OF INFORMATION PROTECTED

For the avoidance of doubt, Data disclosed prior to the execution of this Agreement shall be governed by the terms of this Agreement.

8. INDEMNITY

The Recipient shall indemnify and hold harmless the Discloser from and against all liability, fines, loss, cost, expense, damage, claims or demands for actual or alleged violation of any terms of this Agreement and for any breach of the Data Protection Acts, 1988 to 2018 as amended or extended and any Regulation thereunder and protect the confidentiality, integrity and security of all and any information supplies to the Recipient.

The recipient shall provide the Discloser with such information and access to its premises (upon giving reasonable notice) as the Discloser may reasonably require to satisfy itself that the Recipient is complying with its obligations hereunder.

9. LIMITED WARRANTY

The Recipient represents and warrants that it has the full power and authority to enter into this Agreement.

10. NO RIGHT OR LICENCE

The Recipient acknowledges that the Data disclosed by the Discloser under this Agreement shall remain the sole property of the Discloser. Nothing in this Agreement shall be taken as granting to the Recipient any right or licence in relation to the Data or any other property or intellectual property of the Discloser.

11. PRIVACY

The Recipient shall not disclose the existence of this Agreement, its subject matter, or that fact that discussions are taking place in connection with the Purpose, without the prior written consent of the Discloser.

12. TERM AND SURVIVAL

This Agreement shall come into force on the date appearing at the top of this Confidentiality Agreement and shall continue in full force and effect unless it is terminated by either party. This Agreement may be terminated early by either Party at any time upon thirty (30) days' written notice to the other Party. The Data shall remain subject to the provisions set forth in this Agreement notwithstanding its termination.

13. WAIVER OR VARIATIONS

A failure by the Discloser to exercise or delay in exercising a right or remedy provided by this Agreement or by law does not constitute a waiver of the right or remedy or a waiver of other rights or remedies. No single or partial exercise of a right or remedy provided by this Agreement or by law prevents further exercise of the right or remedy or the exercise of another right or remedy. No variation of this Agreement shall be effective, and no obligation may be waived unless it is made in writing and signed by the Discloser.

14. ASSIGNMENT

The Recipient may not assign, transfer, charge or otherwise dispose of their respective rights and obligations under this Agreement without the prior written consent of the Discloser.

15. COUNTERPARTS

This Agreement may be executed in any number of counterparts, each of which when so executed shall be deemed to be an original and all of which when taken together shall constitute one and the same instrument.

16. GOVERNING LAW AND JURISDICTION

This Agreement and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed and construed in all respects in accordance with the laws of Ireland to the exclusive jurisdiction of whose courts the Recipient hereby irrevocably submits.

SIGNED:

Signed by authorised signatory
For and on behalf of
THE NATIONAL TOURISM DEVELOPMENT AUTHORITY

Authorised Signatory

Position

Date

Signed by authorised signatory
For and on behalf of
CONTRACTOR:

Authorised Signatory

Position

Date

Schedule E

Client's ITT including any Clarifications issued by the Client

The ITT dated ??? reference # and any Clarifications are hereby incorporated by reference into this Agreement.

Schedule F

Contractor's Submission including any Clarifications issued by the contractor

The Submission dated ?? reference # and any Clarifications are hereby incorporated by reference into this Agreement.