

## Confidentiality Agreement

THIS AGREEMENT is made on the [Day] of [Month] [Year] BETWEEN

**Pobal**, of Second Floor Ormond Building, 31-36 Ormond Quay Upper, Dublin 7 (hereinafter “the Contracting Authority”) of the one part;

and

**[Supplier Legal Name]**, of **[Supplier Address]** (hereinafter called “the Contractor”) of the other part.

### WHEREAS

**A.** By Request for Tenders dated [Publication Date] entitled [RFT Title] (the “RFT”) the Contracting Authority invited tenders (“Tenders”) for the provision of the services described in Appendix 1 to the RFT (the “Services”) (“the Competition”). The Contractor submitted a response to the RFT dated the [Submission Date].

The Contractor has been identified as the preferred bidder in the Competition.

**B.** For the purposes of the Competition and any subsequent contract awarded thereunder (if any) (“the Contract”) certain confidential information as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to the Client.

**NOW IT IS HEREBY AGREED** in consideration of the sum of €2.00 (the receipt of which is hereby acknowledged by the Contractor) as follows:

**1.** The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.

**2.** For the purposes of this Agreement “Confidential Information” means:

**2.1** unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the provision of services under the Contract and all and any information supplied or made available to the Contractor (to include agents, Subcontractors, customers and suppliers) for the purposes of the Contract (s); and

**2.2** any and all information which has been derived or obtained from information described in sub-paragraph 2.1

**3.** For the purposes of this Agreement “Data Protection Laws” means all applicable nation and EU data protection laws, regulations and guidelines, including by not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time.

**4.** Save as may be required by law, the Contractor agrees in respect of the Confidential Information:

**3.1** to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;

**3.2** to only use such Confidential Information for the purposes of the Competition and any subsequent contract awarded thereunder (if any);

**3.3** not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to an person except

**i.** to those employees, agents, subcontractors and other suppliers on a need to know basis; and/or

**ii.** to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.

**5.** The obligations in this Agreement will not apply to any Confidential Information:

**i.** in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority; or

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

- iii. is independently developed by the Contractor without access to or use of the Confidential Information; or
- iv. is lawfully received from a third party (with full right to disclose)

**6. The Contractor undertakes:**

- 6.1** to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);
- 6.2** to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act, 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;
- 6.3** upon termination of the Competition (or Contract) for whatever reason to furnish to the Contracting Authority, all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof that may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not; and
- 6.4** to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:
  - i. Data Protection Acts, 1988, 2003 and 2018; and
  - ii. All EU requirements arising (including, but not limited to, provisions relating to the processing of data, ensuring the security of data and restrictions on transfers of data abroad) and any legislation and regulations implementing same.

**7.** The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.

**8.** The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be

necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.

9. The contractor shall, in the performance of the Contract, comply with all of the Contracting Authority's information security and privacy policies and procedures as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom).
10. The contractor shall, in the performance of the Contract, comply with the Contracting Authority's policy 'ISMS - POL003 - Asset Management Policy (Section 2.4 Handling of Assets)' as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom).
11. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
12. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
13. **A.** In this Agreement, the following terms shall have the meanings respectively ascribed to them:
  - "Data Controller" has the meaning given under the Data Protection Laws;
  - "Data Processor" has the meaning given under the Data Protection Laws;
  - "Data Subject" has the meaning given under the Data Protection Laws;
  - "Data Subject Access Requested" means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;
  - "Personal Data" has the meaning given under Data Protection Laws;
  - "Processing" has the meaning given under Data Protection Laws;
- B.** The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C.** The parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D.** Without prejudice to the generality of clause 13(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
  - (1) process that Personal Data only on written instructions of the Client;
  - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature

of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

- (3) ensure that all personnel who have access to and / or process Personal Data are obliged to keep the Personal Data confidential;
- (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
  - ii. the data subject has enforceable rights and effective legal remedies;
  - iii. the Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred;  
and
  - iv. the Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

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

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

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

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

**I. To support ongoing due diligence and proactive management of third party risk**, the Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits (relating to information Security and/or Privacy) and or inspections of the Contractor's facilities. At a minimum, due diligence activities should take place, at least on an annual basis or on a timescale deemed appropriate by the Client. To support this requirement, the Client will also require access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.

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

**K.** The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 13 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.

**L.** The Contractor shall:-

1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
2. ensure that a back-up copy of any and all such Personal Data is made **[Insert Frequency]** and this copy is recorded on media from which that data can be reloaded if there is any corruption or loss of the data; and
3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

**M.** The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement.

Or

The Client consents to the Contractor appointing **[Insert Third Party Processor]** as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 13 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 13.

**N.** Save for clauses 13B, 13C, 13D(4) and 13E, all the obligations on the Contractor in this clause 13 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

**SIGNED** for and on behalf of the Contracting Authority

\_\_\_\_\_  
(being a duly authorised officer)

**PRINT NAME:**

**SIGNED** for and on behalf of the Contractor

\_\_\_\_\_

**PRINT NAME:**

## Schedule A to the Confidentiality Agreement: Data Protection

To be completed when completing the Contract

### Processing, Personal Data and Data Subjects

#### 1. Processing by the Contractor

- 1.1 Subject Matter of Processing
- 1.2 Nature of Processing
- 1.3 Purpose of Processing
- 1.4 Duration of the Processing

#### 2. Types of Personal Data

#### 3. Categories of Data Subject