

TEILIFÍS NA GAEILGE
and

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

AGREEMENT

Relating to the Supply of Goods pursuant to

Request for Tenders for the supply of []

THIS AGREEMENT is made

2018 BETWEEN:

TEILIFÍS NA GAEILGE of Baile na hAbhann, Co na Gaillimhe

(“TG4”); and

[Contractor's full legal name], of [Address:] (“the Contractor”) (each

a “Party” and together “the Parties”).

WHEREAS:

- A. By Request for Tender entitled “[Title of RFT]”, dated [insert date of RFT] (“the RFT”), TG4 invited tenders from economic operators (“Tenderers”) for the provision of the goods described in Appendix A to the RFT (the “Goods”). References to the RFT shall include any clarifications issued by TG4 via the messaging facility on www.etenders.gov.ie (the “RFT Clarifications”). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date of tender] (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to TG4 (the “Submission Clarifications”). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

- 1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Agreement and Schedules A to D attached hereto;
 - ii. The RFT; and
 - iii. The Submission.
- 2. The Contractor shall sell and TG4 shall purchase in accordance with this Agreement (“Agreement”) the Goods described in Schedule B (“Goods”). Schedule B details the nature, quantity, quality, time of delivery and functional specifications of the Goods in accordance with the RFT and the Submission (“the Specification”).
- 3. Subject to the terms and conditions of this Agreement, TG4 agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
- 4. For the purposes of this Agreement, TG4’s Contact is [insert contact name]; the Contractor’s Contact is [Contractor contact name].

5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on Insert date, unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”) **Delete expiry date/duration if not applicable.**

Delete if not applicable:

TG4 reserves the right to extend the Term for a period or periods of up to Insert Number months with a maximum of Insert Number such extensions permitted subject to its obligations at law.

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

SIGNED for and on behalf of Teilifís na Gaeilge _____	SIGNED for and on behalf of the Contractor _____
Witness	Witness

Schedule A: Terms and Conditions

1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the supply of Goods and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the supply of the Goods and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 5 the Contractor shall:

1. supply the Goods in accordance with the Specification, the RFT, TG4's directions and the terms of this Agreement;
 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by TG4 from time to time and notified to the Contractor in writing;
 3. comply with all local security and health and safety arrangements as notified to it by TG4; and
 4. supply the Goods in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law. that apply at the place where the Goods are supplied, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations"). The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
 5. provide regular reports to TG4 in the manner agreed with TG4 and maintain full and accurate books of account in connection with the supply of the Goods. TG4 will have the right on reasonable prior notice to inspect audit and take copies of all books and records relating to this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Contractor.
- D. Without prejudice to clause 1C, where TG4 becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, TG4 reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

- E. During this Agreement the Contractor shall be an independent contractor and not the employee of TG4. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of TG4 for any purposes whatsoever.
- F. TG4 acknowledges that the Contractor may from time to time be dependent on TG4 to facilitate the Contractor in the carrying out of its duties under this Agreement. TG4 agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 11.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by TG4 to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.

2. The Goods

- A. The Contractor shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties.
- B. Unless otherwise stated in the Specification:
 - 1. Where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at TG4’s premises as notified to the Contractor. Where the Goods are collected by TG4, the point of delivery shall be when the Goods are loaded on TG4’s vehicle.
 - 2. Delivery shall include the unloading, stacking or installation of the Goods by the Contractor’s staff, agents or carriers at such place as TG4 or a duly authorised person shall reasonably direct.
 - 3. The Goods shall be packed and marked in a proper manner and in accordance with TG4’s instructions and any statutory requirements and any requirements of the carriers and manufacturers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

4. Unless expressly agreed to the contrary, TG4 shall not be obliged to accept delivery by instalments. If, however, TG4 does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of TG4, entitle TG4 to terminate the whole of any unfulfilled part of the Agreement without further liability to TG4.
 5. TG4 shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. The risk in any over-delivered Goods shall remain with the Contractor.
 6. TG4 shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- C. Any Contractor pre-printed terms and conditions produced, signed or stamped by either Party and for whatever purpose during this Term are hereby disallowed.
- D. Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time period promised or specified in the Specification, TG4 may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Goods and / or terminate this Agreement in either case without prejudice to any other rights and remedies of TG4.
- E. Without prejudice to any general right to damages under this Agreement where the Contractor does not deliver the ordered amount within delivery dates or lead times in accordance with this Agreement, TG4 may, at his discretion, deduct 2% per cent per week, or part thereof, for each week of late delivery of the value of the entire relevant invoice or order as liquidated damages up to a maximum amount of 20% per cent of the Charges (or invoice or order) price for the relevant Goods (the "Liquidated Damages Threshold").

Where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), TG4 shall be entitled to:

1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and;
2. without prejudice to sub-clause (1), TG4 shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor.

3. Inspection of Goods

- A. TG4 or its authorised representative may inspect (to include a call for advance samples) or test the Goods either completed or in the process of manufacture, during normal business hours on reasonable notice at the Contractor's premises (including the premises of any subcontractor or

agent) and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint at the time of any such inspection or test and / or the approval given during or after such inspection or test shall not constitute a waiver by TG4 of any rights or remedies in respect of the Goods and TG4 reserves the right to reject the Goods in accordance with clause 3B.

B. TG4 may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to TG4 of such Goods. If TG4 rejects any of the Goods pursuant to this clause TG4 may (without prejudice to other rights and remedies) either:

1. treat the Agreement as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by TG4 in obtaining other Goods in replacement provided that TG4 uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

or

2. have such Goods promptly, and in any event within 14 calendar days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.

C. Rejected Goods shall be removed by the Contractor from TG4 within 7 calendar days from the date of the notification to the Contractor of their rejection. In the event of failure by the Contractor to remove Goods within 14 calendar days of such notification, TG4 may dispose of such Goods as he sees fit and pending such removal, the Goods will remain with TG4 at the risk of the Contractor. Any costs incurred by TG4 relating to such disposal shall at the option of TG4 be borne by the Contractor.

D. For the avoidance of doubt, TG4 will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 3B.

E. The issue by TG4 of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or TG4's acceptance of them.

F. The Contractor hereby guarantees the Goods for 12 months from the date of acceptance of the Goods (the "Guarantee Period") against faulty materials or workmanship. TG4 shall within such Guarantee Period, or within 14 calendar days thereafter, give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such Guarantee Period under proper and normal use. The Contractor shall (without prejudice to any other rights and remedies which

TG4 may have) promptly remedy such defects (whether by repair or replacement as TG4 shall elect) free of charge, which replaced or repaired Goods shall also have the benefit of this clause for the Guarantee Period.

- G. Without prejudice to Clause 3F the Contractor will acquire all customary warranties/guarantees from third party suppliers/manufactures for the benefit of TG4 in respect of the Goods. The Contractor will not through action or inaction void such warranties/guarantees.

4. Risk and Title

- A. The Goods ordered under this Agreement shall be delivered to any location specified by TG4, in Ireland, without limit to the number of locations, in the quantities and by the dates specified in the orders, unless otherwise stated. Any extension of the delivery time shall not constitute a general waiver or acquiescence on the part of TG4. All such Goods shall be delivered free of encumbrances or retention of title clauses or similar provision. The Charges quoted shall be based on the understanding that the Goods are to be delivered carriage paid to the various locations as specified in the order, along with the necessary delivery documentation. Pending such delivery, the Goods shall remain at the risk of the Contractor.
- B. Title shall pass to TG4 on payment for the Goods.

5. Payment

- A. Subject to the provisions of this clause 5 TG4 shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
 - 1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 11A from time to time;
 - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by TG4 from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to TG4's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Goods for any billing period (including whether or not Goods have been accepted, rejected, satisfactorily repaired or replaced as the case may be) must be raised by

TG4's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of TG4 or upon such deemed acceptance the invoice shall be payable by TG4. Payment is subject to any rights reserved by TG4 under any other provision of this Agreement; and

4. TG4 being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements.
- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to TG4 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 TG4. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. Where indicated in the Specification, the Charges shall include the cost of instruction of TG4 's personnel in the use and maintenance of the Goods and such instructions shall be in accordance with the requirements detailed in the Specification.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by TG4 in accordance with section 523 of the Taxes Consolidation Act 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Goods under and in accordance with this Agreement will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

6. Warranties, Representations and Undertakings

- A. The Contractor acknowledges, warrants, represents and undertakes that:
 1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply the Goods hereunder;
 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;

4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the supply of the Goods (to include manufacture and distribution process) as they apply to the Contractor;
 5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
 7. if applicable, it has inspected TG4’s premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;
 8. TG4 shall be under no obligation to purchase any minimum number or value of Goods.
- B. The Contractor shall be and undertakes to be responsible for and to take due precautions for the safe custody of any Goods on his premises which are the property of the Contractor and shall insure the same against any form of loss or damage and the Contractor so acknowledges and confirms.
- C. The Contractor confirms and undertakes that the Goods supplied will, at the time of delivery (and for the Guarantee Period), correspond to the description given by the Contractor in accordance with the Submission (to include any samples furnished thereunder) and the Specification (Schedule B) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in the Submission. None of the provisions of the Sale of Goods Acts 1893 and 1980 shall be excluded or limited under this Agreement.
- D. The Contractor undertakes to ensure that all and any necessary consents and/or licences are obtained and in place for the purposes of this Agreement. The Contractor hereby indemnifies TG4 and shall keep and hold TG4 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 intellectual property rights in so far as any such rights are used for the purposes of this Agreement.
- E. 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 supply the Goods shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper supply of the Goods to TG4. In the event that any of the Key Personnel assigned by the Contractor to provide the Goods under this Agreement becomes unable to supply the Goods for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify TG4 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 TG4 such details as TG4 may reasonably require in writing regarding any Replacement Personnel. TG4 shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

- F. The Contractor undertakes to notify TG4 forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out in clause 6A and to comply with all reasonable directions of TG4 with regard thereto which may include termination of this Agreement.

7. Remedies

- A. The Contractor shall be liable for and shall indemnify TG4 for and in respect of all and any losses, claims, demands, damages or expenses which TG4 may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor’s failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 7A shall survive termination of this Agreement for any reason.
- B. 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.
- C. Should TG4 find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Goods of approved quality, TG4 shall be entitled to recover from the Contractor any excess prices which may be paid by TG4 .
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E. TG4’s aggregate liability to the Contractor under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed the Charges paid or to be paid under this Agreement.
- F. If for any reason TG4 is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment (“the Retention Amount”) which Retention Amount shall not at any given time exceed 20% per cent of the Charges. In such event TG4 shall identify the particular Goods with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the Goods as identified by TG4 or resolution of outstanding queries. TG4 shall hold the Retention Amount on behalf of

the Contractor but without any obligation to invest. The terms of this clause 7F shall be without prejudice to and not be in substitution for any remedy of TG4 under this Agreement.

8. Confidentiality

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

1. its professional advisers subject to the provisions of this clause 8; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 8; or
4. in the case of TG4 by request of any person or body or authority whose request TG4 or persons associated with TG4 (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

B. The Contractor undertakes to comply with all reasonable directions of TG4 with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited in the RFT (“the Confidentiality Agreement”).

The obligations in this clause 8 will not apply to any Confidential Information:

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

C. TG4 is subject to the provisions of the Freedom of Information Act 2014. In the event of TG4 receiving a request for information related to this Agreement, TG4 shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state

the reasons for this sensitivity. TG4 will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation.

D. The Contractor undertakes to comply with all requirements of data protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time including but not limited to (i) the Data Protection Acts 1988 and 2003; and (ii) all EU requirements arising (including but not limited to provisions relating to the processing of data, ensuring the security of data and restrictions on transfer of data abroad) and any legislation and regulations implementing same.

E. Without prejudice to the generality of clause D above, the Contractor shall in respect of any Personal Data (as defined in the Data Protection Acts):

1. process the Personal Data only on and subject to the instructions and authorisation of TG4;
2. adopt and maintain and prior to processing any Personal Data, appropriate technical and organisational security and other measures for processing Personal Data in order to protect against unauthorised or accidental access, loss, alteration, disclosure or destruction of such data and against all other unlawful forms of processing of such data;
3. take all reasonable steps to ensure that its officers, employees and agents are aware of and comply with this clause E;
4. fully comply with, and implement any data protection, data retention or other related policies which are communicated or notified to the Contractor by TG4 from time to time;
5. promptly comply with any request from TG4 requiring the Contractor to amend, transfer or delete the Personal Data;
6. promptly notify TG4 if it receives a request from a data subject (as defined in the Data Protection Acts) to have access to any Personal Data or any other complaint, correspondence, notice or request relating to TG4's obligations under the data protection law and provide full co-operation and assistance to TG4 in relation to any such complaint or request; and
7. shall not process or otherwise transfer any Personal Data outside of the EEA without TG4's prior written consent. The Contractor acknowledges and accepts that any consent given may be contingent upon compliance with additional terms.

F. The terms of this clause 8 shall survive expiry, completion or termination for whatever

reason of this Agreement.

9. Force Majeure

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
1. the nature of the Force Majeure Event;
 2. the anticipated delay in the performance of obligations;
 3. the action proposed to minimise the impact of the Force Majeure Event;
- and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
- C. If the Force Majeure Event continues for 30 calendar days either Party may terminate at 14 days notice.
- D. In circumstances where the Contractor is the Affected Party, TG4 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.

10. Termination

- A. Without prejudice to the provisions of sub-clause 10B, this Agreement may be terminated by TG4, without liability for compensation or damages, by serving 60 days written notice on the Contractor.
- B. Either Party 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 on the happening of any of the following:

1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party; or
 2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect; or
 3. in circumstances where TG4 becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of TG4, be removed by other means; or
 4. in circumstances where TG4 become aware of any registrable interest on the part of the Contractor.
- C. TG4 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 TG4 becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all confidential information, records, papers, materials, media and other property of TG4 which is in its possession.

11. Contract Management

- A. TG4'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 TG4 from time to time. If requested in writing by TG4 the Contractor shall meet formally with TG4 to report on progress and shall comply with all written directions of TG4.

- B. The Contractor agrees to:
1. liaise with and keep TG4 's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under the Agreement;
 2. maintain such records and comply with such reporting arrangements and protocols required by TG4 from time to time;
 3. comply with all reasonable directions of TG4; and
 4. comply with the service levels and performance indicators set out in Schedule D.
- C. TG4 or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of TG4 thereby arising. The cost of inspection shall be borne by TG4.
- D. The Contractor shall be required to hold for the Term insurances of the nature and amount as set out in the RFT and shall immediately advise TG4 of any material change to its insured status. The Contractor shall produce proof of current premiums paid upon request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of TG4 with regard to compliance with this clause 11D.

12. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to an agreed member of staff within the Contractor and to the Director General within TG4 respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.

- E Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times

13. Governing Law, Choice of Jurisdiction and Execution

- A. This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
- B. This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

14. Notices

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause.
- B. All notices shall be deemed to have been served as follows:
 - 1. if personally delivered, at the time of delivery;
 - 2. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 - 3. if communicated by email, on the next calendar day following transmission.

15. Assignment and Subcontract

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

16. Entire Agreement

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

17. Severability

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

18. Waiver

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

19. Non-exclusivity

Nothing in this Agreement shall preclude TG4 from purchasing goods (or Goods) from a third party at any time during the currency of the Agreement.

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 TG4 .

21. Conflicts, Registrable Interests and Corrupt Gifts

- A. 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 Goods and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise TG4 forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with TG4 's directions in respect thereof.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and TG4, must be fully disclosed to TG4 immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and to comply with TG4's directions in respect thereof to the satisfaction of TG4. The terms "registrable interest" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 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 TG4 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

- A. Any of TG4's premises made available from time to time to the Contractor by TG4 in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.
- B. The Contractor shall upon reasonable notice by TG4 allow TG4 access to its premises (including the premises of any Subcontractor or agent) which are used in connection with the supply of the Goods under this Agreement.

23. Non Solicitation

- A. For the Term and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither TG4 nor the Contractor shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

24. Change Control Procedure

- A. At any time during the term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or TG4 proposes the change.
- C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the supply of the Goods (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and submission for review,

subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.

- F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. The Contractor and TG4 will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If TG4 's request for any variation is subsequently withdrawn but results in a delay in the supply of the Goods 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.

Schedule B: Goods: The Specification

[Insert when completing contract] detail the nature, quantity, quality, time of delivery and functional specifications of the Goods

The key personnel are [] [no para in the body of the goods agreement in respect of key personnel]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels

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

Appendix 1: Confidentiality Agreement

THIS AGREEMENT is made

2018 BETWEEN:

TEILIFÍS NA GAELIGE, of Baile na hAbhann, Co na Gaillimhe (hereinafter “TG4”) of the one part; and

[Contractor’s legal name: to be completed on signing.], of [address: to be completed on signing.] (hereinafter called “the Contractor”) of the other part.

WHEREAS

- A. By Request for Tenders dated [insert date] entitled [insert title] (the “RFT”) TG4 invited tenders (“Tenders”) for the provision of the goods described in Appendix A to the RFT (the “Goods”) (“the Competition”). The Contractor submitted a response to the RFT dated the [insert date of Tender].

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 (the “Confidential Information”) as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to TG4.

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 it by TG4 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 TG4 all and any information (whether in documentary form, oral, electronic, audio-visual, audiorecorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to TG4, the supply of Goods 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 subparagraph 2.1.
3. 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 not, without the prior written consent of TG4, to communicate or disclose any part of such Confidential Information to any 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 TG4; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.

4. 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 TG4; 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).

5. The Contractor undertakes:

- 5.1 to comply with all directions of TG4 with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Acts 1988 and 2003);
- 5.2 to comply with all directions as to local security arrangements deemed reasonably necessary by TG4 including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of TG4 including by police authorities;
- 5.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to TG4 all Confidential Information or at the written direction of TG4 to destroy in a secure manner all (or such part or parts thereof as may be identified by TG4) 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 TG4 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
- 5.4 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 and 2003 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.
- 6 The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by the TG4 and the Contractor so acknowledges and confirms.
- 7. 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 TG4 as may be necessary

for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by TG4 and in the manner agreed in writing between the Parties.

8. 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.
9. 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.

SIGNED for and on behalf of Teilifís na Gaeilge	SIGNED for and on behalf of the Contractor
Witness	Witness