



eir Standard Terms and Conditions of Purchase

1. Definitions and Interpretation

1.1 The following definitions apply in these Conditions:

“Affiliate” – any subsidiary or holding company of a party from time to time, as the terms **“subsidiary”** and **“holding company”** are defined in Sections 7 and 8 of the Companies Act 2014 and **“Affiliates”** shall be interpreted accordingly.

“Applicable Law” – any law, statute, bye-law, regulation, order, regulatory policy (including any requirement or notice of any regulator), guidance or industry code of practice, rule of court or directives, delegated or subordinate legislation in force from time to time which applies to the provision of the Goods and/or Services.

“Business Day” – a day (other than a Saturday or a Sunday or public holiday in Ireland) on which the banks are open for business in Dublin.

“Conditions” – these eir Standard Terms and Conditions of Purchase.

“Confidential Information” – information disclosed by eir in any medium or format (whether in writing, orally, visually or electronic or by any other means and whether directly and specifically described, designated or marked as confidential or which ought reasonably be regarded as confidential) under or in connection with the Contract, together with all reproductions, extracts, summaries or analyses of Confidential Information made by eir to the Supplier or to which, under or in connection with the Contract, including, without limitation, information relating to eir’s products, services, operations, processes, plans or intentions, product information, trade secrets, market opportunities and business affairs.

“Contract” – the contract between eir and the Supplier, for the purchase of Goods or Services by eir comprised of the Purchase Order, the Conditions, any applicable Specification and /or Statement of Work.

“Deliverables” – any deliverables provided by the Supplier in connection with the Services, and or the Goods, including all hardware, Software and all Documents, products, materials, media, licences developed by the Supplier in any form, including computer programs, data, reports and specifications (including drafts) to be delivered by the Supplier as part of the Goods and / or Services. **“Delivery Address”** – the address(es) for delivery of the Goods or performance of the Services specified by eir in the Purchase Order and/or any applicable Statement of Work.

“Delivery Date” – the date for delivery of the Goods or performance of the Services specified by eir in the Purchase Order or in any applicable Statement of Work.

“Document” –without limitation, in addition to any document in writing, any accompanying or associated drawing, map, plan, diagram, design, picture or other image, tape, disk or other device or record embodying information in any form.

“DPA” – the Data Protection Acts 1988 and 2003 (as amended), the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011, the EU Data Protection Directive 95/46/EC, the EU ePrivacy Directive 2002/58/EC (as amended) (the **“ePrivacy Directive”**), any successor or replacement to the laws set out above (including, when they come into force, the General Data Protection Regulation (Regulation (EU) 2016/679 (the **“GDPR”**)) and the successor to the ePrivacy Directive) and all other industry guidelines (whether statutory or non-statutory) or applicable codes of practice and guidance notes



issued from time to time by the Irish Data Protection Commissioner relating to the processing of Personal Data or privacy.

“eir” – eircom Limited, a company registered as a branch in Ireland (branch number 907674), incorporated in Jersey (company number 116389) whose Irish branch address is at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, Ireland.

“eir Data” – all data, tables, information, text, drawings, codes, diagrams, images or sounds which are embodied in any electronic or tangible medium, including compilations of any of the forgoing, and which are: (a) processed by, or a product of, the supply of the Goods and/or provision of the Services; (b) generated by the Supplier or a sub-contractor in carrying out the Supplier's obligations under the Contract or a Statement of Work; or (c) generated by or on behalf of eir, or an Affiliate.

“eir Policies” – eir's policies and procedures relevant to the supply of the Goods and/or the Services.

“eir Systems” – any of eir's hardware, Software, firmware, computer systems or networks (or any part thereof).

“Environmental Regulations” – any environmental Applicable Law including but not limited to the Waste Management (Waste Electrical and Electronic Equipment) Regulations (S.I. 340 of 2005), as amended, the Waste Management (Restriction of Certain Hazardous Substances in Electrical and Electronic Equipment) Regulations (S.I. 341 of 2005) as amended, and the Waste Management (Batteries and Accumulators) Regulations 2008 (S.I. 268 of 2008) and the European Union (Waste Electrical and Electronic Equipment) Regulations (S.I. No. 149 of 2014).

“Force Majeure Event” - acts, events, omissions or accidents beyond a Party's reasonable control, including acts of God, inclement weather, flood, lightening, fire, acts of terrorism, war, military operations, acts or omissions of Government or other competent authorities.

“Goods” – the goods (or any instalment or any part of them) as described in the Purchase Order and where relevant includes any Documents supplied to aid use of such goods or as set out in an agreed Statement of Work signed by the Parties.

“Intellectual Property Rights” – (i) any copyright, designs, trademarks, trade names, logos, patents, moral rights, know how, data base rights, methodologies, rights in Confidential Information, trade secrets, whether or not registered or registrable and including any representations and applications for registration of their rights; (ii) all other intellectual property rights and similar or equivalent rights which currently exist or are recognised in the future; and (iii) all applications, extensions and renewals in relation to any such rights.

“Party” – either of eir or the Supplier and **“Parties”** shall mean both of them.

“Payment Period” –Ninety (90) days from the date eir receives a valid, properly submitted, undisputed invoice prepared and delivered in accordance with Clause 6. **“Price”** – the price of the Goods or the charges for the Services, including carriage, packing, insurance, logistics costs, license or royalty payments, payable in Euro as set out in the Purchase Order.

“Publicly Available Software” – any software that contains, or is derived in any manner (in whole or in part) from, any software that is distributed as free software, open source software (e.g. Linux) or similar licensing or distribution models and that requires as a condition of use, modification or distribution that such software or other software incorporated into, derived from, or distributed with such software (i) be disclosed or distributed in source code form; (ii) be licensed for the purpose of making derivative works; or (iii) be distributable at no charge.

“Purchase Order” – eir's order or orders for Goods or Services incorporating these Conditions.



“Purchase Order Number” – the unique number set out by eir on the Purchase Order.

“Services” – the services to be provided by the Supplier (or any part of them) described in the Purchase Order and as may be more particularly described in a Statement of Work.

“Software” – the software programs designed, written and /or provided to eir as part of the Deliverables and / or the Services.

“Source Code” – the computer programming code of any Deliverables and any applicable services, code or materials to same, in human readable form. **“Specification”** – any specification, Statement of Work, description (functional and operational), plan, drawing, sample or detailed statement setting out the functionality and/or requirements of each component relating to the Deliverables, the Goods and/or the Services which has been approved by eir.

“Supplier” – the company / person named in the Purchase Order.

“Statement of Work” – any agreed statement of work signed by the Parties issued under the Contract.

“Timetable” – a timetable agreed by eir for the provision of the Goods or performance of the Services.

“Transfer Regulations” – the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (S.I. 131 of 2003) as amended, re-enacted or extended from time to time.

“VAT” – is the current rate of value added tax chargeable under Irish law for the time being.

“Virus” – any code which is designed to disrupt, disable, harm or otherwise impede in any manner, including aesthetic disruptions or distortions, the operation of any of eir Systems on which it is installed on or with which it interacts, or would disable in any way its operation based on the elapsing of a period of time, exceeding an authorised number of copies, advancement to a particular date or other numeral, or that would permit the Supplier or any other person to access eir Systems to cause such disablement or impairment, or which contains any other similar harmful, malicious or hidden procedures, routines or mechanisms which would cause such programs to cease functioning or to damage or corrupt data, storage media, programs, equipment or communications, or otherwise interfere with operations including, without limitation, computer programs commonly referred to as worms or trojan horses.

“Working Hours” – 9 a.m. to 5 p.m. on a Business Day.

2. Scope

2.1 In the absence of any other properly executed agreement between the Parties these Conditions apply to every Purchase Order placed by eir for the delivery of Goods and Services to the exclusion of all other terms and conditions which the Supplier may seek to rely, stipulate, incorporate, refer to or purport to apply in writing or orally whether in any quotation, order form, acknowledgement of a Purchase Order, invoice, paperwork, other documentation, correspondence or elsewhere, or implied by law, trade, custom or course of dealing.

2.2 Any variation to the Contract (including to these Conditions) will not be effective unless agreed in writing and signed by eir, or where a separate formal agreement in writing has been executed between the Parties in respect of Goods and Services, in which instance the terms and conditions of such agreement shall supersede and prevail over the Contract to the extent of any conflict between them.

2.3 eir reserves the right to update the Conditions from time to time. Contracts incorporate the version of the Conditions in force at the time of the Contract.



2.4 The Conditions have been reviewed by both Parties and their legal representatives have reviewed (or have had an opportunity to review) and accordingly, the Parties agree that no presumption or rule that an ambiguity shall be construed against the Party drafting the clause shall apply to the interpretation or enforcement of the Contract.

2.5 The Supplier acknowledges and agrees that eir contracts on behalf of itself and on behalf of each of its Affiliates, and that all rights afforded under the Contract to eir are also afforded and are enforceable by or on behalf of each of its Affiliates.

2.6 In the event of any conflict between the Conditions and any Statement of Work and / or Purchase Order hereunder, the Conditions shall prevail over the said Statement of Work and / or Purchase Order to the extent of any such conflict. Should a conflict arise between a Statement of Work and / or a Purchase Order, the terms of the Statement of Work shall prevail.

3. Contract Formation

3.1 Each Purchase Order issued by eir constitutes an offer by eir to purchase Goods or acquire Services from the Supplier on a non-exclusive basis subject to the Conditions.

3.2 A Contract is made between the Parties on the earlier of –

3.2.1 Notification of written acceptance by the Supplier of a Purchase Order, or

3.2.2 Fulfilment of a Purchase Order in whole or in part by the Supplier.

3.3 Regardless of the date of acceptance or fulfilment of a Purchase Order, the Supplier accepts that the Conditions shall be effective from the commencement of the provision of the Goods or Services by the Supplier (and shall apply to all Goods and Services supplied predating the Purchase Order).

4. Variation of Purchase Order

4.1 eir may, at any time, vary or add to the Goods or Services, and the Supplier will carry out such variation as if they were incorporated in the Contract upon receipt of an amended Purchase Order.

5. Price

5.1 The Price of the Goods or Services is as stated in the Purchase Order and is exclusive of VAT.

5.2 No increase in the Price or extra charges will be accepted by eir and the Parties agree the Price shall remain fixed until completion of the Contract.

5.3 The Supplier agrees to grant any discount for prompt payment, bulk purchases or volume of purchase customarily granted by the Supplier or as set out in a Purchase Order.

5.4 The Supplier will pass on any cost savings to eir resulting from a reduction of raw material costs, labour costs or otherwise.

5.5 The Supplier will (unless otherwise agreed in writing by eir) bear the cost of unanticipated expenses or cost overruns required to ensure the Goods or Services are provided in accordance with the terms of the Contract.



6. Payment

6.1 Unless otherwise stated in the Purchase Order, all valid and undisputed invoices will normally be paid in the first scheduled bill payment run after the Payment Period. Time for payment shall not be of the essence of the Contract.

6.2 Invoices must be submitted electronically to such email address as eir may, from time to time specify. Prior to submitting invoices the Supplier must notify eir of the email address(es) that the invoice(s) will be sent from. Invoices received from email addresses other than those registered will not be recognised by eir's billing systems.

6.3 The Supplier may invoice eir in respect of each Purchase Order at any time after delivery of the Goods or completion of the Services. Each invoice must be addressed to eircom Limited, quote (a) the Supplier's unique invoice number, (b) the date, (c) eir's Purchase Order Number, (d) eir's item code, (e) unit price, (f) quantity and description of Goods or Services, (g) details of the Supplier's name and registered address, (h) VAT number (if appropriate), amount of VAT payable and value of invoice both gross and net, inclusive and exclusive of VAT and (i) the Supplier's banking details. The Supplier must submit a separate invoice in respect of each instalment delivered under the Purchase Order.

6.4 Credit notes, in order to be valid, must comply with the criteria for valid invoices set out above in Clause 6.3, unless otherwise agreed in writing by eir.

6.5 eir may withhold payment if a current revenue clearance certificate is not provided by the Supplier.

6.6 The Supplier must inform eir immediately by sending an email to such email address as eir may, from time to time specify of any changes to the status of the Supplier, including any change of name, bank details, VAT registration or company registration details.

6.7 In the event that eir disputes an invoice, eir may withhold payment until the dispute is resolved. If any sum of money shall be due from the Supplier to eir, the same may be deducted from any sum then due or which at any time thereafter may become due to the Supplier under the Contract or any other agreement or contract with eir.

7. Inspection and Progress

7.1 The Supplier agrees to allow eir to carry out such inspections, audit of records where applicable, or tests as eir may reasonably require. Any such inspection or testing will not diminish or otherwise effect the Supplier's obligations under the Contract.

7.2 If eir is not satisfied that the Goods or Services will comply with the Contract the Supplier will immediately take all steps necessary to ensure compliance with the Contract within seven (7) days of the date of inspection.

7.3 A failure by eir to make a complaint at the time of inspection in accordance with Clause 7.1 will not constitute a waiver by eir of any of its rights or remedies.

8. Delivery and Performance

8.1 The Supplier will deliver the Goods to or perform the Services at the Delivery Address on the date or within the time scale for completion as specified in the Purchase Order or in the agreed Statement of Work and in any event



during Working Hours. If a date is not specified then delivery or performance must be within twenty eight (28) days of the date of the Purchase Order.

8.2 Time is of the essence in relation to delivery of the Goods or performance of the Services by the Supplier.

8.3 Without prejudice to Clause 10.1, the Supplier will inform eir immediately in circumstances where it has reason to believe that Goods or Services will not be delivered or completed by the date specified in the Purchase Order.

8.4 Each delivery of Goods must be accompanied by a delivery note, quoting the Purchase Order Number, and containing the same level of detail as the Purchase Order, and in the case of instalment sent, the outstanding balance remaining to be delivered. A service work sheet or delivery docket for Services, containing the same level of detail as the Purchase Order must be submitted on completion of Services.

8.5 If eir agrees that the Goods can be delivered by instalments, time will be of the essence as to the delivery of each instalment and the failure by the Supplier to deliver any one instalment in accordance with this Contract will entitle eir at its discretion to treat the entire Contract as repudiated.

8.6 If Goods or Services are delivered in excess of the quantities ordered, eir is not bound to pay for the excess and the excess remains and is returnable at the Suppliers risk and expense.

8.7 Title and property in the Goods and Deliverables passes to eir upon delivery.

8.8 eir has the right to reject any Goods or Services which are not in accordance with the Contract and will not be deemed to have accepted all or part of the Goods or Services (notwithstanding the signature of a delivery note or any other acknowledgement of delivery) until –

8.8.1 eir has had a reasonable opportunity to test or inspect the Goods and Services.

8.8.2 The completion of any acceptance tests eir considers necessary.

8.8.3 Lapse of a reasonable time after any latent defect has become apparent.

8.9 The Supplier shall assign or procure the benefit of any manufacturers' warranties or guarantees in respect of the Goods to or for eir and will provide all reasonable assistance in enforcing the same.

9. Warranties

9.1 The Supplier warrants that it has the right to enter into and carry out its obligations under the Contract and to provide and / or sell the Goods and Deliverables to eir. The warranties in Clause 9.1 are in addition to any other warranties or guarantees contained in the Purchase Order or implied by law or provided by the Supplier, the manufacturer of Goods or any third party.

9.2 The Goods will be of satisfactory quality (within the meaning of the Sale of Goods and Supply of Services Act 1980)(as amended) and fit for any purpose held out by the Supplier or made known to the Supplier expressly or implicitly prior to or at the time the Purchase Order is placed. The Supplier shall notify eir as soon as it becomes aware of any health and safety hazards or issues which arise in relation to the Goods and/or Services.

9.3 The Goods will be free from defects whether actual or latent and whether in design, material and workmanship.

9.4 The Goods and Services will conform in every respect with any relevant Specification or sample.



9.5 The Goods and Services will be supplied in accordance with Applicable Law.

9.6 The Services will be performed with due care, skill and diligence in accordance with recognised commercial practices and standards in accordance with any Timetable or by the Delivery Date agreed by eir and by appropriately qualified and trained personnel.

9.7 The Deliverables will meet any agreed Specification and will be free from Virus.

9.8 The supply of the Goods or Services and eir's use of the Goods or Services will not infringe the Intellectual Property Rights of any other parties.

9.9 To the extent that the Supplier or its personnel have access to the eir System in performing the Services, the Supplier warrants that it shall not (and will procure that its personnel, sub-contractors or agents do not) deliberately or negligently introduce any Virus into the eir System.

9.10 The Supplier shall maintain complete and accurate Documents and records relating to the performance of the Services and provision or supply of the Goods.

9.11 The Supplier has (and will at all times maintain) the right and shall obtain and maintain all requisite licences, approvals, permissions and consents (together with all necessary corporate authority and capacity) to perform the Services and provide the Goods and to enter into the Contract.

9.12 The Supplier shall ensure that no eir equipment is used or removed from any eir premises without eir's prior written consent.

9.13 The Supplier shall co-operate in good faith with all other suppliers appointed by eir.

9.14 The Supplier shall perform the Services and provide the Goods in such a way as not to cause any interruption to the business processes of eir (other than any agreed and unavoidable interruption which is required in order to perform the Services or provide the Goods in a proper and efficient manner).

9.15 The Goods and Deliverables are free from any charge or encumbrance not disclosed to eir before the Contract is made.

9.16 eir's rights under the Contract are in addition to the statutory implied terms implied in favour of eir by the Sale of Goods and Supply of Services Act 1980, and any other statute.

9.17 The Supplier will provide eir with the benefit of any manufacturer's warranties in respect of the Goods.

The provisions of Clauses 9.1 to 9.17 will survive any performance, acceptance or payment pursuant to the Contract and will extend to any substituted or remedial Goods or Services provided by the Supplier.

10. Remedies

10.1 Without prejudice to any other remedy, eir may have, in the event of late delivery, or if the Goods or Services or Deliverables including any Software, are not supplied or performed in accordance with the Contract, then eir may at its absolute discretion (whether or not any part of the Goods or Services have been accepted by eir) –

10.1.1 Cancel the Contract in whole or in part.

10.1.2 Postpone or refuse to accept any further delivery of Goods or Services without liability.



10.1.3 Require the Supplier at its expense to fulfil its obligations in accordance with the Contract within seven (7) days.

10.1.4 Whether or not eir has previously required the Supplier to fulfil its obligations above, reject the Goods or Services (in whole or in part) and return them to the Supplier at the risk and cost of the Supplier.

10.1.5 Recover from the Supplier any expenditure incurred by eir in obtaining Goods or Services in substitution from another supplier.

10.1.6 Claim damages for all additional costs, losses or expenses incurred as a result of the Suppliers breach or breaches of the Contract.

10.1.7 In the case of late delivery of Goods or delay in performance of the Services, deduct from the Price by way of liquidated damages for delay, five per cent (5%) of the Price for each week (or part thereof) of delay to a maximum of twenty per cent (20%). It is acknowledged by the Supplier that such liquidated damages are a genuine pre-estimate of loss and shall not be construed as a penalty.

11. Packaging and Environmental Matters

11.1 In performing its obligations under the Contract, the Supplier must comply with Applicable Law relating to the prevention of harm to humans or to the environment and in all respects with the Environmental Regulations.

11.2 The Supplier must, before delivery, provide eir with a list of any harmful or potentially harmful properties or substances in the Goods supplied. eir will rely on such information from its Supplier to satisfy its own obligations under Applicable Law.

11.3 On delivery, the Supplier must provide eir with comprehensive information on the origin or source of the Goods and, where applicable details in respect of the manufacture of the Goods, including but not limited to batch number(s) to enable eir to trace the source of supply.

11.4 The Supplier must ensure that packaging is designed and produced to –

11.4.1 Minimise the volume and weight used.

11.4.2 Limit its impact on the environment when managed as a waste.

11.4.3 Permit its reuse or recovery, and

11.4.4 Manufactured so as to minimise and where possible eliminate the presence of noxious and hazardous constituents.

11.5 The Supplier must provide eir with information on the weight and category of packaging of the Goods supplied. This information must be submitted by the Supplier to eir in advance of delivery of Goods by completing eir's packaging waste statistical return form No. 72110.

11.6 eir may at the Supplier's expense return all or any empty packaging materials to the Supplier.

12. Damage in Transit



12.1 The Supplier must immediately repair or replace (at eir's discretion) at its own cost any Goods damaged in transit.

13. Software

13.1 Where there is a supply of Software to eir (whether Software proprietary to the Supplier or to a third party), subject to Clause 17.1 the Supplier grants, or must procure the grant of an irrevocable, worldwide, non-exclusive, perpetual and royalty-free license to eir and its Affiliates to use and copy the Software and any associated Documents.

13.2 The Supplier shall promptly notify eir of any modifications, maintenance, release or new version of the Software, and shall offer them to eir on such terms as they are generally made available to the Supplier's customers and in accordance with Clause 5.3 and Clause 13.3 below.

13.3 The Supplier warrants that –

13.3.1 The Software will conform to its published or agreed Specification and will be free from defects.

13.3.2 No Virus will be contained in any Software or in any media on which the Software is delivered to eir under the Contract.

13.3.3 No Publicly Available Software, save where agreed in writing with eir, shall be incorporated or used, in whole or part, in the Deliverables or in the development of the Deliverables.

13.3.4 It will use any access to the eir Systems solely to the extent necessary and essential to the delivery of the Goods and/or the Services and strictly in accordance with the eir Policies applicable (including but not limited to those related to access, remote access and security).

13.3.5 It has full right and authority to grant a licence of the Software to eir.

13.4 The Supplier will provide eir with such technical advice, assistance, data and Documents including Source Code and support contacts where necessary to allow eir to maintain the Software.

14. Indemnity & Limitation of Liability

14.1 In this clause a reference to eir includes eir's Affiliates and the provisions of this condition shall be for the benefit of and enforceable by, eir's Affiliates. A reference to the Supplier includes its employees, subcontractors or agents. Without any prejudice to any other rights or remedies of eir, the Supplier will indemnify and keep eir indemnified against all damages, costs, expenses (including legal costs) injury or death to third parties, all claims for loss, incurred by eir arising out of or in connection with –

14.1.1 Any breach of any of the warranties given by the Supplier.

14.1.2 Any negligent or deliberate act or omission of the Supplier in the performance or purported performance of the Contract.

14.1.3 Any breach of Clause 19 (Confidentiality).

14.1.4 Any breach of Clause 20 (Assignment and Sub-Contracting).



14.1.5 Any breach of Clause 28 (Data Protection).

14.1.6 Any claim that the Goods, Services, software or Deliverables breach any third party Intellectual Property Rights in relation to the supply or the use of them by eir.

14.1.7 Any claim arising under Clause 31 (Personnel & Transfer Regulations).

14.2 To the maximum extent permitted by Applicable Law eir's maximum liability to the Supplier in respect of any Purchase Order shall be limited to the amount paid by eir under a Purchase Order for the relevant Goods and/or Services.

14.3 To the maximum extent permitted by Applicable Law eir shall not be liable for any consequential or indirect loss, loss of profits, revenue or anticipated revenue.

14.4 Nothing in these Conditions will restrict either the Supplier's or eir's liability for death or personal injury resulting from their negligence or fraud.

14.5 This Clause 14 shall survive and shall not be rendered ineffective by the termination or expiry of the Contract for any reason whatsoever.

15. Insurance

15.1 The Supplier must maintain sufficient insurances with a reputable insurer to cover any potential liability under the Contract. As a minimum, where relevant, the Supplier must maintain the following insurances at the following indemnity levels –

15.1.1 Public Liability Insurance of € 12,700,000 per claim and as a yearly aggregate.

15.1.2 Product Liability Insurance of € 12,700,000 per claim and as a yearly aggregate.

15.1.3 Employer Liability Insurance of € 13,000,000 per claim and as a yearly aggregate.

15.1.4 Insurance as required under the Road Traffic Acts in respect of any vehicles or machinery used in connection with the execution or performance of the Contract.

15.1.5 Professional Indemnity Insurance of € 5,000,000 per claim and as a yearly aggregate

15.1.6 Cyber Liability and Data Insurances of €5,000,000 per claim and as a yearly aggregate.

15.1.7 In the event the Supplier is delivering Goods and / or performing Services, at any of eir's data centres and / or main exchange buildings, higher insurance requirements will be advised at that time.

15.2 The Supplier agrees on request by eir to provide evidence of such insurances to eir or to amend any insurance cover to meet any specific requirements of eir.

16. Term and Termination

16.1 Unless terminated under this Clause the term of the Contract shall commence on the date the Contract becomes legally binding pursuant to Clause 3 and shall continue until the Supplier has delivered the Goods and / or performed all of the Services under the Contract.



16.2 The Contract or any Purchase Order may be terminated in whole or in part by eir by giving written notice to the Supplier at any time and eir's sole liability will be to pay the Supplier the Price for any Goods delivered or Services performed up to and including the date of termination. eir will not be liable to pay any further costs.

16.3 Without prejudice to any other rights or remedies eir may have, eir may terminate the Contract with immediate effect and without liability upon written notice in the event that:

16.3.1 The Supplier commits a material breach of the terms of the Contract and, in the event of a material breach capable of being remedied, fails to remedy the breach within seven (7) days of receipt of written notice from eir specifying the material breach of the Contract.

16.3.2 The Supplier is in persistent or continuing breach of any of its obligations under the terms of the Contract, or is in persistent or continuing breach of agreed service levels and, where such breach is remediable, fails to remedy such breach within fourteen (14) days of a written notice to do so. For the avoidance of doubt, separate minor breaches (of whatever nature and howsoever arising) exceeding three (3) in number can be construed as a persistent or continuing breach within the meaning of this clause.

16.3.3 The Supplier is subject to a change of control.

16.3.4 The Supplier is the subject of an appointment of a receiver, examiner or administrator is appointed over the whole or any part of the Supplier's assets or the Supplier is struck off the Register of Companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for the winding up of the Supplier (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the Supplier as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by the Contract) or if anything analogous to the foregoing occurs in any applicable jurisdiction.

16.3.5 A notice is issued for the purposes of convening a meeting to approve the placing of the Supplier into liquidation, or a petition is presented or an order made for the liquidation of the Supplier or the Supplier otherwise becomes subject to dissolution proceedings.

16.3.6 The Supplier suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business or is or becomes unable to pay its debts (within the meaning of of the Companies Act 2014 (as amended)) or otherwise becomes insolvent.

16.3.7 The Supplier is subject to a voluntary winding-up under the Companies Act 2014 (as amended), a scheme of arrangement under the Companies Act 2014 or any other arrangement, compromise or composition of the Supplier's debts, or any class of its debts, is proposed or made by or with the Supplier.

16.3.8 a judgment, order or award made against the Supplier is outstanding or if any distress, execution, sequestration or similar process is levied on or commenced against any of the assets of the Supplier.

16.3.9 The Supplier is deemed bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of amalgamation or reconstruction, is the subject of a winding up petition or compounds with its creditors generally or has a receiver or manager appointed over all or any of its assets or enters into Examinership, Chapter 11 Protection or anything analogous to any of the above.

16.4 Termination of the Contract shall not affect the rights of either Party existing at the date of termination.

16.5 Notwithstanding termination of the Contract those provisions which expressly or by implication survive termination will continue in full force and effect. On termination of the Contract the Supplier must immediately



return all Documents or materials containing Confidential Information, information relating to eir's Intellectual Property Rights and any property belonging to eir.

16.6 Upon termination of the Contract the Supplier shall co-operate fully with eir and any future supplier to ensure an orderly migration of the Services.

17. Intellectual Property

17.1 All existing Intellectual Property Rights existing prior to the commencement of the Contract shall belong to the party that owned such Intellectual Property Rights prior to such date.

17.2 Unless otherwise stated in a Purchase Order or in a Statement of Work the Supplier agrees that all new Intellectual Property Rights in the Deliverables, Services and any Software developed for eir provided under the Contract shall vest in and be the absolute property of eir.

17.3 The Supplier will at eir's request, do all such further acts and execute all such Documents as is required to secure for eir the full benefit of any Intellectual Property Rights in accordance with Clause 17.2.

17.4 In respect of (1) all existing Intellectual Property Rights in the Deliverable or the Software or (2) any new Intellectual Property Rights in a Deliverable or the Software which are not assigned to eir in accordance with the Conditions, the Supplier shall grant eir, its Affiliates, agents, consultants, contractors, sub-contractors and outsourcers a non-exclusive, perpetual, worldwide, irrevocable, royalty free licence to use such Deliverable and / or Software (including Source Code) for eir's business purposes.

18. Reputation, Inducement, Bribery and Corruption

18.1 The Supplier must not do or omit to do anything or publicly say anything which may damage the reputation of eir or its Affiliates.

18.2 The Supplier must not offer or agree to give to any employee or other person within eir or any agent of eir any gift, reward, advantage, benefit or consideration of any kind as an inducement or reward for doing, or not doing any action, in relation to the granting of a Contract by eir or its Affiliates.

18.3 Compliance with Applicable Law in relation to bribery and corruption is a matter of fundamental importance to eir and the Parties (including their respective employees, agents, consultants, contractors and subcontractors) shall act in accordance with all Applicable Law relating to bribery and corruption.

19. Confidentiality

19.1 The Supplier will, and will procure that, all of its employees, agents, sub-contractors or advisors will keep all Confidential Information relating to the business or the operations of eir or its Affiliates which is not in the public domain confidential subject to any obligations under Applicable Law.

19.2 The obligation in Clause 19.1 will survive termination of the Contract.



20. Assignment and Sub-Contracting

20.1 The Supplier may not assign, novate, sub-contract or otherwise dispose of its rights or obligations or any part of them under the Contract without the prior written consent of eir.

20.2 The appointment of a sub-contractor or agent in accordance with eir's consent will not relieve the Supplier of any of its obligations under the Contract. The Supplier agrees on request by eir to provide details of all contractual arrangements in place with sub-contractors or agents in relation to the supply of the Goods or Services to eir and if requested will obtain collateral warranties from such sub-contractors in favour of eir in a form required by eir. The Supplier will indemnify and keep indemnified eir from and against all damages, costs, charges and expenses (including legal costs) amounting from or incurred by reason of any act or omission of its sub-contractors or agents.

21. Acts beyond the Control of a Party

21.1 Neither Party will be liable to the other or be deemed to be in breach of the Contract by reason of any delay in performing, or any failure to perform, any of its obligations under the Contract arising from any Force Majeure Event.

21.2 In the event that a Force Majeure Event continues for more than four (4) weeks, then either Party may terminate the Contract by notice in writing to the other. The Supplier will assist and facilitate eir and any alternative supplier of eir to ensure continuity of supply and mitigation of loss.

22. Entire Agreement

22.1 The Contract constitutes the entire understanding between the Parties relating to the subject matter of the Contract except that eir may rely on any verbal or other representations made by the Supplier in respect of the Goods or Services prior to eir issuing a Purchase Order.

23. Publicity

23.1 The Supplier must not, without the prior written consent of eir, advertise or publicly announce that the Supplier is supplying Goods or Services to eir.

24. Relationship

24.1 Neither Party has the right or authority express or implied to create or incur any liability on behalf of the other Party.

25. Severance

25.1 Any provision of the Contract which is or held to be invalid or unenforceable (in whole or in part) will be treated as severable from the remainder of the Contract and shall not affect the validity or enforceability of the remaining provisions of the Contract.



26. Waiver

26.1 No waiver by eir of any breach of the Contract by the Supplier will be considered as a waiver of any subsequent breach of the same or any other provision.

27. Audit

27.1 The Supplier must maintain up to date records of all Purchase Orders issued by eir, details of all Goods or Services and invoices and all eir or its auditors the right to inspect all such records on request by eir.

27.2 The Supplier shall conduct annual internal audits of all Services and provide eir with access to the Supplier's internal audit reports, to the extent that they affect or relate to the Goods or Services, or the controls and checks relating to the delivery or provision of same. The plan, scope and performance of individual audits should be notified to the eir internal audit function upon request. This audit activity shall include meeting the requirements of the eirTight Financial Reporting Control Framework. Regular security audits or investigations will be operated by eir or its' agents and the Supplier shall co-operate with such audit or investigation. The Supplier also warrants that it shall provide eir with an ISAE 3402 (Service Organisation Control) Type II report in each year of the Contract.

28. Data Protection

Where the Supplier Processes Personal Data on behalf of eir as is necessary for the purposes of the Contract it shall comply with the DPA clause as set out in Appendix 1 to these Conditions.

29. Security and Business Continuity

29.1 The Supplier will take all appropriate technical, organisational and security measures in line with best industry practice to protect against unauthorised access to eir Data (including Personal Data), and to limit access to staff necessary for the provision of the Goods or performance of the Service.

29.2 On request by eir, the Supplier will provide details of such technical, organisational and security measures implemented and will allow eir, and reasonable notice, to audit such security measures.

29.3 The Supplier will notify eir promptly of any security breach impacting or potentially impacting on eir Data or on the provision of the Services, and will immediately implement all remedial actions necessary as a result of the breach.

29.4 The Supplier will ensure that all eir Data (including Personal Data) is erased, destroyed and / or at eir's request returned to eir on termination or expiry of the Contract.

29.5 The Supplier will perform the Services and provide the Goods in such a way as not to cause any interruption to the business processes of eir (other than any agreed and unavoidable interruption which is required in order to perform the Services or provide the Goods in a proper and efficient manner).

29.6 The Supplier will establish and maintain contingency plans and risk controls to ensure the Supplier is capable of delivering the Goods or providing the Services. The Supplier will provide details of such plans and controls on request to eir.



30. Set Off

30.1 The Supplier expressly agrees that eir shall be entitled to withhold and set off monies owing to the Supplier in accordance with the Contract and / or any other contract between the Parties in the event and to the extent that the Supplier owes any monies, damages, costs or expenses to eir as a result of or in connection with the Supplier's performance or failure to perform its obligations under the Contract.

31. Personnel & Transfer Regulations

31.1 The Contract constitutes a contract for the provision of Services and accordingly, the Supplier will be an independent contractor and nothing in this Contract shall render the Supplier or any person employed or otherwise engaged by the Supplier as an employee, worker agent or partner of eir.

31.2 The Supplier shall be fully responsible for and shall indemnify eir for and in respect of:

i. any income tax, social insurance contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services and/or payment of the Price, where such recovery is not prohibited by Applicable Law. The Supplier shall further indemnify eir against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by eir in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

ii. any liability (including reasonable costs and expenses) for any claim based on an assertion of employee status or an assertion pursuant to Transfer Regulations or employment related claim (including termination thereof), brought by or on behalf of any person employed or otherwise engaged by the Supplier against eir arising out of or in connection with the provision of the Services.

31.3 eir may at its option satisfy such indemnity (in whole or in part) by way of deduction from any payments due to the Supplier.

32 Notices

32.1 Any notice required or permitted to be given by either Party to the other under the Contract shall be in writing and shall be delivered by certified or registered post, postage, prepaid and return receipt requested or by courier, and will be deemed effective upon receipt by the addressee at the address in the Purchase Order, or such other address or facsimile number as the Parties may designate by written notice to each other. For the purposes of this condition all notices shall be served on eir to the Head of Procurement, with a copy to the eir Legal Department, at 2022 Bianconi Avenue, Citywest Business Campus, Dublin 24, Ireland. For the avoidance of doubt, communication by electronic mail or other electronic methods of writing shall not be effective under the Contract.

33 Governing Law

33.1 The Contract shall be governed by and construed in accordance with the laws of Ireland and the Parties submit to the exclusive jurisdiction of the Irish Courts.

APPENDIX 1

Data Protection



28.1 Within this Clause “**Data Controller**”, “**Data Processor**”, “**Data Subject**”, “**Personal Data**” and “**Processing**” shall have the same meanings as specified above and/or in the DPA and “**Processed**” and “**Process**” shall be construed in accordance with the definition of “**Processing**”.

“**Data Protection Incident**” - a breach of the Applicable Data Protection Law, or other incident, leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, personal data transmitted, stored or otherwise processed and includes any potential breach or incident being investigated by the Processor;

“**Supplier Personnel**” - any employee, consultant, agent or sub-contractor (or an employee or consultant thereof) engaged or employed by the Supplier or any third party supplier to provide the Goods and/or Services or any part of the Services.

28.2 In respect of the Processing of Personal Data by the Supplier or its Supplier Personnel under or in connection with the Contract, the Supplier shall, and shall procure that the Supplier Personnel shall:

- (a) only Process the Personal Data to the extent required to provide the Goods/Services in accordance with the terms of the Contract or otherwise in accordance with documented instructions of eir from time to time;
- (b) not otherwise modify, amend or alter the contents of the Personal Data or disclose or permit the disclosure of any of the Personal Data to any third party unless specifically authorised to do so in writing by eir;
- (c) comply with Supplier’s obligations under Article 32 GDPR to implement appropriate technical and organisational measures to ensure a level of security appropriate to the risk of the Processing undertaken by the Supplier under or in connection with the Contract and in particular to protect the Personal Data against unauthorised or unlawful Processing and against accidental or unlawful loss, destruction, damage, alteration, or disclosure;
- (d) comply with and Process the Personal Data only in accordance with the DPA and not do or permit anything to be done which might cause eir in any way to be in breach of the DPA;
- (e) ensure the protection of the rights of the Data Subjects;
- (f) ensure that all Supplier Personnel engaged in the supply of the Goods and/or the provision of the Services have entered into a confidentiality agreement or non-disclosure agreement with the Supplier and shall further ensure that such Supplier personnel are made aware of and observe the Supplier’s obligations under the Contract with regard to the security and protection of Personal Data;
- (g) provide written evidence of the Supplier’s compliance with DPA as may be requested by eir from time to time;
- (h) make available to eir all information required by eir to demonstrate compliance with Article 28 GDPR as may be requested by eir from time to time;
- (i) not Process the Personal Data anywhere outside of the European Economic Area without the prior written consent of eir (and subject then, in the event of any transfer outside the European Economic Area, to the execution of any document or agreement which, in the reasonable opinion of eir, is required in order to lawfully effect any such transfer of Personal Data);
- (j) at the request of eir or any competent regulatory or supervisory authority, submit for audit the Processing activities (and related facilities) carried out pursuant to the Contract which shall be carried out by eir, its authorised representatives (bound by a duty of confidentiality) and/or representatives of the relevant regulatory or supervisory authority; and



(k) cease Processing the Personal Data immediately upon the termination or expiry of the Contract or, if sooner, the supply of Goods and/or Services to which it relates and as soon as possible thereafter, at eir's option, either return, or delete from its systems, the Personal Data and any copies of it or of the information it contains and the Supplier shall confirm in writing that this clause has been complied with in full. The provisions of this clause shall not apply to the extent the Supplier is obliged by Applicable Law to keep copies of the Personal Data.

28.3 The Supplier shall ensure that access to Personal Data is limited to:

(a) those Supplier Personnel who need access to the Personal Data to meet Supplier's obligations under the Contract; and

(b) in the case of any access by any Supplier Personnel, such part or parts of the Personal Data as is strictly necessary for performance of such Supplier Personnel's duties; and ensure that all Supplier Personnel: (x) are informed of the confidential nature of the Personal Data being processed for or on behalf of eir; (y) have undertaken training in the laws relating to handling of Personal Data; and (z) are aware both of Supplier's duties and their personal duties and obligations as Processors under such laws and the Contract.

28.4 Upon request by eir, the Supplier shall co-operate and assist eir (at no additional cost to eir):

(a) to put appropriate technical and organisational measures in place to enable eir to comply with any exercise of rights by a Data Subject under the DPA (including, without limitation, in relation to the retrieval and/or deletion of a Data Subject's Personal Data); and

(b) in discharging eir's obligations pursuant to Articles 32 and 36 GDPR.

28.5 The Supplier shall notify eir as soon as reasonably practicable and in any event within twenty-four (24) hours of:

28.5.1 any legally binding request for disclosure of Personal Data by a law enforcement or other competent authority unless prohibited by law from doing so;

28.5.2 any request received directly from a Data Subject without responding to that request, unless required by law or it has been otherwise authorised by eir to do so;

28.5.3 receiving any correspondence, notice or other communication whether orally or in writing from the relevant data protection regulator or any other regulator or person, relating to the Personal Data; and/or

28.5.4 becoming aware of any breach of this Clause 28.

28.6 Without prejudice to any other provision of the Contract, eir may, on reasonable notice, request a detailed written description of: (i) the technical and organisational methods employed by the Supplier and any of its Sub-Processors (hereinafter defined)(if any) for the Processing of Personal Data; and/or (ii) the Processing activities carried out by the Supplier on behalf of eir, containing at least the amount of detail as required by Article 30(2) of the GDPR. Within ten (10) days of receipt by the Supplier of eir's written request (which shall include a detailed description of eir's requirements), the Supplier shall deliver a written report to eir in sufficient detail that eir can reasonably determine whether or not any applicable Personal Data is being or has been Processed in compliance with the DPA and in accordance with the Contract.

28.7 Without prejudice to the other provisions of this Clause 28, if the Supplier or any member of the Supplier Personnel becomes aware of any Data Protection Incident, then the Supplier shall promptly (but in any event within twenty-four (24) hours of discovery) notify eir by telephone and by email. The Supplier shall, at no additional cost to eir, provide eir with all resources, assistance and co-operation as are required by eir for eir to notify the relevant data protection regulator (or analogous body in any other relevant jurisdiction and any bodies which may succeed or



replace them from time to time) of a Data Protection Incident and for eir to provide such reports or information as may be requested by it in relation to such Data Protection Incident and/or for eir to notify the relevant Data Subjects of such Data Protection Incident, as applicable.

28.8 The Supplier shall, at no additional cost to eir, provide eir with all resources and assistance as are required by eir for eir to discharge its duties pursuant to Articles 35 and 36 GDPR including, but not limited to, promptly at the request of eir providing information in respect of any data protection impact assessment which eir conducts.

28.9 Nothing in the Contract shall relieve the Supplier of any liability for the acts or omissions of its staff, employees or contractors in relation to the Personal Data.

28.10 Supplier may only authorize a third party (a “**Sub-Processor**”) to process the Personal Data being processed for or on behalf of eir with the prior written consent of eir and provided that:

28.10.1 the Sub-Processor's contract is on terms which are substantially the same as those set out in this Clause 28;

28.10.2 the Sub-Processor will be subject to the same obligations as those which Supplier is subject to under this Clause 28;

28.10.3 the Sub-Processor's contract, in respect of any supply to eir, terminates automatically on termination of the Contract for any reason.

28.11 Where the Supplier appoints or otherwise uses the services of a Sub-Processor, Supplier shall be fully liable to eir for the performance, acts and omissions of Sub-Processor. Nothing in this Contract shall relieve the Supplier of any liability for the acts or omissions of the Supplier Personnel in relation to the Personal Data.

28.12 At eir's request, the Supplier agrees to adhere to the terms of any approved code of conduct under Article 40 of the GDPR or any approved certification mechanism under Article 42 of the GDPR.

28.13 The Supplier agrees not to use any Personal Data which it processes on behalf of eir for direct marketing purposes without the prior written authorisation of eir.

28.14 The Supplier agrees and warrants that the technical and organisational measures referred to in this Clause 28 are appropriate to protect Personal Data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the Processing and the nature of the Personal Data to be protected having regard to the state of the art.

28.15 The Supplier further agrees and warrants that the Processing of the Personal Data has been and will continue to be carried out in accordance with the DPA.

28.16 The Supplier irrevocably agrees and acknowledges that:

28.16.1 eir Data is the property of eir and its' Affiliates and/or its third party Processor(s); and

28.16.2 Intellectual Property Rights in the eir Data vest solely and exclusively in and shall remain the property of eir, its Affiliates and/or its licensors.

28.17 The Supplier hereby agrees:

28.17.1 not to delete or remove any copyright notices contained within or relating to eir Data;



28.17.2 not to disclose, sell, assign, lease, commercially exploit or give access to any eir Data otherwise than access to Supplier sub-contractors, and in all cases only where and to the extent that such access is strictly necessary in the course of their supply of the Goods and/or Services.

28.18 The Supplier shall implement appropriate technical and organisational measures (having regard to the nature of its obligations under the Contract and in accordance with best industry practice) to:

28.18.1 preserve the integrity of the eir Data, material and information and prevent any corruption, unauthorised loss, disclosure, alteration or access to the eir Data;

28.18.2 maintain back-up copies of all eir Data disclosed to the Supplier and that such copy or copies will be recorded in a medium that is compatible with eir's systems such to allow for such back-up copies to be promptly uploaded to eir's Systems.

28.19 In the event of the loss, temporary or permanent unavailability, theft, alteration or corruption of eir Data (howsoever arising and, including, but not limited to, due to a third party hacking event or denial-of-service attack, which in eir's opinion is material in nature) (a "**Data Event**") and which results from a default of the Supplier (the Supplier Personnel, Sub-Processors or any sub-contractor), then, the Supplier shall upon request by eir:

28.19.1 where the Supplier is responsible for any support and management and/or back up of software (whether Software or other eir software to be supported under the Services) and/or eir Data, return such eir Data and software to the last available back-up (the "**Data Restoration**"), as soon as reasonably possible; and

28.19.2 provide eir with all reasonable assistance to identify of the cause of the Data Event and to resolve the Data Event as soon as possible by achieving a resumption of activities to the greatest extent possible as soon as reasonably possible in the circumstances (the "**Business Restoration**").

28.20 In the event that a Data Event is due to the default of the Supplier (the Supplier Personnel, Sub-Processors or any sub-contractor), then, eir may, at its sole option, elect either to:

28.20.1 require the Supplier, at the Supplier's expense, to allocate the Supplier Personnel, engaged in the supply of the Goods and/or provision of the Services, or other appropriate Supplier Personnel, to carry out the Data Restoration and/or Business Restoration, as applicable in the circumstances, including, in respect of a Data Restoration, using the last available back-up copy referred to in Clause 28.7.1 above;

28.20.2 require the Supplier to work with a third party nominated by eir in the Data Restoration and/or Business Restoration, as applicable in the circumstances, subject to the nominated third party entering into a standard confidentiality agreement with the Supplier; or

28.20.3 where eir is of the reasonable opinion that the it represents less operational risk for eir to undertake the Data Restoration and/or Business Restoration (whether by either utilising its own resources or engaging a third party), then the Supplier shall provide all reasonable assistance and co-operation with and to eir or its nominated third party, recognising the urgent nature of the matter;

and, in all circumstances described in this Clause 28.18, the Supplier shall provide regular progress reports on the Data Restoration and/or Business Restoration to eir upon request.

28.21 In respect of the obligations and services set out in this Clause, the following shall apply:

28.21.1 the Supplier shall use all commercially reasonable and good faith endeavours in the circumstances to assist and support eir in as prompt a manner as possible in the circumstances;



28.21.2 the foregoing obligation shall, it is recognised, be subject to certain technical and resource limitations insofar and to the extent that the support, assistance and know-how of a third party processor is required; and

28.21.3 it is recognised that in the circumstances to which a Business Restoration is required no absolute commitment or guarantees can be given by the Supplier or be expected by eir and the Parties shall operate on a commercially reasonable and prompt good faith endeavours basis, but noting the inherent urgency and importance of the matter.

28.22 In the event that, at any time and from time to time, through the provision of the Goods and/or Services, the Supplier or any of the Supplier Personnel are deemed by virtue of Directive 96/9/EC (as implemented in local applicable law) or otherwise to be the first owner of any database right, or any other Intellectual Property Rights, in or in relation to any of the eir Data, **THEN**, the Supplier **HEREBY ASSIGNS, TRANSFERS AND CONVEYS**, by way of future assignment upon the creation of such rights, all right, title, interest and benefit in and to all database rights, copyright and other Intellectual Property Rights capable of future assignment, and shall, in respect of all other Intellectual Property Rights, **ASSIGN, TRANSFER AND CONVEY**, upon the creation of such rights, all right, title, interest and benefit in and to all such Intellectual Property Rights in any eir Data to eir, and, **IN ADDITION**, shall do such things, and shall procure that any sub-contractor assigns and does all such things, as eir may reasonably consider are necessary to give effect to this Clause. The consideration for the foregoing transfer of Intellectual Property Rights shall derive from the payment of the Charges pursuant to the Contract and, in addition, the eir payment of the sum of one euro (€1) as of the Effective Date, the receipt of which the Supplier hereby acknowledges.

28.23 The Supplier shall not remove any storage media or hardware containing any eir Data from any site without eir's express prior written agreement. In such event, unless: (i) otherwise agreed; or (ii) the Supplier is under a legal obligation to retain the data on such storage media or hardware (in which case it shall notify eir of the same prior to the removal of such storage media or hardware from the relevant site); the Supplier shall first wipe such removed storage media or hardware in accordance with the Supplier's drive handling procedures for the secure destruction of data using a multi-pass formatting utility and Best Industry Practice, and shall prior to such removal provide eir with a written certificate confirming the destruction of such data.

28.24 In the event that the Supplier gains any direct or remote access or direct physical access to any eir computer system (including eir hardware and/or software) or any physical access to a non-public part of a eir premises, then:

28.24.1 all such access will be strictly limited to that part of the system or eir Premises, and will only be carried out in such a manner as is required for proper performance of the supply of the Goods and/or provision of the Services;

28.24.2 the Supplier will comply with all eir Policies, particularly those in respect of access and security; and

28.24.3 the Supplier will allow Supplier Personnel access only to the extent strictly necessary for the proper performance of the individual's duties in respect of the supply of the Goods and/or the provision of the Services.

28.25 The Supplier undertakes fully and effectively to indemnify, keep indemnified and hold harmless at all times eir without limitation and on demand against all actions, proceedings, costs, claims, demands, liabilities and expenses whatsoever (including legal and other fees and disbursements) sustained, incurred or paid by eir directly arising from the failure by the Supplier or any Supplier Personnel to comply with the DPA or the provisions of this Clause 28.

28.26 Any material breach of this Clause 28, or any other breach of this Clause 28 that causes any material loss or damage (including reputational damage) to eir, or to any of its Affiliates, will give rise to an immediate right for eir to terminate the Contract on the basis of a breach incapable by its nature of remedy.