



Commission for  
**Communications Regulation**

**(1) THE COMMISSION FOR  
COMMUNICATIONS  
REGULATION**

**(“THE COMMISSION”)**

**(2) [COMPANY NAME]**

**(“THE CONSULTANT”)**

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**DRAFT CONSULTANCY AGREEMENT, DOCUMENT No.  
14/86B  
(APPENDIX 9 TO ITT DOCUMENT No. 14/86A)**

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**IMPORTANT NOTE:**

Applicants must submit any comments on the Consultancy Agreement prior to submission of their Applications, and by the date set out in section 2.4 of the ITT. See section 6.4 of the ITT for more information in this regard.

# COMREG CONSULTANCY AGREEMENT

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COMREG CONSULTANCY AGREEMENT

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DRAFT

**CONSULTANCY AGREEMENT** dated the **[DATE]** day of month **[YEAR]**

**BETWEEN**

- (1) The Commission for Communications Regulation, established in accordance with the Communications Regulation Act, 2002 and having its offices at Block DEF, Abbey Court, Irish Life Centre, Lower Abbey Street, Dublin 1 (the “Commission”, which expression shall include its successors and assigns)

**AND**

- (2) ●, a [company incorporated] under the laws of [Ireland] (Registered No. ●) and having its offices at ● (the “Consultant”, which expression shall include its successors and permitted assigns).

**WHEREAS**

- (A) The Commission requires the performance of certain Consultancy Services and wishes to engage the Consultant to perform the Consultancy Services.
- (B) By an Invitation to Tender the Commission invited the submission of a proposal to provide Consultancy Services as further specified in this Agreement and its Schedules and, in reliance upon the commitments and representations in the Response, the Consultant’s Tender has been chosen as the most economically advantageous after an evaluation process.
- (C) The Consultant has agreed to perform the Consultancy Services on the terms and conditions contained in this Agreement.

**NOW IT IS HEREBY AGREED**

**1 INTERPRETATION AND DEFINITIONS**

- 1.1 In this Agreement, unless the context otherwise suggests:

“**Agreement**” means the provisions of this Agreement, including the Schedules, as may from time to time be varied in accordance with Clause 27;

“**Authorised Undertaking**” means an authorised undertaking as defined in the European Communities (Electronic Communications Networks and Services) (Authorisation) Regulations 2011;

“**Background Intellectual Property**” means any and all Intellectual Property that is owned by or licensed to either Party and which are or have been developed independently of this Agreement and the Consultancy Services (whether prior to or after the Commencement Date);

**“Best Industry Practice”** means the exercise of the degree of skill and care which would reasonably and ordinarily be expected of a market leading skilled and experienced person engaged to carry out services similar to the Consultancy Services under the same or similar circumstances seeking in good faith to comply with its contractual obligations and complying with all laws and codes of practice;

**“Change of Control”** means a change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the Consultant’s management or policies, whether through ownership of shares, by contract, or by any other means;

**“Commencement Date”** means the date first set out in this Agreement;

**“Confidential Information”** means this Agreement, all information of whatever nature relating to the Consultancy Services or Deliverables which, before, on or after the Commencement Date, is disclosed by the Commission to the Consultant (its officers, employees, advisers, agents, representatives, contractors, sub-contractors or consultants) or the Consultant is given access to, whether in, written, oral, visual, graphic, photographic, electronic, digital or in any other tangible form whatsoever, and any other information which ought reasonably be regarded as confidential information or which the Commission designates as confidential information. Confidential Information includes, but is not limited to all know-how, Intellectual Property, ideas, experience, drawings, designs, diagrams lists, computer programs, algorithms, engineering data, economic data, statistical data, formulae, specifications and all other technical or other tangible information in the possession or procurement of the Commission and any other matters relating to the Consultancy Services, whether pursuant to written communication, or correspondence with the officers, management, employees, contractors or sub-contractors of the Commission, or the advisers or consultants to or agents or representatives of the Commission. Confidential Information also includes analyses, compilations, studies, notes, reports, presentations and any other documents or records of whatsoever nature in whatever form prepared by the Consultant and/or his officers, employees, advisers, agents, representatives, contractors, sub-contractors or consultants with respect to the Consultancy Services.

**“Conflict of Interest”** means an interest that the Consultant (or any third party engaged by it to assist in the provision of the Consultancy Services) has, which, in the reasonable opinion of the Commission:

- (a) would or could actually compromise the independence of the Consultant (or any third party engaged by it to assist in the provision of the Consultancy Services) in its performance of the Consultancy Services;
- (b) would or could create the perception that the independence of the Consultant (or any third party engaged by it to assist in the provision of

the Consultancy Services) in its performance of the Consultancy Services might be so compromised;

- (c) a pecuniary interest (whether by way of a shareholding or otherwise) in an Authorised Undertaking or any person (or a subsidiary or an associated company of an organisation) which is the subject of the Consultancy Services;
- (d) a contract (whether oral or written) with an Authorised Undertaking or any person (or a subsidiary or an associated company of an organisation) which is the subject of the Consultancy Services; or
- (e) a position of employment, directorship (whether executive or non-executive) or any position of emolument with an Authorised Undertaking or any person (or a subsidiary or an associated company of an organisation) which is the subject of the Consultancy Services; and
- (f) includes for the avoidance of doubt any work undertaken or contracted to be undertaken on or after the Commencement Date on behalf of any Authorised Undertaking or any person (or a subsidiary or an associated company of an organisation) which is the subject of the Consultancy Services;

and also includes where the Consultant has in the past undertaken work for an organisation (or a subsidiary or an associated company of an organisation) that might be affected by decisions to be taken by the Commission which are in any way connected with the Consultancy Services, in circumstances where the Consultant was privy to confidential information that would give, or might reasonably be perceived to give, the Consultant (and by extension the Commission) an unfair advantage or inappropriate information in relation to an organisation that might be affected by any future decisions to be taken by the Commission.

**“Consultancy Services”** means the services to be provided by the Consultant to the Commission as described in Schedule 1 and any other services which can reasonably be inferred as being required for the proper execution of same;

**“Contract Documents”** means this Agreement, the ITT and the Response;

**“Deliverables”** has the meaning given to it in Clause 9.1.

**“Eur”** and **“euro”** mean the lawful currency of Ireland;

**“Fees”** means the Fees described in Schedule 2 and payable in accordance with Clause 5 and Schedule 2;

**“Intellectual Property”** and **“Intellectual Property Rights”** means without limitation, copyrights (including copyright in computer software and source code), database rights, patents, registered and unregistered trademarks,

know-how, service marks, business methods, utility models, design rights (whether registered or unregistered) trade secrets and all other industrial or intellectual property rights of whatever nature whether registered or unregistered and any application (or right of application) for such rights and any similar proprietary rights worldwide;

**“Invitation to Tender (ITT)”** means the invitation to submit a proposal for the provision of Consultancy Services issued by the Commission in connection with the Consultancy Service and the Pre-qualification Questionnaire document (“PQQ”) which was issued in conjunction with the ITT (and all amendments and clarifications issued by the Commission in relation to same) as more particularly identified in Schedule 2;

**“Parties”** means the Commission and the Consultant and **“Party”** means either of them;

**“Response”** means the response to the ITT submitted by the Consultant which includes the “Tender” and completed “PQQ” (and any written clarifications in respect of the response);

**“Scheduled Personnel”** means the person(s) referred to in Schedule 2 whom the Consultant has identified as proposed personnel in the Response;

**“Tax Clearance Certificate”** means a tax clearance certificate issued by the Irish Revenue Commissioners.

1.2 In this Agreement (except where the context otherwise requires or unless otherwise specified):

1.2.1 any reference to a Clause, Schedule, sub-clause or paragraph is to the Clause, Schedule, sub-clause or paragraph of or to this Agreement and any reference to a sub-clause or paragraph is to the relevant sub-clause or paragraph of the Clause or Schedule in which it appears;

1.2.2 the index and clause headings are included for convenience only and shall not affect the interpretation of this Agreement;

1.2.3 the use of the singular includes the plural and vice versa;

1.2.4 the use of any gender includes the other genders;

1.2.5 a reference to any provision of any legislation includes a reference to that legislation as amended, extended or re-enacted and to any regulation, order, instrument or subordinate legislation under the relevant legislation;

1.2.6 references to persons in this Agreement include bodies corporate, unincorporated associations or partnerships and any reference to a

person includes a reference to that person's legal personal representatives, successors and permitted assigns;

- 1.2.7 where the words "include(s)", "including" or "in particular" are used in this Agreement, they are deemed to have the words "without limitation" following them and where the context permits, the words "other" and "otherwise" are illustrative and shall not limit the sense of the words preceding them; and
  - 1.2.8 any obligation in this Agreement on a person not to do something includes an obligation not to agree, allow, permit or acquiesce in that thing being done.
- 1.3 Unless a right or remedy of the Commission is expressed to be an exclusive right or remedy, the exercise of it by the Commission is without prejudice to its other rights and remedies under this Agreement and/or at law or in equity. The Commission's rights and remedies survive any delivery, inspection, acceptance, payment, reports or performance pursuant to this Agreement and extend to any substituted or remedial Services provided by the Service Provider.
- 1.4 The grant of any approval, acceptance, confirmation or consent by the Commission, or the receipt of, or failure by the Commission to respond to, any communication, in respect of any matters:
- 1.4.1 does not pass any liability or responsibility to the Commission in connection with same;
  - 1.4.2 does not imply or suggest compliance with this Agreement; and
  - 1.4.3 does not in any way diminish the responsibility and liability of the Consultant in connection with same.
- 1.5 The Schedules to this Agreement form part of this Agreement and shall have effect as if set out in full in the body of this Agreement and any reference to this Agreement includes the Schedules to this Agreement.
- 1.6 In the event of any conflict between the Contract Documents, then the following order of precedence shall apply:
- 1.6.1 this Agreement (other than the Schedules to this Agreement);
  - 1.6.2 the Schedules to this Agreement;
  - 1.6.3 the ITT; and
  - 1.6.4 the Response.



- 1.7 Any qualifications, assumptions or similar contained in the Response are of no legal effect and are deemed to be excluded from the Contract Documents.

## **2 ENGAGEMENT**

- 2.1 In consideration for the Fees, the Consultant shall provide the Consultancy Services subject to and in accordance with the Contract Documents and in accordance with all laws and Best Industry Practice.
- 2.2 The Consultant hereby acknowledges and agrees that, despite its engagement under this Agreement:
- 2.2.1 it does not have any exclusive right to provide the Consultancy Services or Deliverables, or anything similar or identical to the Consultancy Services or Deliverables, to the Commission;
  - 2.2.2 the Commission may use its own personnel or other third parties in relation to the provision of the Consultancy Services or Deliverables or anything similar or identical to the Consultancy Services or Deliverables; and
  - 2.2.3 there is no guarantee of any scope, value, volume or frequency of Consultancy Services or Deliverables.
- 2.3 The Consultant shall render and perform, and shall procure that any third party engaged by it to assist in the provision of the Consultancy Services, renders and performs the Consultancy Services to the best of its skill and ability, in a timely manner and in accordance with the description of the requirements of the Consultancy Services, so as to give to the Commission the full and complete benefit of the Consultant's experience and expertise.
- 2.4 The Consultant shall exercise, and shall procure that any third party engaged by it to assist in the provision of the Consultancy Services exercises, that standard of skill, care and diligence required by Best Industry Practice having regard to the type, scope, complexity, value, importance and purpose of the Consultancy Services.
- 2.5 The Consultant will ensure that all reports and advice is written in excellent English in a clear, accurate, factual, neutral, not overly academic, style and that all Deliverables are fit for the purpose intended.
- 2.6 The Consultant will prioritise its obligations under this Agreement in relation to the other business activities of the Consultant to ensure that it can comply with its covenants and obligations in the manner contemplated by this Agreement.

- 2.7 The Consultant will, and will procure that all its personnel, agents and subcontractors will, act subject to, and in accordance with, any requirements, procedures, policies, rules, guidelines and/or directions notified by the Commission to the Consultant from time to time.
- 2.8 If the Commission is not satisfied with the standard of any part of the Consultancy Service performed by the Consultant (or any third party engaged by it to assist in the provision of the Consultancy Services), it may by written notice require the Consultant to remedy any defective work within a period of seven (7) days of the receipt of such a notice. The Commission may terminate this Agreement with immediate effect if it is not satisfied with the standard of any such remedial work undertaken by the Consultant.

### **3 CONSULTANT WARRANTIES**

- 3.1 The Consultant represents and warrants to the Commission:
- 3.1.1 the accuracy and truthfulness of all representations and/or statements made by the Consultant in the Response;
  - 3.1.2 that it is an expert in, and is fully competent in all areas of, providing services, works, deliverables, tasks and functions of a similar scope, nature, scale, importance and complexity to the Consultancy Services and Deliverables;
  - 3.1.3 it will adopt and adhere to the project management methodologies and quality control systems and standards referred to in the Response at all relevant times in providing the Consultancy Services and Deliverables;
  - 3.1.4 that it will perform the Consultancy Services with all due care, skill, professionalism and diligence and in accordance with Best Industry Practice and that the Consultancy Services and Deliverables will be for the purpose intended;
  - 3.1.5 that neither it, the Scheduled Personnel nor any third party engaged by it to assist in the provision of the Consultancy Services has a Conflict of Interest (except to the extent that a Conflict of Interest has been disclosed to the Commission but declared acceptable by the Commission in writing);
  - 3.1.6 that it shall not place or retain itself, or permit any of the Scheduled Personnel or any third party engaged by it to assist it in the provision of the Consultancy Services to place or retain themselves, in a position of a Conflict of Interest during the term of, and for a period of twelve (12) months following the termination or expiration of, this Agreement;

- 3.1.7 that it (and any third party engaged by it to assist in the provision of the Consultancy Services) have the capacity, experience, qualification, training and necessary ability to undertake the Consultancy Services;
  - 3.1.8 that it is a limited liability company duly incorporated and validly existing under the laws of the country in which it was established and has the legal right and full power and authority to carry on its business as currently carried on and to own its property and assets;
  - 3.1.9 that it has the legal right and full power and authority to execute, deliver and perform all its obligations under the Agreement;
  - 3.1.10 the execution, delivery and performance by it of this Agreement has been authorised by all necessary action on its part;
  - 3.1.11 that it understands each of the obligations under this Agreement constitute legally binding obligations;
  - 3.1.12 that there are no actions, suits or proceedings or regulatory investigations pending or, to the Consultant's knowledge or belief, threatened against or affecting the Consultant before any court or administrative body or arbitration tribunal that might affect the ability of the Consultant to perform its obligations under this Agreement or the decision of the Commission to enter into this Agreement with the Consultant;
  - 3.1.13 that it has satisfied itself as to the requirements, demands, obligations and all risks assumed by it under this Agreement;
  - 3.1.14 that it agrees it is responsible for the management and organisation of the Consultancy Services; and
  - 3.1.15 that all Intellectual Property Rights provided by the Consultant to the Commission under or in connection with this Agreement do not and will not infringe any third party Intellectual Property Rights.
- 3.2 The representations and warranties of the Consultant in Clause 3.1 shall be deemed to be repeated on each payment date with respect to the facts and circumstances existing at that time, as if made at that time.

#### **4 COMMENCEMENT AND TERMINATION**

- 4.1 This Agreement takes effect on and from the Commencement Date. The Agreement shall continue after that until the Commission notifies the Consultant in writing that it considers that the Consultancy Services have been satisfactorily completed and that it does not have any further need for

the Consultancy Services at which point it will terminate, unless terminated earlier in accordance with the provisions of this Agreement.

4.2 The Commission may terminate this Agreement (in whole or in part) with immediate effect by giving written notice to the Consultant if:

- 4.2.1 the Consultant abandons this Agreement;
- 4.2.2 the Consultant commits a material breach of any of its obligations under this Agreement which is incapable of remedy or which, if capable of remedy, is not remedied within fifteen (15) days of receiving notice from the Commission to remedy such breach;
- 4.2.3 the Consultant or its employees, servants or agents or any of them commit any act of grave misconduct or gross default or any conduct tending to bring either the Consultant or the Commission or the Consultancy Services into disrepute or otherwise negatively affecting the business or reputation of the Commission;
- 4.2.4 the Consultant through its employees, servants or agents or otherwise is in default or neglect in the discharge of its obligations under this Agreement or is, by reason of the ill health of its employees, servants or agents or otherwise, unable to fulfil its obligations under this Agreement to the satisfaction of the Commission;
- 4.2.5 the Consultant becomes bankrupt, or makes any composition or arrangement with, or conveyance or assignment for the benefit of his creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of his estate, or a trustee is granted by him on behalf of his creditors, or if the Consultant, being a company, enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation on terms approved by the Commission), or if a receiver, receiver manager or administrator, or examiner of any of its assets is appointed;
- 4.2.6 the Consultant undergoes a Change of Control and the Commission does not give its prior written consent to such Change of Control on the basis that the Change of Control would result in the Consultant having a Conflict of Interest or is otherwise considered by the Commission likely to have a negative effect on the Consultant's performance of the Consultancy Services;
- 4.2.7 there is a sustained absence of any of the Scheduled Personnel, or any approved replacement thereof, in providing the Consultancy Services; and/or

- 4.2.8 any of the Scheduled Personnel, or any approved replacement thereof, fails to work the number of days such person was proposed in the Response to work.
- 4.3 The Commission may, without cause, terminate this Agreement (in whole or in part) by thirty (30) days notice in writing to the Consultant.
- 4.4 The Commission may terminate this Agreement (in whole or in part) by notice in writing with immediate effect if, in the reasonable opinion of the Commission, it is necessary or prudent to terminate it in order to comply with the requirements of applicable public procurement law or settle or resolve any complaint or challenge received by the Commission in such respect.
- 4.5 If this Agreement is terminated for any reason, the Consultant shall only be entitled to payment directly attributable to the proportion of the Consultancy Services properly completed in accordance with this Agreement prior to such termination of this Agreement. Any prepaid charges for the Consultancy Services to be completed after such termination shall forthwith, upon termination, be refunded in full by the Consultant to the Commission (without set-off, reduction, withholding, abatement, counter-claim or similar).
- 4.6 The Commission shall not be liable to the Consultant (or any third party engaged by it to assist in the provision of the Consultancy Services) for any loss of profit, contracts, goodwill, business opportunity or anticipated saving suffered or incurred by the Consultant arising out of or in connection with this Agreement for any reason.
- 4.7 The termination or expiry of this Agreement (in whole or in part) does not affect either Party's rights, remedies, liabilities or obligations accrued prior to the effective date of the termination or expiration or any rights, remedies or obligations of either Party which are stated or by implication are intended to survive or commence after the expiration or termination of this Agreement.
- 4.8 On termination of this Agreement, the Consultant shall execute and deliver all documentation and data prepared or obtained by the Consultant and all other documentation and data in its custody or control relating to the Consultancy Services to the Commission and shall take further steps as the Commission may reasonably require for the purpose of fully vesting in the Commission all rights and benefits of the Consultancy Services arising therefrom.
- 4.9 The Commission's rights to terminate this Agreement as provided for in this Clause 4 are in addition to any other rights of termination provided for in this Agreement.
- 4.10 If the Commission terminates this Agreement because of a material breach of this Agreement it may rely on a single breach, a number of breaches or

repeated breaches which individually or together constitute a material breach.

- 4.11 Upon termination of this Agreement for any reason, the Commission may procure substitute Consultancy Services from another supplier. If the Commission terminates this Agreement under Clause 4.2, the costs of procuring an alternative supplier of the Consultancy Services shall promptly on demand be reimbursed in full to the Commission by the Consultant.

## **5 FEES**

- 5.1 In consideration of the provision of the Consultancy Services in accordance with this Agreement, the Commission shall pay to the Consultant the Fees for the amounts and at the times set out in Schedule 2.
- 5.2 The Commission shall pay the Consultant all amounts due and owing within 30 days of the receipt of a valid invoice from the Consultant unless the Commission disputes any portion of an invoice, in which case the Commission shall notify the Consultant of the amount in dispute and the reasons therefor. Invoices shall be supported by a written report and time analysis in respect of the work undertaken by the Consultant.
- 5.3 Invoices with respect to any Fees additional to the fixed fee set out in Schedule 2 shall not be submitted to the Commission unless the Commission has provided prior written approval and in accordance with Clause 11.
- 5.4 The Consultant agrees that neither it (nor any third party engaged by it to assist in the provision of the Consultancy Services) is or shall become an employee or agent of the Commission or be entitled to any fee, salary, pension, bonus, or other fringe benefits from the Commission and it is agreed that the Consultant shall be responsible for the deduction of income tax liabilities and pay related social insurance ("**PRSI**"), Universal Service Charge ("**USC**"), levies or similar contributions, if applicable, arising from the payment of the Fees to the Consultant under this Agreement. The Consultant agrees to indemnify and hold harmless the Commission from and against any claims or demands that may be made by any relevant authority in respect of income tax, PRSI, USC, levies or similar, as well as any penalties or interest relating to such payments, in connection with the provision of the Consultancy Services. This indemnity survives the expiration or termination of this Agreement.
- 5.5 Where a Tax Clearance Certificate expires during the course of this Agreement, the Consultant must immediately procure a renewed Tax Clearance Certificate. The Fees are only payable where the Consultant maintains and is in possession of a valid and current Tax Clearance Certificate.

- 5.6 If the Commission is not satisfied with the standard of any part of the work carried out by the Consultant and requires the Consultant to rectify any defective work in accordance with Clause 2.8, such remedial work as may be required shall be carried out by the Consultant at its own expense and it shall not be entitled to any Fees in respect of such remedial work.

## **6 ASSIGNMENT AND SCHEDULED PERSONNEL**

- 6.1 The Consultant shall allocate, both in terms of time and quality, appropriate personnel with appropriate qualifications, levels of experience and seniority to perform the Consultancy Services in the manner and to the standard required by this Agreement.
- 6.2 The Consultant shall, if requested by the Commission, agree in advance with the Commission the dates upon which any Scheduled Personnel will take scheduled annual leave. The Consultant shall ensure that the taking of any such leave is timed so as to cause the least possible inconvenience with respect to the performance of the Consultancy Services.
- 6.3 The Consultant, without limiting or affecting its obligations under this Agreement, shall use the Scheduled Personnel in the manner and to the extent proposed in the Response. The Consultant may not, in any case whatever, change (or reduce the contribution proposed in the Response of) any of the Scheduled Personnel without the prior written consent of the Commission.
- 6.4 If the Commission becomes dissatisfied with the performance, conduct, capacity or availability of any of the Scheduled Personnel assigned by the Consultant for any reason whatsoever, the Consultant shall, upon request, immediately remove the said person and replace him or her with a replacement reasonably acceptable to the Commission. If the Consultant fails to nominate a replacement who is acceptable to the Commission, acting reasonably, within ten (10) days of the Commission's request, the Commission may immediately terminate this Agreement by notice in writing.
- 6.5 Any replacement of the Scheduled Personnel must, without limiting or affecting the other provisions in this Clause 6, to the satisfaction of the Commission, possess qualifications and experience equal to or greater than the Scheduled Personnel who are being replaced.

## **7 ACCESS TO INFORMATION, REPORTING OBLIGATION, CO-OPERATION**

- 7.1 The Consultant shall appoint a competent and appropriately qualified and experienced manager for the Consultancy Services for the purposes of overseeing, managing and co-ordinating the timely and proper provision of the Consultancy Services and whom shall be available (from time to time) for consultation with the Commission during normal business hours during the Agreement.

- 7.2 The Consultant shall liaise and co-operate with the Commission with a view to achieving the most effective and cost efficient implementation and completion of the Consultancy Services.
- 7.3 In addition to the reports required to be provided under the Consultancy Services, the Consultant shall report to the Commission on all matters referred to the Consultant under this Agreement in such form and with such frequency and within such time periods as are reasonably specified by the Commission from time to time. The Commission shall be entitled to have full and free access to all papers, results, information, documents, reports, data or similar generated or used by the Consultant in the performance of the Agreement and Consultancy Services.
- 7.4 The Consultant shall submit to the Commission such reports at such times as the Commission shall reasonably require and in such format and with such detail as the Commission shall reasonably require (including electronic format).
- 7.5 The Consultant shall maintain proper accounts and records of its performance under this Agreement. Without prejudice to any legal requirement or shorter or longer retention requirement under this Agreement, all records and reports shall be retained for a period of 3 years following the later of the completion of the Consultancy Services or termination of this Agreement.
- 7.6 The Consultant will co-ordinate, co-operate and liaise with the Commission and any other persons involved or connected with the Consultancy Services or Deliverables and, where requested, will attend meetings with the Commission and others.

## **8 CONFIDENTIAL INFORMATION AND ANNOUNCEMENTS**

- 8.1 Subject to Clause 8.2, during the term of this Agreement and at any time after the termination or expiry of this Agreement (for any reason) the Consultant:
- 8.1.1 may not use any Confidential Information for any purpose other than in the performance of its obligations under this Agreement;
  - 8.1.2 may not disclose any Confidential Information to any person except with the prior written consent of the Commission or in accordance with Clause 8.2; and
  - 8.1.3 shall use all reasonable endeavours to prevent the use, access or disclosure of Confidential Information to any third party.
- 8.2 The Consultant may disclose information which would otherwise be Confidential Information if and to the extent that:



- 8.2.1 it is required by applicable law;
  - 8.2.2 the information has come into the public domain or in to the knowledge of the Consultant, otherwise than through a breach of this Clause 8 (or any other confidentiality agreement or obligation);
  - 8.2.3 it is required by existing contractual obligations of which the Commission is made aware and has acknowledged in writing prior to the Commencement Date of this Agreement;
  - 8.2.4 it is required by a regulatory or governmental body in Ireland to which it is subject; or
  - 8.2.5 the disclosure is to its professional advisers, other officers, employees and sub-contractors ("**a Recipient**") to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- 8.3 The Consultant shall ensure that a Recipient is made aware of and complies with the Consultant's obligations of confidentiality under this Agreement as if the Recipient was a Party to this Agreement.
- 8.4 On termination or expiry of this Agreement, the Consultant shall within one (1) month of the date of termination or expiry:
- 8.4.1 return to the Commission all Confidential Information insofar as it is in tangible form together with all copies thereof, provided however that in such case the Consultant shall be entitled to retain one copy of same for professional indemnity purposes which copy shall only be used for such purposes; and
  - 8.4.2 provide a signed statement to the Commission certifying that all Confidential Information has either been delivered to the Commission or irrevocably destroyed.
- 8.5 The Consultant acknowledges that the Commission may be required to grant access to records held by the Commission in relation to the Consultancy Services (including Confidential Information) to members of the public pursuant to the provisions of the Freedom of Information Acts 1997–2003 and the Consultant shall provide the Commission with copies of any relevant records (for the purpose of the Freedom of Information Acts 1997–2003) held by it within five (5) days of a request being made by the Commission.
- 8.6 The Consultant acknowledges that prior to the execution of this Agreement it has familiarised itself with and is aware of the provisions of the Freedom of Information Acts 1997–2003 and the Commission's procedures in relation thereto which are published on the Commission's website at [www.comreg.ie](http://www.comreg.ie).

- 8.7 The Consultant shall not make any public announcement concerning this Agreement, the Consultancy Services or any ancillary matter without the prior written consent of the Commission. The Consultant, in particular, shall not therefore communicate directly or indirectly with the print or broadcast media or any agency nor shall it publish any articles or similar relating to this Agreement or the Consultancy Services.
- 8.8 Clause 8.7 does not apply to a public announcement, communication or circular to be made or sent by the Consultant, if it is required by law, or any regulatory or governmental body, to which it is subject.
- 8.9 The Commission reserves the right at its sole discretion to publish information about the Agreement. Where the Consultant (acting reasonably) notifies the Commission that financial and/or economic information supplied by it to the Commission is confidential or commercially sensitive information, the Commission may take account of such representations in considering whether to disclose the relevant information to the extent the Commission considers appropriate.
- 8.10 The Commission is not liable to the Consultant for any information the Commission discloses purportedly pursuant to applicable law.

## **9 INTELLECTUAL PROPERTY RIGHTS**

- 9.1 In this Clause 9, “**Deliverables**” include, without limitation, all items, reports, papers, analysis, advice, data, databases, spreadsheets, compilations, output, product, work, models and any other deliverables whatever resulting from the performance by the Consultant of the Consultancy Services and/or this Agreement.
- 9.2 The Consultant (and any other third party) has no, and will not, subject to Clause 9.8 and Clause 9.9, acquire any right, title or interest in or to the Intellectual Property of the Commission or its third party licensors.
- 9.3 The Commission has not, and will not, subject to Clause 9.5, acquire any right, title or interest in or to the Background Intellectual Property of the Consultant or its third party licensors.
- 9.4 The Consultant hereby absolutely assigns, conveys and sets unto the Commission all right, title and interest to all present and future rights and interest in all Intellectual Property in the Deliverables and Consultancy Services and all Intellectual Property arising out of and/or in connection with the Consultancy Services and Deliverables (“**Foreground Intellectual Property**”) (excluding, for certainty, the Background Intellectual Property of the Consultant).
- 9.5 The Consultant hereby grants to the Commission (and its service providers and other contractors) an irrevocable non-terminable perpetual fully paid up

worldwide royalty free non-exclusive transferable sub-licensable licence to use, review, update, amend, improve, adapt and/or modify the Consultant's Background Intellectual Property in any way whatever in connection with, and/or in order to obtain the full benefit of the Consultancy Services, Deliverables and Agreement and/or for any related and/or connected purpose whatever. This Clause 9.5 survives the termination or expiration of this Agreement.

- 9.6 The Consultant acknowledges and agrees that the whole or any part of any or all of the Deliverables may be used, publicised and made available to the public by the Commission in its own name (subject to the following sentence) and in such manner as it sees fit at its absolute discretion. The Commission will use reasonable endeavours to credit the Consultant as the original author of any Deliverable (or part of a Deliverable) which the Commission publishes or which the Commission cites, quotes or uses in a published report or similar document where considered appropriate by the Commission (acting reasonably), except that the Commission is not required to do so where the Commission, acting reasonably, considers that this may be to the detriment of the Commission or adverse to its interests or adverse to the intended use to which the Deliverable may be put by the Commission.
- 9.7 The Consultant hereby irrevocably waives, and will procure the irrevocable waiver of, all moral rights in the Deliverables.
- 9.8 The Commission hereby grants the Consultant, subject to the Commission's prior written consent in any case (which consent will not be unreasonably delayed or withheld by the Commission), a revocable non-exclusive non-transferable limited licence to use the Commission's Intellectual Property solely to the extent necessary for the Consultant to provide the Consultancy Services in accordance with this Agreement, and not for any other purpose. This licence will immediately cease upon the termination or expiry of this Agreement (or earlier to the extent that any such Intellectual Property is not required by the Consultant for the purpose of fulfilling its obligations to provide the Consultancy Services under this Agreement).
- 9.9 The Commission hereby agrees to grant the Consultant upon written request a revocable non-exclusive non-transferable limited licence to use the Foreground Intellectual Property. The grant of a licence in any case is subject to the Commission's prior written consent and will extend only to the specific parts of the Foreground Intellectual Property, and be limited solely to the use of those specific parts of the Foreground Intellectual Property for the purpose and in the manner, expressly set out and identified in the written consent in that case. The Consultant hereby agrees that the Consultant has no right or claim against the Commission whatever arising out of or in connection with the Consultant's use of the Foreground Intellectual Property or any claim that the Foreground Intellectual Property infringes the rights of any third party or otherwise and that it uses the Foreground Intellectual Property at its sole and exclusive risk. The licence

in any case may also be made subject by the Commission to any other conditions or requirements set out in the written consent (including, without prejudice to the generality of the foregoing, restrictions on the use of, or an exclusion from the licence of, specific content, Intellectual Property or Confidential Information contained in, connected with or associated with the Foreground Intellectual Property). Each licence granted under this Clause 9.9 is separate and independent of any other licence granted under it. Each licence will immediately terminate when the Consultant ceases to require use of the Foreground Intellectual Property for the purpose for which the licence was granted. The Commission may withhold, limit or withdraw its consent under this Clause 9.9 if the Commission considers that the use to which the Foreground Intellectual Property may be put by the Consultant may (i) be to the detriment of the Commission; (ii) be adverse to its interests; (iii) be adverse to the intended use to which the Foreground Intellectual may be put by the Commission; and/or (iv) result in the use, access or disclosure of Confidential Information. A consent will only be deemed to have been given by the Commission under this Clause 9.9 where it is expressly stated to have been given under this Clause 9.9 and the consent has been signed in pen on behalf of the Commission by an authorised person.

- 9.10 The Consultant agrees to respect the Commission's and its third party licensors' legal and beneficial rights in and to each of their Intellectual Property and the Consultant will not act or omit to act in any manner which adversely affects the rights of the Commission or its third party licensors in or to either of their Intellectual Property.
- 9.11 The Consultant agrees on request at any time to give the Commission or any person authorised by the Commission access to the Consultant's Intellectual Property and to provide copies of same at its own expense.
- 9.12 The Consultant warrants, represents and undertakes that:
- 9.12.1 it has the right to grant, licence, assign, convey and set unto, as the case may be, all rights, licences, interests in and to all Intellectual Property granted by it under this Agreement; and
- 9.12.2 the normal use and possession by the Commission or any other person in accordance with this Agreement of any Intellectual Property supplied, procured, made available or used by or on behalf of the Consultant under this Agreement and/or in connection with the Consultancy Services and/or Deliverables (including the Background Intellectual Property and Foreground Intellectual Property) does not, and will not, infringe the Intellectual Property rights of any third party.
- 9.14 The Consultant hereby agrees to fully and effectively indemnify, hold harmless and keep so indemnified on demand the Commission (and its officers, employees, contractors and agents) from and against any liabilities whatever arising out of or in connection with any threat or claim that the

Consultancy Services, Deliverables, Background Intellectual Property, Foreground Intellectual Property and/or any other Intellectual Property supplied, generated or made available by the Consultant breach the Intellectual Property rights of a third party. This indemnity survives the termination or expiration of this Agreement.

- 9.15 The provisions under this Clause 9 will continue to apply notwithstanding the termination or expiration of this Agreement for any reason and notwithstanding the completion of the performance of the Consultancy Services.
- 9.16 In the event of any discrepancy or conflict between the Consultant's obligations under Clause 8 and this Clause 9, Clause 8 shall take precedence over this Clause 9.

## **10 COMPLIANCE WITH LAWS**

- 10.1 The Consultant shall comply with and shall procure that its employees, agents and servants, sub-contractors or any other third parties engaged to provide the Consultancy Services, comply with all relevant laws and the requirements of any statutory authority, regulatory or government body in performing the Consultancy Services.

## **11 VARIATION OF CONSULTANCY SERVICES**

- 11.1 The Commission may by written notice require the Consultant to vary the nature, scope or timing of the Consultancy Services or to provide additional Consultancy Services that are not included within the scope of the fixed fee set out in Schedule 2.
- 11.2 Where the Commission requires additional Consultancy Services and such additional Consultancy Services would affect the scope of the Consultancy Services, the Parties shall, if necessary, negotiate a variation of the Fees and the time for completion of the Consultancy Services, but otherwise the variation of the Consultancy Services shall be on the same terms and conditions as contained in this Agreement. The Consultant shall act reasonably in such regard. The variation to the Fees shall, at the Commission's discretion:
- 11.2.1 be in proportion to the variation in the Consultancy Services; or
- 11.2.2 be based upon rates no higher than the daily and hourly rates set out in Schedule 2 and the increase or decrease in required time.

The Consultant may be required to provide a fixed fee or a capped fee for any variation or agree to such other financial fee / payment model as is requested by the Commission.

- 11.3 If the Parties cannot agree the variation of the Fees and the time for completion of the Consultancy Services, this Agreement shall continue unaffected and unchanged. The Consultant shall continue to provide the Consultancy Services to the Commission during the period of any negotiations described in this Clause 11.

## **12 SUSPENSION OF CONSULTANCY SERVICES**

- 12.1 The Commission may by notice require the Consultant to suspend the progress of the whole or any part of the Consultancy Services for a specified period upon receipt of such a notice.
- 12.2 Unless such suspension is necessary by reason of some default of or breach of this Agreement by the Consultant for which it is responsible, the following provisions shall apply:
- 12.2.1 the Consultant shall be entitled to an extension of time for performance of the obligation(s) to which the suspension relates; and
- 12.2.2 the Consultant shall be reimbursed by the Commission in respect of any increased costs reasonably incurred by the Consultant by reason of such suspension.
- 12.3 Following any such period of suspension referred to in this Clause 12, the Consultant shall, on request by the Commission, immediately recommence work on all or any part of the suspended Consultancy Services.

## **13 INDEMNITY AND LIMITATION OF LIABILITY**

- 13.1 The Consultant acknowledges that the Commission will be relying on the Consultant's skill, expertise and experience in providing the Consultancy Services. The Commission will also be relying on the accuracy of all representations or statements made by the Consultant in the Response, and the Deliverables and advice given by the Consultant in connection with the provision of the Consultancy Services.
- 13.2 The Consultant hereby agrees to indemnify, hold harmless and keep so indemnified the Commission (and the Commission's officers, employees and agents) from and against all liabilities, losses, claims, demands, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by the Commission, whether arising (directly or indirectly) under contract, tort, statute or otherwise, arising out of or in connection with the Consultant's breach of any of the obligations or the warranties contained in this Agreement or arising out of the Consultant's negligence in providing the Consultancy Services.

- 13.3 Nothing in this Agreement excludes or limits the liability of either Party in respect of death or personal injury to any person arising as a result of the negligence or wilful acts or omissions of a Party, its employees, agents, approved sub-contractors or any other person for which that Party has responsibility.
- 13.4 Except where the Consultant is in breach of Clauses 8 or 9 or under the indemnity in Clause 9.13, the Consultant shall not, subject to Clause 13.5, be liable to the Commission for any indirect or consequential losses suffered by the Commission arising out of or in connection with the Consultant's breach of this Agreement.
- 13.5 Clause 13.4 does not apply in relation to the following all of which are considered recoverable losses:
- 13.5.1 any time, charges or expenditure rendered unnecessary or wasted and/or incurred by the Commission;
  - 13.5.2 any additional operational and/or administrative costs and expenses;
  - 13.5.3 the additional cost of procuring and paying for services to replace the Consultancy Services;
  - 13.5.4 the costs, expenses, loss and/or liability arising out of or in connection with loss or damage to, or unauthorised access to or disclosure of, any information, data or Confidential Information of the Commission; and/or
  - 13.5.5 third party claims threatened or taken against the Commission arising out of or in connection with the performance of the Consultancy Services and/or provision of the Deliverables.

## **14 INSURANCE**

- 14.1 The Consultant shall obtain and maintain, at its own expense, for the duration of the Consultancy Services and for a period of six (6) years following completion or termination of same, the insurance policies set out in Schedule 3 in order to meet any liabilities which it may have to the Commission or third parties arising out of or in connection with this Agreement. The interest of the Commission must either be noted on such insurance policies or an indemnity to principals clause contained on the policies.
- 14.2 The Consultant shall at the request of the Commission, or its insurance broker, furnish a certificate from its insurers confirming that the policies referred to in this Clause 14 and Schedule 3 are in place and stating the amounts of cover in place. The supply to the Commission of any draft or final insurance policy or certificate or other evidence of compliance with this

Clause 14 shall not, however, imply acceptance by the Commission that the extent of insurance cover is sufficient or that its terms are satisfactory.

- 14.3 The Consultant shall notify the Commission immediately in the event that any insurance required under this Clause 14 and Schedule 3 ceases to be available or maintained.
- 14.4 At the Commission's reasonable request, the Consultant shall increase the agreed insurance limits or obtain additional coverage.
- 14.5 If the Consultant fails to provide the insurance cover now specified the Commission may do so for the whole or part of the period for which such cover is required (without being under any obligation to do so) and may deduct any costs it incurs in obtaining such cover from any Fees due to the Consultant under this Agreement, or otherwise recover such sums from the Consultant.
- 14.6 Neither failure to comply nor to fully comply with the insurance provisions of this Agreement shall limit or relieve the Consultant of its liabilities and obligations arising under this Agreement.

## **15 JOINT AND SEVERAL LIABILITY**

- 15.1 If the Consultant is comprised of more than one legal entity, all representations, warranties, indemnities, undertakings, covenants, agreements and obligations made, given or entered into in this Agreement by the Consultant are made, given and entered into jointly and severally by each of the persons that constitute the Consultant.
- 15.2 If the Consultant is comprised of more than one legal entity the Commission may take action against any one or more of the Consultant members and/or may release or compromise in whole or in part the liability of any one or more of the Consultant members under this Agreement or grant any time or other indulgence without affecting the liability of the other persons that constitute the Consultant under this Agreement.

## **16 NON-SOLICITATION**

- 16.1 During the term of this Agreement and for a period of six (6) months following its termination, the Consultant shall not and shall procure that its employees, servants and agents shall not, directly or indirectly solicit, seek or procure the services of any employees, servants or agents of the Commission without the prior written consent of and upon such terms specified by the Commission.



## 17 FORCE MAJEURE

- 17.1 If a Party (the “**Affected Party**”) is prevented, hindered or delayed from or in performing any of its obligations under this Agreement by a Force Majeure Event:
- 17.1.1 the Affected Party’s obligations under this Agreement are suspended while the Force Majeure Event continues and to the extent that it is prevented, hindered or delayed;
  - 17.1.2 as soon as reasonably possible after the start of the Force Majeure Event the Affected Party shall notify the other Party in writing of the Force Majeure Event, the date on which the Force Majeure Event started and the effects of the Force Majeure Event on its ability to perform its obligations under this Agreement;
  - 17.1.3 if the Affected Party does not comply with Clause 17.1.2 it forfeits its rights under Clause 17.1.1; and
  - 17.1.4 the Affected Party shall make all reasonable efforts to mitigate the effects of the Force Majeure Event on the performance of its obligations under this Agreement and immediately after the end of the Force Majeure Event the Affected Party shall notify the other Party that the Force Majeure Event has ended and resume performance of its obligations under this Agreement.
- 17.2 If the Force Majeure Event continues for more than three (3) months starting on the day the Force Majeure Event starts, the Commission may terminate this Agreement by giving not less than thirty (30) days written notice to the Consultant.
- 17.3 In this Clause 17, a “**Force Majeure Event**” means an act of God, war, riot, civil commotion, malicious damage, fire, flood and storm.

## 18 ASSIGNMENT AND SUB-CONTRACTING

- 18.1 This Agreement is personal to the Consultant and the Consultant may not, without the prior written consent of the Commission, assign, sub-contract, mortgage, charge (otherwise than by floating charge), create an interest in any trust over, or dispose of or transfer any of its rights or obligations (in whole or in part) under this Agreement.
- 18.2 The Consultant shall not sub-contract or otherwise engage any third party to provide all or any part of the Consultancy Services without obtaining the prior written consent of the Commission. If the Consultant wishes to apply for the consent of the Commission to appoint or change a sub-contractor, the Consultant shall give the Commission not less than fourteen (14) days’ notice of:

- 18.2.1 the intended appointment of the sub-contractor or other relevant third party, with detailed particulars which shall include its relevant experience; and
  - 18.2.2 the intended commencement date and scope of the sub-contractor's or relevant third party's work.
- 18.3 If the Consultant has obtained the consent of the Commission referred to in Clause 18.2, the consent shall:
- 18.3.1 not operate as an authority to transfer responsibility to the sub-contractor or relevant third party for the proper and due performance of the obligations of the Consultant contained in this Agreement; and
  - 18.3.2 not relieve the Consultant from any of its obligations or liabilities under this Agreement and the Consultant shall be responsible for the acts or defaults of any sub-contractor or relevant third party, their agents or employees, as if they were the acts or defaults of the Consultant.
- 18.4 A change in the legal status of the Commission shall not affect the validity of this Agreement.

## **19 FURTHER ASSURANCE**

- 19.1 Each Party shall, at its own cost, from time to time and being required to do so by the other Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to the other Party as the other Party may reasonably consider necessary, to give full effect to this Agreement.

## **20 RELATIONSHIP OF PARTIES**

- 20.1 Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall create, or be interpreted or construed as creating a partnership, association, or joint venture or other co-operative entity between the parties, nor establish a relationship of agency between the Parties.
- 20.2 The Parties acknowledge that nothing in this Agreement or in any other agreement between the Parties shall give rise to the relationship of employer/employee between the Commission and the Consultant and any Scheduled Personnel and any replacement or any other persons supplied to the Commission by the Consultant in respect of the Consultancy Services to be performed under this Agreement.

- 20.3 Neither Party shall have any right, power or authority to enter into any agreement, or act on behalf of, or to act as or to be an agent or representative of, or to otherwise bind the other Party unless expressly provided otherwise in this Agreement.

## **21 ENTIRE AGREEMENT**

- 21.1 The Contract Documents constitute the entire agreement and understanding between the Parties with respect to the Consultancy Services and supersedes any previous agreements, negotiations and discussions between the Parties.
- 21.2 Each of the Parties acknowledges and agrees that in entering into this Agreement, and the documents referred to in it, it does not rely on, and shall have no remedy in respect of, any statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to this Agreement or not) other than as expressly contained in the Contract Documents. Nothing in this Clause 21 shall, however, operate to limit or exclude any liability for fraud or fraudulent misrepresentation.

## **22 WITHHOLDING TAX**

- 22.1 All payments to be made pursuant to this Agreement shall be subject to professional services withholding tax in accordance with Irish law and at the prevailing rate.

## **23 NOTICES**

- 23.1 Invoices for payment in respect of the Consultancy Services should be sent to:

**The Finance Manager  
Commission for Communications Regulation  
Blocks D, E, F  
Abbey Court  
Irish Life Centre  
Lower Abbey Street  
Dublin 1  
Ireland.**

- 23.2 Any notice or other communication given or made under this Agreement shall be in writing, and may be delivered to the relevant Party or sent by pre-paid registered post to the address of that Party specified in this Agreement, or such other address as may be notified hereunder, by that Party from time to time for this purpose and shall be effective notwithstanding any change of address not so notified.

- 23.3 Unless the contrary is proved, each notice or communication for the purposes of this Agreement shall be deemed to have been given or made and delivered (if by post) forty eight (48) hours after posting or (if delivered by hand) when left at the relevant address.

## **24 WAIVERS AND REMEDIES**

- 24.1 The failure to exercise or delay in exercising a right or remedy shall not constitute a waiver of the right or remedy or a waiver of any other rights or remedies. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement shall not constitute a waiver of any other breach or default and shall not affect the other terms of this Agreement. A waiver of a breach of any of the terms of this Agreement or of a default under this Agreement shall not prevent a Party from subsequently requiring compliance with the waived obligation.
- 24.2 The rights and remedies of the Commission provided by this Agreement are cumulative and (subject to what is otherwise provided in this Agreement) are not exclusive of any rights or remedies provided by law.

## **25 BONDS**

- 25.1 If requested, the Consultant shall, at its expense, procure the execution and delivery to the Commission of any bonds specified in the ITT, if any, or otherwise agreed in writing between the Parties, Any such bond shall be provided by the Consultant in a form approved by the Commission and by a bank or other financial institution acceptable to the Commission.
- 25.2 Payment of the Fees to the Consultant hereunder shall be conditional upon the execution and delivery of any such bonds.

## **26 LEGAL OPINION**

- 26.1 Without prejudice to Clause 3, the Consultant shall, if requested by the Commission, at the Consultant's expense, procure the provision of a written legal opinion of a qualified barrister or solicitor certifying that:
- 26.1.1 the Consultant has all requisite corporate power to execute, deliver and perform its obligations under this Agreement and any bonds required to be procured by the Consultant under this Agreement;
- 26.1.2 such execution, delivery and performance of this Agreement and any bonds required to be procured by the Consultant under this Agreement have been duly authorised by appropriate corporate action; and

26.1.3 this Agreement and any bonds required to be procured by the Consultant under this Agreement constitute legally binding obligations on the Consultant and the surety as the case may be.

26.2 Any legal opinion requested by the Commission in accordance with Clause 26.1 shall be of such form and content as shall be required by the Commission.

## **27 VARIATION**

27.1 A variation of any of the terms of this Agreement shall not be valid unless it is in writing and signed by or on behalf of each of the Parties.

## **28 SEVERABILITY**

28.1 If any provision of this Agreement shall be found by any court, arbitrator or administrative body of competent jurisdiction to be invalid or unenforceable, such invalidity or unenforceability shall not affect the other provisions of this Agreement which shall remain in full force and effect.

## **29 EXECUTION AND COUNTERPARTS**

29.1 This Agreement is effective only upon the same being executed by or on behalf of each Party. This Agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be an original, and all the counterparts together shall constitute one and the same instrument.

## **30 COSTS**

30.1 The Parties shall be responsible for their respective legal and other costs incurred in relation to the preparation of this Agreement.

## **31 CONFLICTS OF INTEREST**

31.1 The Consultant acknowledges and agrees, unless otherwise agreed by the Commission in a specific case in writing, that it is required, during the term of this Agreement and for a period of twelve (12) months after its expiration or termination, not to place or retain itself in (and to procure that any Scheduled Personnel and any third party engaged by it do not place or retain themselves in), and to take steps to remove itself from (and to procure that any Scheduled Personnel and any third party engaged by it remove themselves from), any Conflict of Interest (including by ceasing, directly or indirectly, to act or advise any person who has an interest in the subject matter of the Consultancy Services for such period).

- 31.2 The Consultant shall, where applicable, put in place and maintain any measures agreed between the Parties or proposed by the Consultant in the Response in order to address any possible Conflict of Interest.

### **32 RESOLUTION OF DISPUTES**

- 32.1 The Parties shall make a good faith effort to settle amicably any dispute which may arise between them under or in connection this Agreement. The Consultant shall continue to perform its obligations under this Agreement pending any resolution of a dispute concerning it, unless otherwise request by the Commission. Any dispute arising out of or in connection with this Agreement which the parties are unable to settle amicably after such effort shall be decided, pursuant to Clause 33, by the courts of Ireland in accordance with Irish law.

### **33 GOVERNING LAW AND JURISDICTION**

- 33.1 This Agreement, and all disputes arising out of or in connection with this Agreement, shall in all respects be governed by, construed and take effect in accordance with the laws of Ireland.
- 33.2 The Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Agreement.
- 33.3 The submission to the jurisdiction of the courts of Ireland does not limit the Commission's right to take proceedings against the Consultant in another court of competent jurisdiction, nor does the taking of proceedings by the Commission in any one or more jurisdictions preclude the Commission taking proceedings in another jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

SCHEDULE 1

THE CONSULTANCY SERVICES

The Services of The Provision of Bi-Annual Drive Testing Services on Mobile Networks in Ireland to Commission for Communications Regulation comprises the services required under the ITT, as supplemented by the Application. See Section 3.2 of the ITT for full details.

Possible Additional Services (ITT section 3.3)

The Service Provider may, from time to time, be required to perform additional services as per ITT section 3.3. Such Additional Services may only be provided by the Service Provider pursuant to an express request in writing made by the Commission's contact person. The identity of the Commission's contact person may change from time to time. Any such change will be notified in writing by the Commission to the Service Provider.

## SCHEDULE 2

## FEES AND SCHEDULED PERSONNEL

1. Fees

The Fee is an unconditional fixed fee as detailed in Section 3.8 of the ITT.

The fixed price fee is inclusive of all costs and expenses (whether third party or not).

The following are the maximum hourly rates that may apply for the purposes of any variation to the Consultancy Services (though the Parties may agree to use lower rates for such purposes):

| <b>Grade</b>        | <b>Description</b>                        | <b>Tendered Hourly Rate (excluding VAT)</b> | <b>Tendered Daily Rate (8 hour day) (excluding VAT)</b> |
|---------------------|-------------------------------------------|---------------------------------------------|---------------------------------------------------------|
| <b>Junior</b>       | 1 – 3 years post qualification experience |                                             |                                                         |
| <b>Intermediate</b> | 4 – 7 years post qualification experience |                                             |                                                         |
| <b>Senior</b>       | 8 + years post qualification experience   |                                             |                                                         |

2. Payment of Fees

The Fees shall be payable monthly in arrears and in accordance with Clause 5.2 of this Agreement.

3. Method of Payment



Payment shall be by electronic funds transfer in to the Consultant's bank account.

4. Scheduled Personnel

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SCHEDULE 3

INSURANCES

The Consultant undertakes for the benefit of the Commission to take out and maintain at all times during the term and for a period of six (6) years following completion of the Consultancy Services sufficient insurances to cover its liabilities under or in connection with this Agreement, including the following:

1. Professional Indemnity Insurance:

**€5 million** for each and every claim / in aggregate  
zero excess

2. Public Liability Insurance:

**€13 million** for each and every claim / in aggregate  
zero excess.

3. Employer's Liability Insurance:

**€13 million** for each and every claim / in aggregate  
zero excess.

COMREG CONSULTANCY AGREEMENT

**IN WITNESS WHEREOF** this Agreement has been entered into the day and year first  
**HEREIN WRITTEN**

**SIGNED by**

Duly authorised on behalf of the Commission

in the presence of:

**SIGNED FOR AND ON BEHALF OF THE CONSULTANT**

in the presence of:

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