



TÚS LA

**An Ghníomhaireacht um
Leanaí agus an Teaghlach**
Child and Family Agency

Services Agreement

Section 56 of the Child and Family Agency Act, 2013

Our mission:

With the child at the centre, our mission is to design and deliver supportive, coordinated and evidence-informed services that strive to ensure positive outcomes for children, families and communities.

THE AGREEMENT (PART A)

INTRODUCTION	5
1. Service Agreement – General Provisions	5
WHAT WE MUST DO.....	7
2. General Obligations.....	7
3. Additional Funding	7
4. Our Conduct	8
WHAT YOU MUST DO	8
5. Use of Funding and Delivery of Services	8
6. Governance and Reporting Obligations	10
7. Other Obligations	11
ABOUT THE FUNDING.....	15
8. Payment of Funding	15
9. Funding Terms and Conditions.....	16
MONITORING, REVIEW & EVALUATION	18
10. Performance Review and Audit Access	18
RISK MANAGEMENT	19
11. Managing Risk.....	19
12. Insurance and Indemnity.....	19
13. Quality and Standards	21
14. Conflict of Interest.....	21
TERMINATION AND SUSPENSION	22
15. Terminating and Suspending the Agreement	22
OTHER LEGAL MATTERS	26
16. Subcontracting.....	27
17. Intellectual Property Rights	28
18. Data Protection	28
19. Freedom of Information	29
20. Dispute Resolution	29

Signing of the Agreement

THE PARTICULARS (PART B)

PARTICULARS OF THIS AGREEMENT.....	32
21. Organisation Particulars.....	32
22. Funding Particular.....	36

23. Service Particulars	37
24. Variation Agreement	38
25. Your Legislative Requirements	39
26. Your Governance and Compliance Requirements	40
27. Glossary of Terms	46

Appendix 1 - Fair Procedures

PART A

INTRODUCTION

This Agreement represents the whole and only agreement between Us and You in relation to the entering into of an agreement for the provision of the Services pursuant to Section 56 of the Child and Family Agency Act 2013 (the “2013 Act”).

- (a) This Agreement supersedes and extinguishes any Pre-Contractual Statement.
- (b) Each Party acknowledges that in entering into this Agreement it is not relying upon any Pre-contractual Statement which is not set out in, or referenced in, this Agreement.
- (c) No Party shall have any right of action against any other Party to this Agreement arising out of or in connection with any Pre-contractual Statement.
- (d) This Agreement between You and Us is valid for one year from the Service Commencement Date.
- (e) We agree to operate this Agreement in a fair and Reasonable manner, with mutual respect and by reference to clause 20 of this Agreement, if applicable.
- (f) This Agreement will be operated in compliance with all relevant legislation including but not limited to the Child Care Act 1991, The Child and Family Agency Act 2013, Data Protection Acts 1988 and 2003 and the Freedom of Information Act 2014.

1. Service Agreement – General Provisions

1.1 Background

- (a) The Child and Family Agency (“TUSLA”) is required by statute to provide services, including child and family services and to provide care and protection for victims of domestic, sexual or gender-based violence.

TUSLA’s services include:

- Child Protection and Welfare Services
- Educational Welfare Services
- Alternative Care
- Family and Locally-based Community Supports
- Early Years Services
- Domestic, Sexual and gender-based Violence Services
- Therapeutic Services

- (b) The 2013 Act empowers TUSLA to provide Funding to a service provider under Section 56 of the 2013 Act.
- (c) TUSLA wishes to secure the provision of the Services and the Provider wishes to provide the Services.

- (d) Every Provider must provide the Services in compliance with the terms of the 2013 Act, this Agreement, and in accordance with The Children First Act 2015 which puts elements of the Children First (National Guidance for the Protection and Welfare of Children - 2011) on a statutory footing. <http://www.TUSLA.ie/services/child-protection-welfare/children-first>
- (e) This Agreement sets out the standard terms and conditions upon which Funding is granted by TUSLA.
- (f) The relationship between You (as the “Provider”) and Us (as the Party providing the Funding) is one of mutual respect. Each Party has a shared goal to ensure the delivery of safe, quality, effective services for children, families and victims of domestic, sexual and gender based violence pursuant to this Agreement, and to work collaboratively and constructively in a spirit of goodwill, while acknowledging the requirement for accountable, responsible and effective expenditure of public monies.
- (g) TUSLA and the Provider shall have regard for the provisions of Circular 13/2014 issued by the Department of Public Expenditure and Reform. This circular refers to an overall principle that there be transparency and accountability in the management of public money, in line with economy, efficiency and effectiveness.

1.2 Terminology

- (a) In this Agreement, certain words and phrases have defined meanings. These are indicated by capital letters (e.g. Funding).
- (b) Definitions of these can be found in the Glossary of Terms (Section 27).

1.3 Terms of this Agreement

- (a) The first instalment of the Funding approved under the terms of this Agreement will commence on the Agreement Commencement Date.
- (b) This Agreement sets out the terms and conditions on which ‘We’ (TUSLA) will provide Funding to ‘You’ (the Provider), and in accordance with which You shall deliver the agreed Services. This Agreement is comprised of: (i) Standard Terms upon which Funding is granted by Us (contained in Sections 1 to 20 of this Agreement); and (ii) The Particulars of this Agreement which contain some specific terms about You, the Funding, the Services, and Governance and Compliance Requirements (contained in Sections 21 to 27 of this Agreement).
- (c) This Agreement may also specify or refer to documents, guidelines, policies or standards (and which form part of this Agreement), that You must comply with in relation to particular Funding or Services.
- (d) The person who signs this Agreement on behalf of ‘You’ must be an Authorised Signatory (i.e. authorised enter into binding legal agreements on Your behalf, such as the Chairperson, CEO, Director, Trustee etc. of the Provider.)
- (e) If, in our reasonable view, You at any time fail to meet the terms outlined, We may seek to recoup funds already paid to You, and/or suspend and/or cancel any future Funding. As a result, You may also be liable to repay all or any portion of the Funding already paid to You.

- (f) You must comply with all legal requirements and policies and guidelines issued by any Government Department or by Us in respect of child protection and protection of vulnerable adults and with all reporting procedures in respect of suspected or actual abuse.

WHAT WE MUST DO

2. General Obligations

Subject to the terms and conditions set out in this Agreement, We shall provide Funding to You in the amount agreed, in accordance with the payment arrangements set out in the Funding Particulars (Section 22).

- (a) We will provide the Funding to You in a timely and accountable manner.
- (b) We may fund all or a part of the Funding application and may, at our discretion, attach additional Special Conditions to ensure the Funding is used for the purposes intended. Such Special Conditions may be set out in the Funding Particulars (Section 22) or otherwise communicated by Us to You in writing.
- (c) Our obligation to provide the Funding to You will start at the Agreement Commencement Date and will stop at the earlier of: (i) the Agreement Expiry Date; (ii) termination of this Agreement; or (iii) any determination by Us pursuant to the Agreement to reduce or cease Funding.
- (d) For the avoidance of any doubt, the provision of any Funding by Us to You under this Agreement shall not give rise to any entitlement or legitimate interest on Your part to receive any future Funding or for the renewal of the Agreement after its expiration or termination.
- (e) The expiry or termination of this Agreement will not affect the exercise by Us of any right to take action or to seek remedy for an action or omission that has occurred during the Term of the Agreement.
- (f) We may liaise with other public bodies who provide Funding to You in the interest of managing public money most effectively and You shall co-operate with Us and any other public bodies in this regard. This may include sharing of financial information and/or financial returns provided by You to Us with those public bodies who also provide Funding to You.

3. Additional Funding

During the Term of this Agreement, We may request Additional Services for which We may provide You with additional Funding. Such Funding and Additional Services will be added to this Agreement with a Variation Agreement (Section 24).

4. Our Conduct

We will liaise and work collaboratively with You to improve Our knowledge base of Service Delivery practice and outcomes. We value the expertise provided by providers and endeavor to engage with you in sharing best practice and strategies in working with children, families and victims of domestic, sexual and gender based violence.

WHAT YOU MUST DO

5. Use of Funding and Delivery of Services

5.1 General Obligations

- (a) You must: (i) communicate with Us, and where information is requested, it must be supplied to Us, Our Auditors or other parties nominated by Us as and when We may reasonably require it; and (ii) comply with all of Our requests, directions, and monitoring requirements to Our reasonable satisfaction.
- (b) You must: (i) use the Funding for its intended purposes of delivering the Services and deliver the Services strictly in accordance with this Agreement; (ii) comply with Public Procurement Regulations (if You are in receipt of 50% or more of exchequer funding) when making purchases of works, services or supplies using the Funding and use Your best endeavours to deliver value for money in the use of the Funding. You shall co-operate and collaborate with Us (including engaging in procurement initiatives) to achieve value for money; (iii) comply with all policies highlighted in this Agreement and with all obligations under the Freedom of Information Act 2014 and the Data Protection Acts 1988 and 2003 (as may be amended, updated or replaced). We may require your assistance and co-operation in complying with any obligations under these Acts; (iv) promptly notify Us of any relevant matters that You reasonably think might affect Your ability to deliver any of the Services or meet Your obligations under this Agreement; and (v) obtain and maintain all permits, registrations and licenses required to be taken out and/or maintained in connection with Your performance of the Services.
- (c) You are responsible for maintaining compliance and keeping up to date with all legislative requirements and with any changes to such requirements.
- (d) You are responsible for ensuring compliance with Your obligations under this Agreement, despite: (i) any assistance We may provide; and (ii) any subcontracting of the Services or any arrangement by which any of the Services are delivered under Your direction and authority.

5.2 Compliance Requirements

You must: (a) comply with all legislative requirements in relation to the Funding, the Services and this Agreement, including those set out in Section 25; (b) comply with all legal requirements and national guidelines in respect of child protection, protection of vulnerable adults and reporting of actual or suspected abuse; (c) maintain and adhere to clear policies and procedures for protecting and safeguarding the welfare of children, young people, vulnerable adults and victims of sexual, domestic and gender based violence; and (d) adhere to the Governance and Compliance Requirements set out in Section 26.

5.3 Service Commencement and Delivery

- (a) You must: (i) commence the delivery of the agreed Services by no later than the Agreement Commencement Date, except where otherwise agreed or notified by Us in writing; (ii) not commit to spending any of the Funding before We confirm in writing to You that provision of the Funding has been agreed; (iii) only use the Funding for the purpose set out in the Funding Particulars (Section 22) unless prior written permission to do otherwise is received from Us (with such approval being given at Service/National Director level or above); (iv) comply with the Service Particulars (Section 23) and continue to deliver the agreed Services until the Agreement Expiry Date or such other date as agreed with Us; (v) not cease or change any of the Services without prior written approval from Us (with such approval being given at Service/National Director level or above) or pursuant to a Variation Agreement (Section 24); and (vi) not fund any activities or services contrary to The Child and Family Agency Act 2013 together with any guiding principles relevant to the services being provided. <http://www.TUSLA.ie/services/child-protection-welfare>
- (b) If any of the Services cease to be delivered, You must co-operate with Us in relation to: (i) the process that You will employ to cease those Services; (ii) the continuity of those Services to the Service Users; and (iii) handling of records and information in relation to those Services in compliance with the provisions of Data Protection Legislation.

5.4 Your Conduct

- (a) You must conduct all activities that comprise the Services diligently, effectively and in a professional manner by: (i) delivering the Services without coercion and in a manner that promotes the privacy, dignity, self-esteem and independence of Service Users; (ii) providing Service Users with access to and assistance with the Services on the basis of need, but otherwise on a non-discriminatory basis, except where the Services are delivered to meet the needs of specific Service Users; and (iii) raising awareness with participants in Your activities of their right to be free from abuse (mental, physical, emotional, sexual, financial, etc.).
- (b) You must collaborate and coordinate, where necessary, with other relevant Service Providers (including voluntary, community, statutory and private Service Providers) and government agencies with a view to delivering the most effective Services for the overall benefit of Service Users.

5.5 Dispute Resolution and Complaints Process

- (a) You must use Our procedures, established pursuant to Part 9 of the Child and Family Agency Act 2013, for dealing with complaints about any of the Services.
- (b) We may, at our absolute discretion, agree to You establishing procedures for dealing with complaints against You, to be used in place of Our procedures. In so agreeing, We must be satisfied that Your procedures will be of a comparable standard to Our procedures.
- (c) You must accept that difficulties and disputes within Your organisation are the responsibility of Your governing body. However, if they are likely to affect Service Delivery, You must notify Us and outline any actions taken or planned within fourteen (14) days of the difficulties or dispute arising.

5.6 Governing Law and Jurisdiction

- (a) This Agreement is governed by the laws of Ireland.
- (b) Each Party agrees that the courts of Ireland have exclusive jurisdiction to settle any dispute arising out of or in connection with this Agreement. Any proceeding, suit or action arising out of or in connection with this Agreement shall therefore be brought in the courts of Ireland.

5.7 Other Government Funding

- (a) Where Funding is being provided from two or more government sources, You are required to provide Us annually with a declaration including: (i) the source, amount and purpose of all other exchequer funding You receive; and (ii) a statement that there is no duplication of funding for the same activity/project. Such statements shall be provided to Us prior to the Agreement Commencement Date and thereafter on the earlier of: (A) the making of an application for such funding; or (B) the grant of such funding to You. The declaration will be in the format of the Statement of Compliance (Section 26 (D) of this agreement). All sources of Exchequer funding must also be itemised and disclosed in Your Annual Accounts as per Circular 13/2014.

6. Governance and Reporting Obligations

6.1 Governance requirements

- (a) You must: (i) deal with Us at all times in accordance with the provisions laid out in this agreement and the Service Particulars (Section 23); (ii) adopt and comply with the provisions contained within DPER Circular 13/2014 and the Governance Code for Community, Voluntary and Charitable Organisations, and the TUSLA Governance Framework, as amended from time to time; (iii) furnish Us with a signed Statement of Compliance annually; (iv) review and improve processes for monitoring Your compliance with the codes referenced in this section and take appropriate actions where required; and (v) immediately notify Us in writing of the occurrence of anything which may affect the delivery and provision of the Services.
- (b) You will ensure that Your management processes enable: (i) the Services set out in the Service Particulars (Section 23) to be optimised; and (ii) timely, effective and accountable decision making.

6.2 Reporting Requirements and other information

- (a) You must comply with Our Reporting Requirements and provide the information to us within the timeframe specified.
- (b) You shall, after receiving reasonable notice from Us, promptly provide: (i) the reports specified in Your Governance and Compliance Requirements (Section 26) more regularly than stated; and (ii) information in any way concerning You, Your Service Delivery or the carrying out of Your obligations under this Agreement (including Service performance or financial reports). We shall provide the rationale for such a request.
- (c) Any reasonable notice that We give You requesting information need not be in any specified form but shall state: (i) the relevant reports or information we require and how regularly You must give them to Us; (ii) the format in which We require You to provide the information; and (iii) the time within which You are required to provide the information. Such requests will be made by an Area Manager/National Account

Manager or above and We shall provide the rationale for such a request.

6.3 Standard of reporting and method of lodging

- (a) All reports and information provided by You under this Agreement, including Your Governance and Compliance Requirements (Section 26) must be: (i) true and accurate in all respects; and (ii) of a standard and in a format acceptable to Us.

6.4 Failure to comply with Reporting Requirements or provide information

- (a) Failure to comply with these requirements may adversely impact on any decision We may make about providing additional funding to You under this Agreement or any other subsequent funding assistance and shall be considered a breach of this Agreement which may lead to termination of the Agreement (at Our discretion).

7. Other Obligations

7.1 Your Employees

- (a) You are responsible for all Personnel that You employ (in any capacity) and in particular for: (i) the payment of all associated remuneration (including, subject to sub-Section (b), pension arrangements), wages, PRSI, and any other entitlements; (ii) the monitoring and suitability of all staff, employees and volunteers; (iii) the compliance with all statutory obligations ensuring that persons with access to children, vulnerable adults or victims of domestic, sexual or gender based violence in the course of their activities are fully vetted by the National Vetting Bureau or undergo equivalent criminal background checks in respect of persons who have resided outside of Ireland; and (iv) the compliance in full with all requirements of Government pay policy where applicable and in accordance with legislation.
- (b) (i)

For those service providers who do not operate a “children’s residential centre” specified by the Minister under the Child Care Act, 1991 (Children's Residential Centres) (Superannuation): You shall be responsible for the payment of, or for the payment of any contributions towards or costs in respect of, any superannuation, pensions, allowances, lump sum or other like benefits on retirement, death, termination of employment (whether voluntary or not) or during periods of sickness or disablement, for the benefit of Your employees or officers or former employees or officers or for the benefit of the dependents of any of them. You shall comply with the provisions of the Pensions Act 1990 in respect of the provision of access to a standard PRSA arrangement where an employee of Yours does not have access to membership of an occupational pension scheme operated by You.

OR

(ii)

For those service providers who do operate a “children’s residential centre” specified by the Minister under the Child Care Act, 1991 (Children's Residential Centres) and who qualify pursuant to the Act the following is applicable: (i) Subject to paragraph ii, You shall be responsible for the payment of, or for the payment of any contributions towards or costs in respect of, any superannuation, pensions, allowances, lump sum or other like benefits on retirement, death, termination of

employment (whether voluntary or not) or during periods of sickness or disablement, for the benefit of Your employees or officers or former employees or officers or for the benefit of the dependents of any of them. You shall comply with the provisions of the Pensions Act 1990 in respect of the provision of access to a standard PRSA arrangement where an employee of Yours does not have access to membership of an occupational pension scheme operated by You. (ii) The obligation on You in paragraph i shall not apply in respect of the superannuation arrangements of an employee of Yours who, pursuant to Section 66 of the Child Care Act 1991 (as amended) (the "1991 Act") and for the purposes only of Sections 23, 60(6) and 61 of the Health Act 2004 (as amended) (the "Superannuation Provisions"), is deemed to be employed by Us (being an employee of Yours in a children's residential centre (as defined in Part VIII of the 1991 Act) that is specified pursuant to Section 66(3)(c) of the 1991 Act and who is the holder in a whole time capacity of a position, the establishment, remuneration and conditions of service of which have been approved by Us, with the consent of the Minister), PROVIDED however that You shall be responsible for the application, collection and remittance to Us (in such manner as We may, from time to time, set out) of any employee contribution or levy that, pursuant to the Superannuation Provisions, is to be paid by, or applied in respect of, such employee.

- (c) You shall: (i) only employ or engage (in any capacity) a person who has availed of any public sector exit scheme (e.g. incentivised schemes of early retirement ("ISERs"), voluntary severance and early retirement schemes ("VSERs"), etc.) in accordance with and subject to the rules of the relevant public sector exit scheme and it shall be Your responsibility to have appropriate procedures in place to ensure compliance with same; and (ii) not pay or subsidise salaries, expenses, allowances or other fringe benefits for employees which exceed those normally paid within the public sector and which are in line with the applicable consolidated pay scales in place from time to time.
- (d) You must be able to provide evidence of Your compliance with the above to Us upon request.
- (e) We are under no obligation or liability in respect of Your staff or employees and this Agreement shall not give rise to an employment relationship between Us and Your employees.
- (f) You must provide details of the number of employees (whether or not they are funded through this agreement) whose total employee benefits (excluding employer pensions costs) fall, each year, within each band of €10,000 from €60,000 upwards and an overall figure per Year for total employee pension contributions (see Section 21 - Organisation Particulars). You must also disclose this detail in the Annual Accounts of Your organisation.
- (g) Your recruitment and selection practices must be open, transparent, non-discriminatory and comply with the principles set out in the relevant Codes of Practice issued by the Commission for Public Service Appointments (CPSA), these principles being: probity, merit, best practice, fairness and transparency.
- (h) You must ensure: (i) all of Your staff meet the relevant qualifications and have the experience appropriate to the position being filled and that the qualifications have been validated by the relevant competent authority; (ii) appropriate induction processes for all staff and facilitate on-going education for all personnel including professional development; (iii) as a minimum that all staff working with children or

vulnerable adults in Your organisation have undergone Garda vetting in line with The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012-2016; (iv) all staff in Your Organisation who are required by legislation to maintain a valid professional registration with the appropriate organisation, have and maintain an active registration; (v) You have an appropriate skill mix and expertise of employees and are able to provide evidence that this mix is appropriate to meet the needs of the client base; and (vi) You maintain and provide to Us (if requested) the relevant documents regarding your employees qualifications and evidence of their continuous professional development.

7.2 Financial Viability

During the Term, You must not incur a level of financial indebtedness that would expose You to financial difficulty, such that You will not be able to comply with Your obligations under this Agreement.

7.3 Notifications

Other funding received by You:

- (a) You must notify Us: (i) if You receive other public grants or other funding for meeting the costs of: (A) any of the agreed Services; and/or (B) other services or activities that are of a similar nature to any of the agreed Services, and (ii) of the amount and purpose of any and all additional funds received, unless We agree otherwise in writing and in advance. This notification must also be made in the Statement of Compliance (Section 26 (D) of this agreement).

Changes:

- (b)
- (i) You must notify Us in the format We request of any proposed changes to the Services provided under this agreement and/or this Agreement and if the proposed change is acceptable to Us We and You shall together execute a Variation Agreement (Section 24).
- (ii) You must notify Us in the format We request of any changes to:
- I. the board members, Company Secretary or CEO of Your Organisation
 - II. Your external Auditors or certifying accountants

We reserve the right, within reason, to object to the appointment where there are significant concerns regarding the appointment.

Notifying alleged misconduct:

- (c) If You are, or become, aware of an allegation that raises a reasonable suspicion of misconduct or dishonesty of a serious nature relating to the use of the Funding, the operation of the Services or of inappropriate or illegal behaviour by any employee, officer, volunteer or agent of the Organisation in respect of a participant, You must: (i) within 2 working days notify Your Area Manager / National Account Manager by phone call if the allegation involves misconduct or dishonesty concerning You, Your Services or Your finances; (ii) in all cases, report the allegation to a relevant authority, such as An Garda Síochána, as soon as possible and keep Us updated on outcomes of same; and (iii) send a detailed account of the allegation in writing to

Your Area Manager / National Account Manager as soon as You have gathered sufficient information surrounding the incident.

Notifying Major Incidents:

- (d) You must notify Us, in addition to any other appropriate and relevant authorities, within 2 working days after You become aware of: (i) an incident that affects or is likely to affect the delivery of any of the agreed Services; (ii) an incident that relates to any of the Services or Service Users and that requires an emergency response; (iii) an incident that may relate to any Service Users subject to interventions by You, Your staff, volunteers and any associated personnel; and (iv) a matter where significant media attention has occurred or is likely to occur.

7.4 The Agency Logo

- (a) It is a condition of funding that you publicly acknowledge TUSLA's financial assistance. Accordingly, the funding credit (logo) should be used on everything that you produce to inform the public about the activity or the organisation TUSLA has funded, i.e. on all materials, projects and venues which have received TUSLA funding. The TUSLA Funding Acknowledgement Requirements Protocol sets out a list of communication and publicity materials which should feature this funding acknowledgement. This list is not exhaustive and may be amended from time to time at TUSLA's discretion. TUSLA's objective is to make the public aware of the funding role of TUSLA in enabling funded agencies and organisations to deliver a range of Child and Family support services on its behalf. Furthermore, and in tandem with this protocol, strict adherence should be paid at all times to the TUSLA Brand Guidelines which detail the permitted and correct use of our logo.
- (b) All associated costs of such promotional material are at Your expense.

7.5 Accessibility of Services

You must: (a) ensure that the Services are accessible to people from culturally and linguistically diverse backgrounds, recognising the diversity of needs of people, including specific needs, from urban, regional and remote areas; and (b) not discriminate on the grounds of gender, civil or family status, age, race, religion, disability, sexual orientation or membership of the Traveller Community.

7.6 Change of Auditors

If in Our reasonable opinion there is any doubt as to the independence of Your Auditors or if We deem that a long-standing engagement with Your Auditor exists that is contrary to good practice, We may provide written notice requesting that you change Your Auditors and You shall comply with such request within an agreed time-frame.

ABOUT THE FUNDING

8. Payment of Funding

8.1 Mechanism for Payment

- (a) We will provide the Funding to You by installments in accordance with the Funding Particulars (Section 22).
- (b) We may withhold any instalment of the Funding, including at the point of Funding review, or reduce Funding payable if: (i) You have not complied with any material obligation under this Agreement; or (ii) You have not met all or some of the Key Performance Indicator/Outcome targets agreed in the Service Particulars (Section 23) to Our satisfaction; or (iii) a situation exists that impacts on the immediate going concern status of your organisation.

8.2 Changes to the amount and timing of instalments

- (a) We may vary: (i) the timing of instalments in relation to the Funding (and therefore the timing and amount of each subsequent instalment of the Funding); and (ii) the periods and dates stated in the Service Agreement. We will give You 60 Business Days' notice of any such variation.
- (b) We may amend the Funding from time to time subject to a formal Variation Agreement (Section 24) signed by both You and Us. Where new or expanded Services are to be provided by You in connection with an amendment in the Funding, we may set out the terms and conditions of any such amended Funding in such a Variation Agreement.

8.3 Pre-funding

- (a) We acknowledge You may have a requirement for Pre-funding of one month for working capital, and such Pre-funding is estimated at one-twelfth of the annual budget. If you require Pre-funding for a greater amount, then You will need to seek prior written approval from Us.
- (b) As per DPER Circular 13/2014 Management of and Accountability for Grants from Exchequer Funds as amended from time to time, the rationale for such Pre-funding should be provided to Us, documented by You and available for audit/inspection if requested by Us.
- (c) We may request any additional information from You before deciding whether to Pre-fund You.
- (d) You acknowledge and agree that We are under no obligation to provide the Funding to You beyond the Agreement Expiry Date or termination of the Funding Particulars (Section 22) or this Agreement.

9. Funding Terms and Conditions

9.1 Using the Funding

- (a) The Funding We give to you must only be used: (i) to deliver the agreed Services (pay and general administration, service provision/activity costs), as specified in the Service Particulars (Section 23); (ii) in accordance with the Service Particulars (Section 23) within the Term specified; and (iii) to fund Assets required for the Services if written approval is attained from Us (with such approval being at Service/National Director level or above).
- (b) You must not, without Our prior written approval, use the Funding to: (i) make payments that are inconsistent with the Services specified in the Service Particulars (Section 23); and/or (ii) relieve cash flow problems in the delivery of the Services, including any Services specified in the Funding Particulars (Section 22).
- (c) If You breach this Agreement by using the Funding for a purpose other than those permitted under this Agreement or approved by Us, or for Unapproved Services, then, We may, at our discretion, notify You that You are required to repay the Funding that has been spent, within the period stated in the notice.
- (d) In the circumstances described in sub-Sections (b) and (c) above, we reserve the right to: (i) terminate the Agreement; (ii) recover this amount from You as a debt due and owing by You to Us; and/or (iii) deduct the amount spent from any future Funding payments to You.
- (e) You must keep a record of the date, amount, recipient and purpose of any cash and/or cheque that You issue, or cash advance that You make, for the purposes of the Services.
- (f) You must hold the Funding in an account at an Approved Financial Institution. Any amounts payable by Us shall be transferred to an account nominated by the You as set out in the Organisation Particulars (Section 21).

9.2 Unspent amounts

- (a) If You anticipate that any part of the Funding for the current period will be unspent at period end, You must inform Us no later than 20 Business Days prior to year-end in writing and include the: (i) anticipated amount of unspent Funding; (ii) The expected unused Funding (current and prior periods) cash balance at year end; and (iii) a listing of the expected related outstanding liabilities pursuant to the Funding provided.
- (b) We may then: (i) authorise You to retain the unspent Funding to meet any outstanding related financial requirements; (ii) authorise You to expend some or all of the unspent Funding for an approved purpose, on terms and conditions specified by Us; (iii) reduce a future payment or instalment of the Funding to take account of the unspent Funding; and/or (iv) notify You that You are required to repay the unspent Funding to Us, within the period stated in the notice, which will be not less than 20 Business Days. That amount will be a debt due and owing to Us by You.

9.3 Accountability for Funding

You must:

- (a) Maintain separate Segmented Accounts to identify the Funding that We provide to You separate to any funding You receive from other sources;
- (b) Clearly disclose in annual accounts all income received from Us for the funded period;
This funding must be categorised as “restricted funds”.
- (c) Clearly disclose in the notes to Your annual accounts (in appropriate headings) sufficient detail of the expenditure relating to the Funding;
- (d) Maintain records including receipts and vouched expenditure for the Funding;
- (e) Ensure that all liabilities have been settled when due; and
- (f) Notify Us and all relevant authorities immediately in the event any fraud or misappropriation is suspected, in respect of the Services or arising out of this Agreement. You shall co-operate with any directions by Us in this regard provided these are not contrary to any legal obligation under a criminal investigation. You must ensure that invoices settled from Funding provided by Us are not used to claim for reimbursement from any other funders. You must ensure that expenditure paid by You is wholly, necessarily and exclusively for the Services contracted under the Agreement.

9.4 Tax Requirements

You must be tax compliant and have at all times a current valid tax clearance certificate and confirmation of which must be available to Us upon request to enable verification.

9.5 Procurement and Value for Money Initiatives

You are fully accountable for all expenditure of the Funding We provide to You and You must: (a) to the best of Your ability drive, deliver and report Value for Money (“VFM”) in the use of the Funding in a manner that maximises effectiveness and outcomes; (b) co-operate and collaborate with Us in the achievement of VFM and comply with any applicable procurement initiatives should they arise ; (c) take responsibility for any costs, expenses or damages arising out of any claim, demand or proceedings made against You in relation to this process; (d) endeavour to drive, deliver and report VFM with this Funding in the delivery of Services in a manner which maximises effectiveness and outcomes; and co-operate and collaborate with Us in the achievement of VFM and/or procurement initiatives (as required).

9.6 Acknowledging the Funding

You must ensure that the Funding (including the specific allocation of such Funding) is acknowledged in: (a) Your annual report (if You publish an annual report); (b) Your financial statements referencing TUSLA in segmented accounts (Section 9.3); and (c) Your website.

9.7 Variation to Services

The Parties acknowledge that: (a) this Agreement, or any part of it, may be varied through a Variation Agreement (Section 24) signed by Authorised Signatories from both Parties; (b) if any Additional Services are to be provided, the amount, timing and requirements of such Additional Services, shall be agreed in writing between Us, prior to the commencement of the provision of such Additional Services; (c) a variation which reduces or increases the scope of the agreed Services may result in a reduction of or increase in (as the case may be) the amount of, or any future instalments of the Funding; and (d) all Additional Services shall be agreed through a Variation Agreement (Section 24) agreed with Us.

MONITORING, REVIEW & EVALUATION

10. Performance Review and Audit Access

10.1 Monitoring Service Delivery

- (a) In accordance with Appendix 1 (Fair Procedures), both Parties agree to: (i) hold structured review meetings at least once per annum for the purposes of monitoring the Service Delivery; and (ii) we are permitted to take all actions We regard as reasonable in order to confirm that You are performing Your obligations under this Agreement (including through site visits and/or requiring disclosure of documents as appropriate).
- (b) We may, at any time, in compliance with the 2013 Act, assess the use of the Funding and/or conduct a review of any of the Services to assess service or program effectiveness in accordance with Appendix 1.

10.2 Performance Review

- (a) A Performance Review will be conducted in accordance with the Review Process as set out in Appendix 1 (Fair Procedures) and, notwithstanding anything contained in Appendix 1, may include gathering and analysing information about the Service you are providing or Your use of the Funding, for the purpose of Us: (i) assessing the extent to which the terms of this Agreement can be, or are being, met by You; (ii) considering or recommending a course of action to ensure compliance or to seek a solution to any Non-Compliance; and/or (iii) enforcing any provisions of this Agreement in relation to the Non-Compliance.
- (b) We will provide you with 24 hours' notice prior to conducting any Performance Review, which need not be in any particular form, but the notice will specify the focus of the review and any premises to which We may require access. This notice period shall only be exercised if a serious concern or emergency situation arises.

We will endeavour to provide a longer period of notice for routine Performance Reviews and this shall be agreed for a convenient time, date and location between You and Us.

- (c) In accordance with Appendix 1, We may nominate any independent party to conduct a Performance Review who shall have the Access Rights as set out in

Appendix 1 within the parameters of the Data Protection Legislation.

- (d) We can nominate any of Our Auditors to conduct any financial and compliance Audit of You.

10.3 Compliance with Performance Review

Following the receipt of a Performance Review notice, You must comply with the notice and where required by the notice give Us or any of Our Auditors within the parameters of the Data Protection Legislation, full and free access to: (a) your employees involved in the Services; (b) any premises where Your Services are delivered or where You conduct Your business related to the Services; (c) Your accounts, records, documents and papers that relate either directly or indirectly to the Funding or the conduct of Your Services; and (d) Your IT systems, software, hard drives and related information technology and communication systems to the extent related to the Services.

10.4 Subcontracts and Services Delivered by Auspices

You must ensure that, where any of the Services are delivered through a subcontract or any sponsors, that: (a) any Subcontractor agrees and permits Us and Our Auditors to have the same access rights within the parameters of the Data Protection Legislation as outlined above; and (b) the terms of Section 14.5 in respect of Conflicts of Interest are adhered to.

RISK MANAGEMENT

11. Managing Risk

- (a) You must have and keep up to date: (a) a risk management policy; and (b) risk management processes to ensure optimum management of all risks (these include policies and procedures for the prevention and management of all incidents including serious incidents).
- (b) You must be able to provide evidence of the above upon Our request.
- (c) You must at all times ensure the safety of the Service Users and continuously review and analyse all incident report forms and make improvements to Your Services as a result.

12. Insurance and Indemnity

12.1 Insurance

You must:

- (a) maintain sufficient levels of insurance cover in respect of all the Services and activities You deliver when using the Funding, including: Public liability insurance policy; Employer's liability insurance policy; Motor insurance (if services involves use of motor vehicles by You); Professional indemnity insurance; Directors' and Officers' Insurance; and any other insurance as required for the provision of Services. The level and cost of cover should be discussed with Our commissioning manager;

- (b) upon our request, provide Us with a copy of the insurance certificates and/ or certified copies of all policies;
- (c) increase Your insurance limits or obtain additional coverage as required for the provision of Services;
- (d) notify Us if any such insurances cease to be in force and the reason why within one (1) Business Day.

You are responsible for ensuring that all appropriate insurances are in place for the purposes of and in connection with You discharging Your obligations under this Agreement, as insurances other than those outlined above may be required. If You fail to take out or maintain any insurance required by Us or to provide Us with a copy of any such insurance policy or insurance certificate as required, then, We may suspend or cancel the Funding. As a result, You may also be liable to repay all or any portion of the Funding already paid.

- (e) The following levels of cover are the minimum requirement for Service Providers with income of under €250k:
 - Public Liability insurance – as determined to be appropriate by You
 - Employers Liability insurance - as determined to be appropriate by You
 - Motor insurance (if services involve the use of motor vehicles) - as determined to be appropriate by You
 - Professional Indemnity insurance (to the extent professional service is provided) and dependent on the service risk determined by You
 - Other insurances – as determined to be appropriate by You
- (f) The following levels of cover are the minimum requirement for Service Providers with income of over €250k:
 - Public Liability insurance – with a limit of indemnity of €6.5m for any one claim or series of claims arising out of a single occurrence.
 - Employers Liability insurance - with a limit of indemnity of €12.7m for any one claim or series of claims arising out of a single occurrence.
 - Motor insurance (if services involve the use of motor vehicles) - with a third party damage limit of €2.6m for any one claim or series of claims arising out of a single occurrence.
 - Professional Indemnity insurance (to the extent professional service is provided) and dependent on the service risk determined by You
 - Other insurances – as determined to be appropriate by You

12.2 Indemnity

You indemnify and keep indemnified Us and Our employees from and against any claim, action, proceeding, demand, liability, obligation, cost, loss, damage or expense that may be made or brought by any person against Us or any of Our employees in connection with: Your breach of this Agreement; and/or (b) any negligent or unlawful act or omission by You, Your employees, volunteers or Subcontractors.

13. Quality and Standards

13.1 Quality Standards

You must: (a) comply with statutory quality standards in relation to the Services, including those specified in the Service Particulars (Section 23) and with the Legislative Requirements (Section 25); (b) have appropriate mechanisms in place to assess the quality and standards of the Services funded and reported to Us at the end of each reporting period, including Your performance against the agreed KPIs/Outcomes (as set out the Service Particulars (Section 23)); (c) be able to demonstrate to Us that You are providing a quality service in accordance with the three principles of TUSLA's Quality Assurance Framework (Well Led, Child Centred and Safe); and (d) co-operate with any review or reporting arrangements.

14. Conflict of Interest

14.1 Warranty

You warrant that no Conflict of Interest exists in the performance of Your obligations under this Agreement.

14.2 Resolution of Conflict of Interest

If during the Term, a Conflict of Interest arises, or appears likely to arise, You must undertake to notify Us within ten (10) Business Days in writing and to take such steps to resolve or otherwise deal with the conflict to Our satisfaction.

14.3 Policy

You must have and implement a Conflicts of Interest policy for Your board members, employees and volunteers. The policy must include guiding principles and procedures for identifying, declaring and dealing with Conflicts of Interest.

14.4 Record

You must keep a record of each instance of a Conflict of Interest arising during Service Delivery and how the matter was resolved.

14.5 Conflict of Interest

You must manage actual or potential Conflict of Interest arises involving Your Directors and/or Key Managerial Personnel, or their family members, in connection with any of the Services provided by You under this Agreement. In circumstances, where You become aware of the existence of such a Conflict of Interest, You must provide Us with a written notice of such Conflict of Interest without delay, and in any event not more than ten (10) Business Days, after You become aware of the existence of the Conflict of Interest and such notice must provide details of the nature of the Conflict of Interest and the parties, including any family members, involved in the Conflict of Interest. In circumstances where We are notified by You or otherwise become aware of the potential existence of a Conflict of Interest involving You, We may request in writing that You take certain actions to address the Conflict of Interest. In the event that You fail to take, what We consider to be, reasonable action to address the potential Conflict of Interest.

TERMINATION AND SUSPENSION

15. Terminating and Suspending the Agreement

15.1 Suspension or Termination by Us

Subject to the provisions of Section 15.7, in the event of a Serious Breach of the performance of this Agreement by You (as determined by Us, acting reasonably and in good faith), We reserve the right to terminate this Agreement by giving You three (3) months written notice (or such other written notice period as may be agreed by You and Us).

For the purposes of Section 15.1, a “Serious Breach” shall include but is not be limited to: (a) Your failure to use the Funding in the most beneficial, efficient and effective manner to provide the Services; (b) Your failure to comply with a First Performance Notice or a Second Performance Notice served under Appendix 1 to this Agreement; (c) Your failure to comply with the information requirements in Appendix 1 to this Agreement; (d) without prejudice to Section 15.6 any repeated failures by You to comply with the other information requirements pursuant to this Agreement; and/or (e) Your failure to comply with Sections 7.1(a) of this Agreement.

15.2 Suspension or Termination by You

In the event of a serious breach of the performance of this Agreement by Us (which shall be determined by You, acting reasonably and in good faith), You reserve the right to terminate this Agreement giving three (3) months written notice (or such other written notice period as may be agreed by You and Us).

15.3 Termination by either Party on Notice

Subject always to Sections 15.10 to 15.15, either Party may terminate this Agreement by giving six (6) months prior written notice to the other Party (or such lesser written notice period as may be agreed by You and Us). If You provide notice of termination to Us in accordance with this Section 15.3, at Our option, you may be required by Us to provide the Services on an interim basis for a period of up to three (3) months after the termination date and until a replacement service provider has been put in place. You may receive Funding on a pro-rata basis in respect of any such period (not exceeding three (3) months) where such interim Services are provided by You.

15.4 Termination by Us in certain circumstances

We may terminate this Agreement upon provision of six (6) months written notice where: (a) in respect of You, a Reorganisation or Restructuring, dissolution or other analogous event (whether statutory or otherwise) occurs and You fail to obtain Our prior written consent to such Reorganisation or Restructuring, dissolution or other analogous event; or (b) any significant organisational, governance or policy change affecting Us occurs, which We consider substantially alters the nature, manner or amount of the Services and/or the Funding or Our or Your ability to perform our respective obligations under this Agreement.

15.5 Termination by Us on Notice where services to be procured

In the event that We wish to conduct a public procurement in respect of services which include all or part of the Services which are the subject of this Agreement, We may terminate this Agreement (in whole or in part) upon provision of six (6) months written notice and We reserve the right to award future services (whether or not such services are similar to all or some of the Services) in accordance with any public procurement process which may take place.

15.6 Procedures surrounding Serious Breach

- (a) If, in accordance with Section 15.1, We are of the opinion that there may be a Serious Breach of this Agreement by You and, as a result, We contemplate terminating this Agreement, We shall give three (3) months notice in writing to Your Board and Your Chief Executive Officer specifying: (i) the principal reasons why We are of the opinion that there may be a Serious Breach of this Agreement by You; (ii) the manner in which We consider You to be in Serious Breach of the performance of this Agreement; and (iii) the decision making process which We will follow in determining whether there is a Serious Breach which may result in termination of this Agreement, which decision making process is set out in more detail in Section 15.7 below. You will have fourteen (14) days from the date of the notification letter to make written representations to Us in respect of the foregoing (i) to (iii) and/or to address the matters specified in the notification letter. We shall consider the representations received from You and We may (in our absolute discretion) meet with You to discuss the matter.
- (b) Following expiry of the period provided for in Section 15.6(a) and having considered Your representations (if any), We shall make a determination on whether there is Serious Breach of this Agreement by You, and whether as a result We are to terminate this Agreement by giving You three (3) months notice.
- (c) If we decide to terminate this Agreement, You may invoke Section 20.1(b) to access third party arbitration, consent to which shall not be unreasonably withheld. If you exercise the right to invoke arbitration this must be done within fourteen (14) days of receipt of the notice of termination and judgement by the arbitrator shall be made within the terms of the termination notice.

15.7 Your Notice Requirements

Subject always to Sections 15.10 to 15.15, You shall give Us six (6) months written notice prior to the expiry of this Agreement in the event that You do not wish to provide Services or receive Funding from Us for the Financial Year following expiry of the Term.

15.8 Termination due to Your Insolvency etc.

Without prejudice to Our right to terminate this Agreement pursuant to this Section 15, and subject to Sections 15.10 to 15.15, if:

- (a) You enter into any composition, assignment or Agreement with Your creditors generally or if a resolution is passed, a petition is presented (save, in the case of petition, where such petition is being contested in good faith by You, as the case may be, and is discharged within ninety (90) days of the date of its presentation or where such petition is vexatious or frivolous in nature and is discharged within ninety (90) days of the date of its presentation) or if an order is made for Your winding up, administration or liquidation (save for an amalgamation or reconstruction, the terms of which shall first have been approved in writing by Us,

- acting reasonably) or if, an administrator, an administrative receiver, a receiver, a liquidator, a manager, a trustee-in-bankruptcy or other similar officer is appointed over the whole or the whole or substantially the whole of Your Assets or undertaking;
- (b) any execution, order or other process in respect of an amount which (in Our opinion) would or could have a material impact on You / Your provision of the Services and which is not discharged within ninety (90) days is levied on Your chattels or possessions;
 - (c) You stop or threaten to stop payment of Your debts generally or cease to carry on substantially all of Your business or admit Your inability to pay Your debts;
 - (d) any cross-default by You in excess of an amount which (in Our opinion) would or could have a material impact on You and/or Your provision of the Services under any other facilities provided by any third party to You and such default has not been cured within any applicable grace period;
 - (e) any similar events to the above occurring under any other relevant jurisdiction in which You are incorporated, resident or carry on business; or
 - (f) You (or any member of Your Key Managerial Personnel) dies or becomes incapacitated and as a consequence the continued provision of the Services by You is delayed, or rendered incapable or substantially more difficult of being performed provided that either Party must give notice to the other Party at the earliest available opportunity if it forms the opinion that the continued provision of the Services will be delayed, rendered incapable or substantially more difficult of performance as a consequence of death or incapacity, then this Agreement shall terminate immediately, without prejudice to Our rights and remedies.

15.9 Withdrawal of Notice of Termination

We may, by notice in writing to You, withdraw any notice of termination issued pursuant to this Agreement and We may, at Our discretion, replace such notice of termination with a new notice of termination served in accordance with this Agreement, which shall supersede all previous notices of termination.

15.10 Effect of Termination or Expiry

If either Party exercises their respective rights to terminate this Agreement, We will within a period of forty-five (45) days' pay to You reasonable and agreed costs accrued to the date of termination (or in the event such costs cannot be agreed, such reasonable costs which We believe have fairly accrued to the date of termination), but if this Agreement is terminated by Us on the grounds that the Services provided are unsatisfactory, We shall pay to You only the proportion of the Funding which is in respect of the Services provided prior to termination which meet a standard which We believe to be appropriate.

15.11 No Liability etc. for Termination

Neither Party shall be liable to the other Party for any loss of profit, contracts, goodwill, business opportunity or anticipated saving arising out of or in connection with the termination of this Agreement for any reason or any consequential loss or damage that may arise out of termination of this Agreement. Termination of this Agreement for any reason shall be without prejudice to the rights and remedies of either Party in relation to any negligence, omission or default of the other Party prior to termination.

15.12 Interim Agreements upon Termination

Upon termination or expiry of this Agreement both Parties will endeavour to make interim agreements in respect of those Service Users who are receiving Services on the effective date of termination or expiry that will minimise disruption or distress to such Service Users.

Pending the finalisation of any such interim agreements in respect of such Service Users, You will continue to care for, and accommodate, any Service User who is receiving Services on the effective date of termination or expiry until such time as any new agreements are effective or until the Service User can be discharged or transferred to another facility, whichever is earlier. The terms and conditions of this Agreement (including funding obligations) will continue to bind each Party and remain in effect for each such Service User until discharge or transfer or until any new agreement(s) become(s) effective, whichever is earlier. Both Parties will endeavour to complete such transition agreements within a three (3) month period. In respect of any such interim or transition agreements entered into by the Parties and any services provided by You after the expiration or termination of this Agreement, with Our prior agreement in writing, We shall provide funding to You in accordance with Sections 8 and 9 of this Agreement and for amounts equivalent to those set out in Section 22 (Funding Particulars) to be calculated on a pro-rata basis in respect of any period (not exceeding three (3) months) where such Services are provided by You.

15.13 Effect of Termination or Expiry

We shall have due regard to the potential impact that termination or expiry of the Agreement may have on Service Users and will endeavour to ensure that their best interests will be duly considered, insofar as is possible. In the interests of safeguarding the well-being, welfare and the continuity of Services to Service Users, upon termination or expiry of the whole or any part of this Agreement, if required by Us, You shall make reasonable access available to Us, on a temporary basis, to any premises used in the provision of the Services, until such time as the transfer of Service Users to any new premises, or discharge of Service Users, can reasonably occur.

15.14 Effect of Termination or Expiry

Upon termination or expiry of the whole or any part of this Agreement:

- (a) You shall, subject to the Data Protection Legislation, co-operate fully with Us in providing any data, Confidential Information and documentation in relation to the Services and/or Service Users as may reasonably be required by Us or any replacement provider of services;
- (b) You shall co-operate fully with and provide all reasonable assistance to any replacement provider of services so as to ensure an efficient and expedient transition to the replacement provider without delay or disruption to the provision of the Services; and
- (c) You shall immediately return to Us any and all documents and assets including property in Your possession or under Your control that belongs to Us.
- (d) You shall, subject to the Data Protection Legislation, immediately return, at Your cost, to Us or destroy at Our request, any documents in Your possession or under Your control that has been predominantly (in excess of 50%) funded by Us.
- (e) You shall immediately enter into an agreement with Us regarding any and all assets including property in Your possession or under Your control that has been predominantly funded (in excess of 50%) by Us regarding the future use of said assets/properties. If an agreement cannot be reached between You and Us regarding the future use of the said assets/properties you shall immediately return the assets/properties to Us without adverse financial impact to either party using fair value estimates of the assets/properties and remaining useful economic life proportionate to the funding provided by You and Us.

15.15 Effect of Termination or Expiry

Without prejudice to the provisions of this Agreement in respect of liability, You agree to use reasonable endeavours to mitigate your losses in the event of termination of this Arrangement for any reason.

OTHER LEGAL MATTERS

16. Subcontracting

16.1 Consent for subcontracting

- (a) You must not, without obtaining the prior written consent of a senior TUSLA representative (Area Managers/National Account Managers/or More Senior), subcontract the whole, or any part, of this Agreement (or Your obligations under this Agreement).
- (b) If You intend to subcontract the whole, or any part, of the direct provision of services outlined in the schedules of this Agreement You must: (i) provide Us with details of these subcontractors along with the terms and conditions applying to such subcontracted arrangements; (ii) ensure that any subcontract entered into is consistent with this Agreement and that all Subcontractors comply with their subcontracts and the terms of this Agreement as if they were a party to it; and provide Us with a copy of any contract with a Subcontractor, if requested.

16.2 Your obligations

- (a) You are responsible for ensuring the suitability of any Subcontractor and for ensuring that Service Delivery by the Subcontractor meets the requirements of this Agreement.
- (b) Our consent to any subcontract will not relieve You from any liability or obligation under this Agreement.
- (c) You remain liable under this Agreement for the acts or omissions of any past Subcontractor.
- (d) In the event that the agreed Services are not being undertaken in accordance with this Agreement, You are liable for any repayments We may seek (to the amount determined by Us, acting reasonably and in good faith).
- (e) You shall take full responsibility for the compliance and oversight of such services provided by any Subcontractor and in respect to any losses, damages, claims, costs (including legal costs) and professional and other expenses incurred.

16.3 Our Rights

- (a) We may revoke the approval of a Subcontractor on any reasonable ground at any time.
- (b) Upon receipt of a written notice from Us revoking Our approval of a Subcontractor, You must: as soon as practicable, cease using that Subcontractor to perform the Services.
- (c) You must agree to release and indemnify Us from and against any loss or damage suffered by Us, or for any Claim made by You or any other person against Us, whether in respect of Your contract with a Subcontractor or otherwise.

17. Intellectual Property Rights

17. IPRs

- (a) In relation to Our Materials: (i) We and our licensors shall retain ownership of all IPRs in Our Materials; and (ii) On written approval by Area Manager / National Account Manager or more Senior We shall grant to You a perpetual fully paid-up, non-exclusive, royalty-free, non-transferable licence to copy and modify Our Materials for non-commercial use or purpose.
- (b) In relation to the Deliverables produced from the Funding under this Agreement: (i) You and your licensors shall retain ownership of all IPRs in the Deliverables, excluding Our Materials; (ii) You grant to Us, or shall procure the direct grant to Us of, a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to use, copy and modify the Deliverables (excluding Our Materials) for the purpose of receiving and using the Services and the Deliverables; and (iii) We may sub-licence the rights granted in Section 17, subject to the sub- licensee entering into appropriate confidentiality undertakings, to third parties.
- (c) You: (i) warrant that the receipt, use and onward supply of the Services and the Deliverables (excluding Our Materials) by Us and Our permitted sub-licensees shall not infringe the rights, including any IPRs, of any third party; and (iii) shall keep Us indemnified in full against all costs, expenses, damages and losses, including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by Us as a result of or in connection with any claim brought against Us for actual or alleged infringement of a third party's IPRs arising out of, or in connection with, the receipt, use of supply of the Services and the Deliverables (excluding Our Materials).
- (d) If You are required to indemnify Us under this Section 17, We shall: (i) notify You in writing of any claim against Us in respect of which We wish to rely on the indemnity at Section 17 (c) ("IPR Claim"); (ii) allow You, at Your cost, to conduct all negotiations and proceedings and to settle the IPR Claim, always provided that You shall obtain Our prior approval of any settlement terms, such approval not to be unreasonably withheld; (iii) provide You with such reasonable assistance regarding the IPR Claim as is required by You, subject to reimbursement by You of Our costs so incurred; and (iv) not, without prior consultation with You, make any admission relating to the IPR Claim or attempt to settle it, provided that You defend any IPR Claim diligently, using competent counsel and in such a way as not to bring Our reputation into disrepute.
- (e) If requested by Us, You will sign, execute, or otherwise complete any document that may be necessary or desirable to give effect to this Section 17.

18. Data Protection

- (a) Neither Party shall disclose to any other person any information in connection with the Services, nor any information contained in this Agreement, other than in compliance with the agreed information format specified in compliance with the provisions of the Data Protection Acts 1988 and 2003 (as may be amended or replaced from time to time) and any other applicable data protection law (the "Data Protection Legislation").

- (b) In the event that We provide You with Personal Data, You must use this Personal Data only for the purposes permitted under this Agreement.
- (c) You must ensure that You are legally in a position to access and disclose any Personal Data, in compliance with Data Protection legislation, which We have requested from You.
- (d) If there is any actual or suspected breach of security in relation to funded services which would give rise to the actual or potential loss, theft, unauthorised release or disclosure of Personal Data or any part thereof, You must; (i) inform Us within 2 working days ; (ii) supply Us with all relevant facts surrounding the breach within 2 working days; and (iii) notify Us if you enter into any communications or discussions with the Office of the Data Protection Commissioner within 2 working days.
- (e) You shall inform Us if you receive any communication from the Office of the Data Protection Commissioner in connection with Your Services or Service Users, and in responding You shall have regard for any views or representations We may have.
- (f) You must indemnify Us against any loss, compensation, damages, expenses and costs which become payable, or are incurred, by Us in respect of or as a result of a breach Your obligations under the Data Protection Legislation arising from Your (or Your employees or agents) acts or omissions.
- (g) You must implement appropriate technical and organisational measures to ensure the security of any Personal Data provided by Us to You in connection with this Agreement.
- (h) We reserve the right to update this Section 18 to reflect the General Data Protection Regulation which takes effect on 25 May 2018.

19. Freedom of Information

- (a) You will ensure that any information, data or materials held or prepared by You are supplied promptly to us as soon as possible following a written request from Us.
- (b) We shall have no liability for any disclosure made in accordance with the requirements of the Freedom of information Act 2014.

20. Dispute Resolution

20.1 Dispute Resolution under this Agreement

- (a) Both Parties agree to avoid disputes and deal with issues as they arise. It is expected that any disputes in relation to this Agreement shall be resolved through direct discussions between representatives from both Parties at Review Meetings.
- (b) In the event of a dispute under this Agreement, both Parties agree to the following process:

Stage 1:

- If a dispute arises, both Parties agree to serve a written Dispute Notice to the other Party, setting out in reasonable detail the matter(s) in dispute;
- Representatives from both Parties will meet within seven (7) Business Days of the Dispute Notice to try to resolve the issue within a further fourteen (14) Business Days; and
- If no solution is reached within fourteen (14) Business Days, the Parties will progress to Stage 2.

Stage 2:

- A meeting will take place between Your and Our designated senior representatives (Senior Management) so that the Parties can further discuss resolution of the issue, aiming to resolve the issue within twenty (20) Business Days from the commencement of Stage 2; and
- If no solution is reached within twenty (20) Business Days, both Parties will progress to Stage 3.

Stage 3:

- Either Party may then provide notice in writing to the other Party to refer the dispute for full and final resolution to arbitration.
- An arbitrator shall be nominated in agreement between the Parties (and failing agreement by the Parties shall be appointed by the President of the Law Society of Ireland) and (i) the award of the arbitrator shall be final and binding on both Parties; and (ii) both Parties must bear their own costs in respect to any arbitration required.

20.2 Terms of Dispute

- (a) Whether or not a dispute exists, each Party must continue to perform its obligations under this Agreement.

20.3 Force Majeure

- (a) Neither You nor We are responsible for any failure to perform Our obligations under this Agreement, if either Party is prevented or delayed in performing these obligations by an event of Force Majeure.
- (b) In the event of a Force Majeure, the affected Party must: (i) immediately notify the other Party of the nature and extent of the event of Force Majeure; (ii) provide full details of the Force Majeure and the reasons delaying or preventing the agreed Services being carried out; and (iii) use reasonable efforts to reduce the effect of the Force Majeure on the agreed Services and to carry out its obligations under this Agreement in any other way that is reasonably practicable.
- (c) You and Us will agree appropriate actions to be taken in the best interests of the Service Users and You shall implement the actions agreed with Us.
- (d) Upon completion of the event of Force Majeure, the affected Party must as soon as reasonably practicable recommence the provision of Services and develop a revised Services plan to minimize the effects caused.

- (e) If the event of the Force Majeure continues for a period in excess of one (1) month, the unaffected Party is entitled to give notice to terminate this Agreement with the affected Party.
- (f) An event of Force Majeure does not relieve You or Us from liability for an obligation which arose before the occurrence of that event, regardless of a termination of this Agreement.
- (g) In an event of Force Majeure You have no entitlement and We have no liability for:
 - (i) any costs, losses, expenses, damages or the payment of any part of the Funding during a Force Majeure event; and/or
 - (ii) any delay costs in any way incurred due to an event.

In witness whereof this Arrangement is executed by the parties as follows:-

Signed by - for and on behalf of the Service Provider:

I hereby agree to PART A (The Agreement) & PART B (The Particulars) of the associated schedules of the Services Agreement for the period _____ and declare that I am authorised to sign on behalf of _____.

Name & position held (PRINT):

Signature:

Date:

Signed by - for and on behalf of TUSLA, The Child and Family Agency:

I hereby agree to PART A (The Agreement) & PART B (The Particulars) of the associated schedules of the Services Agreement for the period agreed and declare that I am authorised to sign on behalf of TUSLA-The Child and Family Agency.

Name & position held (PRINT):

Signature:

Date: