

APPENDIX 3 – FRAMEWORK AGREEMENT TERMS AND CONDITIONS

NOTE: FOR INFORMATION PURPOSES ONLY – NOT FOR COMPLETION UNTIL FRAMEWORK CONCLUSION STAGE

IMPORTANT NOTE:

The following terms are provided as an indication of the intended format for the framework agreement to be signed with the successful operator admitted to the framework in accordance with the terms of the Competition. Tenderers are **not** requested to sign these terms as part of their tender submission but should review them carefully.

Framework Agreement with a Single Operator for **[insert description of service / supply from the tender document]**

PARTIES

XXXXXXXXXXXXX EDUCATION TRAINING BOARD of,
Co. XXXXXXXXX (Hereinafter referred to as the 'Client')

AND

[insert legal name of Framework Member] of _____ **[insert address of Framework member]**
(Hereinafter referred to as the "Framework Member" or "Member")

BACKGROUND

- (a) The Client has conducted a tender competition advertised on the Irish Government procurement website www.etenders.gov.ie (Ref. ID: **XXXXXXXXXX**) on **XXXXXXXXXX**.
- (b) The open procedure was used and an Invitation to Tender was issued with a tender submission deadline **XX XXXXXX 20XX**.
- (c) Following evaluation of its tender against the published award criteria, the Framework Member is now appointed as one of the operators under this Framework Agreement.

1. Definitions

"Commencement Date" means after **XXXXXX**.

"Competitive Procedure" means the process leading to the establishment of this framework agreement and/or award of a Contract on foot of this Framework Agreement.

"Contract" means a contract which falls within the scope of this Framework Agreement and for which the Client conducts a Competitive Procedure under the terms of this Agreement;

"Framework Agreement" means these terms and conditions, including any Schedules hereto;

"Framework Member" means the supplier or service provider formally appointed to the Framework Agreement on foot of a Competitive Procedure.

"Framework Period" means the period in years set out in Clause 3.1;

"Invitation to Tender" means the document issued by the Client on **XXXXXX**.

“Other Conditions” means for example Special Terms and Conditions or Service Level Agreement as may be appropriate;

“Successful Tenderer” means a Framework Member who is awarded a contract on the basis of this Framework Agreement;

“Tender” means the submission of the Framework Member in response to the Invitation to Tender, together with any clarifications accepted by the Client.

1.1 To the extent that any specific term or condition in a Contract is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant term or condition that is most favourable to the Client shall prevail.

1.2 Headings are included for ease of reference only and shall not affect the construction of this Framework Agreement.

1.3 Unless the contract requires otherwise, words in the singular may include the plural and vice versa.

1.4 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

2. Appointment of Framework Member

2.1 The Framework Member accepts its appointment under the terms and conditions of this Framework Agreement.

2.2 Membership of this Framework does not entitle the Member to be consulted in respect of, or awarded any contract during, the Framework Period. The Client may at its sole discretion choose not to enter into any contracts falling within the scope of this Framework Agreement, or to terminate the Agreement in accordance with Section 9.

3. Period of Framework Agreement

3.1 The period of the Framework Agreement will be for a maximum period of four years.

3.2 For the avoidance of doubt, it should be noted that contracts awarded during the term of the Framework Agreement may extend beyond the life of the Framework Agreement.

3.3 The Framework Agreement shall take effect on the Commencement Date.

4. Scope of Framework Agreement

4.1 This Framework Agreement relates to the provision of[description of supplies/services from published contract notice – including details of initial contract / subsequent contracts].....

4.2 The maximum value of the framework over the life of the framework is €xxxx **OR** in the range of €xxx to €yyy.

It should be emphasized that this value is not a guarantee of any spend over the life of the framework agreement.

5. Procedure for Award of Contracts

5.1 Contracts awarded under the framework may be by direct appointment to the Framework Member.

5.2 Where the terms of the original tender competition did not specifically address the needs relating to a specific contract which falls within the scope of the framework the Client will invite a supplementary tender from the Framework Member.

5.3 On each occasion that a Contract is awarded to a Framework Member pursuant to this Clause, the Client and the successful Framework Member shall enter into a contract in accordance with the Contract Terms and Conditions, as well as any Special Terms and Conditions that will be set out in the request for a supplementary tender.

5.4 It should be specifically noted that the Client reserves the right to terminate the Framework Agreement and to operate outside the terms of the framework agreement in the event that it considers that the nature of the contract would benefit from a separate competitive process.

6. Fixed Conditions for Contracts

6.1 Pricing

The maximum rates chargeable by the Framework Member are as set out in the **Form of Tender contained in Schedule 1.**

6.1.1 The maximum rates described detailed in Schedule 1 will be fixed for the initial [insert words] [insert number] years of the Framework Period **and subject to satisfactory performance will be adjusted for inflation thereafter on each annual anniversary of the Commencement Date in accordance with the CPI Index.**

6.1.2 Notwithstanding the Client may elect to enter into consultations with the Operator to adjust the maximum rates as a result of increases or decreases that occur in relevant salaries or expenses, or material prices invoiced as part of a Call-Off Contract, or are made by Law.

6.1.4 The Client may seek, or the Operator may offer, lower rates at any time during the Framework Period. In particular, where the Operator is offering **supplies or services, or both**, which are the same as or similar to the **Supplies/Services**, generally in the open market at a lower rate than the maximum rates, the Client may request adjustment of Schedule 1 to reflect this.

6.2 Personnel

The resources nominated by the Framework Member, as detailed in Schedule 2, are those identified by the Framework Member in their tender response. Where the successful Framework Member proposes to replace a nominated person, the replacement must be of equal or better qualifications and expertise than that of the original nominated person(s). Any replacements must be notified in writing to the Client and must be agreed by the Client prior to their commencement of any work under the framework.

6.3 Contract Manager

The Framework Member must nominate a contract manager to liaise with the Client to ensure the successful operation of this Framework Agreement.

7. Obligations of Framework Member

7.1 Insurances

The Framework Member is required to maintain, at a minimum, the levels and forms of insurance set out in the tender documents and as detailed in Schedule 3 of this framework agreement for the duration of the Framework Agreement.

7.2 Tax Clearance Status

The Framework Member shall maintain a tax clearance status as declared by the Irish Revenue Commissioners throughout the Framework Period and the period of any Contract under the Contract Terms and Conditions (whichever is longer).

7.3 Changes to Declarations

If at any point during the Framework Period or during the lifetime of a Contract the Framework Member becomes aware of circumstances that might affect the validity of any of the statements in the pre-signed Declarations (i.e. Declaration as to Personal Circumstances of Tenderer, Confidentiality, Statutory Compliance, Tenderers Statement, etc.), it shall notify the Client in writing of such circumstances at the earliest possible opportunity. Failure to notify the Client of any such changes may result in exclusion from any future consideration for contract award and/or framework membership.

7.4 Corrupt Gifts and Inducements

- 7.4.1 The Framework Member shall not give, provide or offer to any staff or agent of the Client a loan, fee, reward, gift, advantage, benefit or other payment during the Framework Period as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Agreement or any Contract.
- 7.4.2 The Client shall be entitled at all times to request a Certificate from any person in its employment or in the employment of the Framework Member that no such gift has been given. In the event of any such gift having been given, the Client shall be entitled to terminate this Framework Agreement and any Contract forthwith and to recover from the Framework Member all losses resulting from such termination together with an account or value of such gift.

7.4 Audits

Any Contract awarded under this Framework Agreement may be subject to audit by the Client or an authorised third party. In this event, the Framework Member is required to comply with all requests for information in relation to any Contract performed or partly performed by it under the Framework Agreement. Failure to provide the required information may result in termination of appointment or exclusion from any future Request for Mini-tender.

7.5 Changes

It shall be the responsibility of the Client to fulfil the obligations under this Framework Agreement, notwithstanding any changes in circulars, laws, regulations, taxation, duties or other factors which might arise following the withdrawal of the United Kingdom from membership of the EU.

7.6 Assignment

The Framework Operator shall not assign the benefit of its appointment under this Framework Agreement, or under any Contract, or any part thereof without the written permission of the Client.

8. Termination of Appointment

- 8.1 Without prejudice to any other rights or remedies to which it may be entitled, the Client shall be entitled to terminate the appointment of the Framework Member forthwith and without liability by giving notice at any time if:
- 8.1.1 The Member commits a material breach of any term or condition of this Framework Agreement, or a Contract concluded under the Framework Agreement;
- 8.1.2 The Member fails to perform any obligation or responsibility under this Agreement or a Contract concluded under the Framework Agreement, and,

if such breach is capable of being remedied, fails to remedy the breach within fourteen (14) days of notice given by the Client requiring the Member to do so;

- 8.1.3 The Member's performance of an obligation under a Contract is not in accordance with the terms of this Framework Agreement or the relevant Contract, or fails to meet any standard prescribed by law;
- 8.1.4 Any person employed by the Member or acting on its behalf offers or appears to offer a corrupt gift or inducement in the sense set out in Clause 7.5 above, whether with or without the knowledge of the Member;
- 8.1.5 The Member convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;
- 8.1.6 The Member ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
- 8.1.7 The Member is unable to pay its debts within the meaning of Section 570 of the Companies Act 2014 or any analogous provision of law;
- 8.1.8 An order is made, or an effective resolution is passed for the winding up of the Member's company other than for the purpose of a restructuring the terms of which have been agreed by the Client;
- 8.1.9 A petition is presented, or an order is made, or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Members company;
- 8.1.10 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Member;
- 8.1.11 The Client reasonably believes that any of the events mentioned above is about to occur in relation to the Member and notifies the Member;
- 8.1.12 The Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this agreement or the relevant Contract;
- 8.1.13 Any representation made by the Member in connection with this Agreement or a Contract shall in the opinion of the Client prove to be untrue or incorrect in a material respect as of the date when made;
- 8.1.14 Any event analogous to those contemplated in Clauses 8.1.5 through 8.1.12 occurs to the Member within the laws of any other jurisdiction.

9. Termination of Framework Agreement

- 9.1** The Client reserves the right to terminate this Framework Agreement by providing fourteen (14) days' notice in writing to all Framework Members. The Framework Member shall have no claim for damages or otherwise against the Client as a result of the Client terminating this Framework Agreement in accordance with this Clause.
- 9.2** Termination of the Framework Agreement pursuant to Clause 9.1 shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

- 9.3** For the avoidance of doubt, termination of this Framework Agreement shall not affect the validity of any Contract entered into by the Client and any provider of the service pursuant to that Framework Agreement.

10. General

10.1 Freedom of Information

The Framework Member acknowledges that the Client is subject to the Freedom of Information Act 2014. Accordingly, information furnished to the Client by the Member may be released pursuant to the Client's statutory obligations. If the Member considers that any of the information supplied by it to the Client under this Framework Agreement or any Contract should not be disclosed because of its commercial sensitivity it should, when providing the information, indicate this and specify the reason for its sensitivity. The Client accepts no liability whatsoever in respect of any information provided which is subsequently released or in respect of any consequential damage suffered as a result of such obligations.

10.2 Applicable Law

This Agreement shall be governed by and construed in accordance with the laws of Ireland and, subject to the provisions of Clause 10.3 the Irish courts shall have exclusive jurisdiction.

10.3 Resolution of Disputes

Any dispute or difference arising out of or in connection with this Contract shall be referred in the first instance to a Conciliator to be agreed between the parties, or failing such agreement within fourteen (14) days after either party has given to the other a written request to concur in the appointment of a Conciliator, to be appointed on the request of either party by the Chairman for the time being of the Chartered Institute of Arbitrators (Irish Branch) or failing his or her availability the Vice Chairman of the Institute. In the event that the matter cannot be resolved by conciliation it shall be referred to a single Arbitrator to be agreed between the parties, or failing such agreement within fourteen days after either party has given to the other a written request to concur in the appointment of an Arbitrator, to be appointed on the request of either party by the Chairman for the time being of the Chartered Institute of Arbitrators (Irish Branch) or failing his or her availability the Vice Chairman for the Institute. The decision of the Arbitrator appointed under this Condition shall be final and binding on the parties. Such Arbitration shall be governed by the Arbitration Act 2010 as amended or replaced or any statutory variation, modification or re-enactment thereof for the time being in force.

10.4 Waiver

Failure by either party to exercise their rights under these conditions shall not operate as a waiver or in any way preclude or prevent the exercise of further rights. A waiver of any breach of the terms of these conditions shall not be deemed to be a waiver of any other breach or default and shall in no way affect the other terms of the Contract.

10.5 Severability

Should any part of this Framework Agreement be or subsequently be found to be invalid, unlawful or unenforceable, then such parts shall be severed from the Framework Agreement and the remainder of the Agreement shall continue in full force and effect.

10.6 Force Majeure

10.6.1 If through no fault of a party, its performance has been affected or delayed by force majeure, such party shall be at no liability to the other providing the performances are recommenced as soon as possible after such force majeure has ceased to operate.

10.6.2 If however, force majeure causes a delay or failure in performance for a period longer than seven days, the Client shall have the right to terminate the Contract by seven days' notice in writing.

10.6.3 Force majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected in which it is unable to prevent or provide against by the exercise of reasonable diligence but shall not include strikes or concerted acts of the Framework Member 's workforce.

10.7 Public Procurement

Nothing in this Agreement shall prevent the Client from complying with its obligations under public procurement legislation. If necessary, this Framework Agreement and any Contract concluded hereunder may be abridged modified or amended without penalty to the Client so as to enable it to comply with the said obligations.

11. Notices

11.1 The address, email and telephone numbers of the parties for the purpose of the giving of notices under this Agreement are as follows:

The Client

[Name of contact for notices, e.g. Secretary, Education Training Board]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address

Tel: +353 XX XXXXXXXX

The Framework member

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address _____

Tel: +353 XX XXXXXXXX

11.2 Any notice or other communication whether required or permitted to be given by one party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:

11.2.1 If delivered, at the time of delivery to the addressee or its duly authorised agent;

11.2.2 If sent by pre-paid post, four (4) days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other party hereto);

11.2.3 If transmitted electronically on receipt of 'read receipt' or equivalent.

11.3 All notices to the Client or the Framework Member from the other party under this Agreement or the relevant Contract shall be in writing and sent to the appropriate address set out above.

11.4 All notices, documents and communications provided under this Agreement or the relevant Contract shall be in the English language.

SIGNED:

On behalf of Galway Roscommon Education and Training Board

Name: _____
 (Block letters)

Position: _____

Signature: _____

Date: _____

Witnessed by: _____
 (signature)

Witness name: _____
 (Block letters)

On behalf of the Framework Member

Name: _____
 (Block letters)

Position: _____

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

Schedules to this agreement:

- Schedule 1: Form of Tender – from the framework members’ tender response
- Schedule 2: Resources – from the framework member’s tender response
- Schedule 3: Insurances – evidence of insurances in place as per levels detailed at qualification / tender stage
- Schedule 4: Contract Terms and Conditions (Call-Off)

SCHEDULE 1 – FORM OF TENDER

[insert completed Form of Tender from tenderers proposal]

SCHEDULE 2 – RESOURCES

[insert completed Resource Allocation Table from tenderers proposal]

SCHEDULE 3 – INSURANCES

[insert confirmation of insurances received from tenderers]

SCHEDULE 4 – CONTRACT TERMS AND CONDITIONS (CALL-OFF)

[insert ETB Terms and Conditions from tender document]