



## **Request (Call) for Tenders dated 09/06/2026 for the provision of four IMS Trace Detection Systems**

**Tenders to be uploaded by: 12:00 noon on Tuesday the 14<sup>th</sup> of July 2026**

### **Notice**

Please note that all information relating to this tender, including tender documentation, clarifications and changes, will be published on the e-tenders website ([www.etenders.gov.ie](http://www.etenders.gov.ie)) only. Registration is free of charge and there is no charge for documents. The Revenue Commissioners will not accept responsibility for information relayed (or not relayed) via third parties. If the RFT is in any way altered or edited, the subsequent tender may be deemed inadmissible.

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## 1. Introduction

1. The Office of the Revenue Commissioners (“Revenue Commissioners”) invites responses (“Tenders”) to the Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the supply of Goods as described in **Appendix 1** of this RFT, “Requirements and Specifications”, (“the Goods”). The Revenue Commissioners is the Contracting Authority for this public procurement competition (“the Contracting Authority”).
2. The title of this RFT is Request for Tender for the provision of four IMS Trace Detection Systems.
3. This public procurement competition relates to the supply, installation, operational user training and ongoing maintenance of 4 (four) Trace Detection Systems.
4. This public procurement competition (the “Competition”) will be conducted in accordance with the open procedure under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the “Regulations”).
5. Any Goods Contract that may result from this public procurement competition will be issued for a term of 12 months, which may be extended at the request of the Contracting Authority (“the Term”).
6. The Contracting Authority reserves the right to extend the Term for periods of up to 36 months to allow for annual maintenance over the lifetime of the Goods. The aggregate Term shall not exceed 10 years.
7. The Contracting Authority reserves the right to further extend the Term for a period or periods of up to 10 years as required over the lifespan of the Goods subject to the agreement of terms and conditions by all parties.
8. The Contracting Authority estimates that the expenditure on the Goods covered by the Goods Contract may amount to some €400,000 (excl. VAT) over the Term including possible extensions specified at paragraph 6. Tenderers must understand that this figure is an estimate only based on current and future expected usage.

## 2. Instructions to Tenderers

### 2.1 Important Notices

While every effort has been made to provide comprehensive and accurate information in all notices and documents prepared for the purposes of this Competition, the Contracting Authority does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers.

The Contracting Authority does not bind itself to accept the lowest priced or any Tender.

This RFT does not constitute an offer or commitment to enter into a Goods Contract.

No contractual rights in relation to the Contracting Authority will exist unless and until a formal written Goods Contract has been executed by or on behalf of the Contracting Authority.

Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer.

The award of a Goods Contract does not confer exclusivity on the successful Tenderer.

The Contracting Authority may cancel this Competition at any time prior to a formal written Goods Contract being executed by or on behalf of the Contracting Authority.

All costs and expenses incurred by Tenderers relating to their participation in this Competition including, but not being limited to, site visits, field trials, demonstrations and/or presentations shall be borne by and are a matter for discharge by the Tenderers exclusively.

No publicity regarding this public procurement competition, the award of a contract or the execution of the Contract is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

This RFT supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence.

In this clause, "Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation"), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender, is required to confirm in the statement required under paragraph 2.2 below that all Data Subjects

(where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

The Contracting Authority would refer Tenderers in particular to the provisions of Regulation (EU) 2022/1031 on the access of third country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI), and to their obligation to comply therewith.

In particular, tenderers and candidates should note in Article 6 of Regulation (EU) 2022/1031, the obligations for a Contracting Authority in the context of a procurement procedure where the EU Commission has adopted an IPI measure.

## 2.2 Submission of Tenders

- Tenders must be submitted by **12:00 noon (Irish Time) on Tuesday the 14<sup>th</sup> of July 2026**. Extensions to this date cannot be granted. Tenders that are received late **WILL NOT** be considered in this public procurement competition.
- Submission of tenders is via e-tenders electronic on-line tendering facility only. Failure to comply with this requirement will render the tender non-compliant and it will be rejected.
- Tenders must be submitted in English or Irish.
- Late or incomplete proposals not conforming to the requirements of this RFT will not be considered.
- Faxed, e-mailed or hard copies submitted to the Contracting Authority will not be considered - all tender submissions must be returned via E-tenders electronic tender-box.
- Tenderers should note that the E-tenders electronic tender-box facility closes at the closing time precisely. Tenderers must ensure that they give themselves sufficient time to upload and submit all required tender documentation in their Tender before the Tender Deadline. Tenderers should take into account the fact that upload speeds vary.
- Tenderers must note that in the electronic tenderbox, there is a current file size limit of 250MB for each single file uploaded, with a maximum total limit of 2GB for all documentation (combined) in the Tender submitted.
- In order to submit a Tender to the electronic tenderbox, Tenderers must ensure that they follow the necessary steps on the eTenders platform to ensure that their tender has been submitted properly, which includes ensuring that the “Submit” button has been clicked. In the event that Tenderers need to modify or change any aspect of their Tender before the

Tender Deadline, the Tender in its entirety will need to be re-submitted. Tenderers should be aware that the “Submit” button will be disabled automatically at the Tender Deadline.

- It is the responsibility of tenderers to use the tender-box correctly. Please refer all tender-box submission queries directly to E-tenders (ph. +353 818001459 or irish-eproc-helpdesk@eurodyn.com. The Contracting Authority will not be responsible if a supplier fails to properly dispatch all of their tender documents.
- Further information on use of the tender-box facility can be found here <https://www.etenders.gov.ie/epps/home.do>
- All Tenders Submitted must be compiled such that they can be read immediately using standard PDF software, including Adobe Acrobat Reader or standard word processor software, including Microsoft Word.
- Tenders must be organised according to the format outlined in **Appendix 1**.
- All requests for information in all sections of this document must be answered as concisely as possible while providing all information necessary to understand the solution being proposed.
- It is the duty of the tenderer to fully understand and correctly interpret this RFT. At all times, the tenderer has the responsibility to notify Revenue, in writing, of any ambiguity, divergence, error, omission, oversight, or contradiction contained in this RFT, as it is discovered, or to request any instruction, decision, or direction that tenderers may require to prepare a tender proposal.
- Tenderers are required to comply with any and all requirements as specified in the RFT. Any stipulation or qualification made by tenderers contrary to the RFT requirements or set out in tenders as a condition for the acceptance of the contract by the tenderer will not be considered in the award of the contract and may cause the rejection of the entire tender.
- Tenderers are required Not to alter or edit this RFT in any way.
- Tenderers are required to accept the terms and conditions of this RFT. **ALL TENDERERS MUST RETURN**, with their Tender, a scanned signed copy of the Tenderers’ Statement, as set out in **Appendix 3**, printed on the Tenderer’s headed notepaper. The Contracting Authority must be able to read the scanned signature of the Tenderer. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderers’ Statement.
- Tenderers are required to complete and submit with their Tender the electronic version of the European Single Procurement Document (“eESPD”). Tenderers may submit an eESPD which has already been used in a previous procurement procedure provided that they confirm that:
  - I. the information contained in it continues to be correct; and

II. that they satisfy the Selection Criteria for this Competition

Other entities on whose capacity the Tenderer relies for the purposes of fulfilling any of the Selection Criteria and/or subcontractors on whose capacity the Tenderer does not rely on for the purposes of fulfilling any of the Selection Criteria must also complete and submit an eESPD.

- Tenderers should note the terms and conditions of the Goods Contract at **Appendix 5** to this RFT. Tenderers are required to confirm their acceptance of the terms and conditions of the Goods Contract by signing the Tenderers' Statement at **Appendix 3**. Tenderers may not amend the Goods Contract

Prior to the award of any Contract the Successful Tenderer will be required to provide a declaration confirming whether any of the grounds for exclusion listed in Regulation 57 of the Regulations apply to them. The Tenderer identified as the Successful Tenderer will be required to provide "The Declaration as to Personal Circumstances of Tenderer", as set out at Appendix 4 duly completed, signed by an authorised signatory and witnessed by a practicing Solicitor/ Commissioner for Oaths.

- Tenderers may, submit more than one tender conforming to the requirements specified in this RFT. However, any second or subsequent Tender must be prepared and presented under separate cover in a separate Tender.

If a Tenderer fails to comply in any respect with the requirements in relation to the submission of tenders, the Contracting Authority reserves the right to reject the Tenderer's Tender as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- seeking written clarification from the Tenderer;
- seeking further information from the Tenderer; or
- waiving a requirement, which in Contracting Authority's view, is non-material or procedural.

### 2.3 Consortia and Prime /Subcontractors

If the application is from a consortium / joint venture, the consortium must appoint a single entity ("Prime Contractor") to assume overall responsibility for delivery, and who is authorised to sign a contract on behalf of all consortium members. The Contracting Authority will deal with all matters relating to this public procurement competition through the appointed entity, irrespective of whether or not tasks are to be performed by a subcontractor and/or consortium member. The Contracting Authority will not act as an arbitrator between members of project consortia.

The Tenderer must clearly set out:

- The full legal name of the Prime Contractor together with its registered business address (where applicable), registered business name (where

applicable), company registration number (where applicable), telephone and e-mail contact details;

- The names of all subcontractors and/or consortium members who will be involved in the supply of the product;
- A description of the role to be fulfilled by each subcontractor and/or consortium member; and
- The name, title, telephone number, postal address, facsimile number and e-mail address of the nominated contact personnel authorised to represent the Prime Contractor, within the organisation of the Prime Contractor, to whom all communications shall be directed and accepted until this public procurement competition has been completed or terminated. Correspondence from any other person (including from any subcontractor and/or consortium member) will NOT be accepted, acknowledged or responded to.

Tenderers will comply with any and all requirements as specified in the RFT document. Any stipulation or qualification made by tenderers contrary to the RFT requirements or set out in tenders as a condition for the acceptance of the contract by the tenderer may not be considered in the award of the contract and may cause the rejection of the entire tender.

## 2.4 Queries and Clarifications

Queries or requests for clarification relating to this public procurement competition will be accepted no later than **12:00 noon (Irish Time) on Wednesday the 1<sup>st</sup> of July 2026.**

All queries **MUST** be made via the online messaging function of the tender notice, on the Irish Government Procurement Opportunities Portal [www.etenders.gov.ie](http://www.etenders.gov.ie)

For the avoidance of doubt, Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.

All clarifications and responses to queries/requests for clarification will be made through the messaging facility on the eTenders website.

Where appropriate, questions may be amalgamated. Tenderers should note that the Contracting Authority will not make responses or clarifications to individual Tenderers privately.

The Contracting Authority reserves the right at any time before the Tender Deadline, to update or amend the information contained in this document and/or to extend the Tender Deadline. Participating Tenderers will be informed of any such amendment or extension through the eTenders website.

The Contracting Authority reserves the right to issue or seek written clarifications at any stage of the tender process. To assist in the examination and comparison of tenders, Revenue may ask tenderers for clarification of their tenders, including breakdowns of unit prices. No change in the price or substance of the tender shall be sought, offered or permitted, except as required to

confirm the correction of manifest arithmetic errors discovered by Revenue during evaluation of the tenders. As part of the final selection process and prior to final contract award tenderers may be invited to attend a verification /clarification meeting with Revenue.

## 2.5 Confidentiality

All documentation, drawings, data, statistics, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this Competition:

- (a) are furnished for the sole purpose of replying to this RFT only;
- (b) may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;
- (c) shall be treated as confidential by the Tenderer and by any third parties (including subcontractors) engaged or consulted by the Tenderer; and
- (d) must be returned immediately to the Contracting Authority upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.

## 2.6 Pricing

All Tenderers must complete the Pricing Schedule at **Appendix 2** to this RFT.

All prices quoted must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.

Tenderers must confirm that all prices quoted in the Tender will remain valid for six month from the Tender Deadline.

Any currency variations occurring over the term of the Goods Contract shall be borne by the Tenderer.

Payments for Goods supplied under this RFT shall be made subject to and in accordance with the Goods Contract at **Appendix 5** to this RFT.

## 2.7 Publication of Purchase Orders

Tenderers should note that in accordance with Government policy, Purchase Orders for Goods procured by Revenue with a value of €20,000 or greater will be published quarterly in arrears on [www.revenue.ie](http://www.revenue.ie). The details will include supplier name, product description and actual value.

## 2.8 Environmental, Social and Labour Law

In the performance of any Goods Contract awarded, the successful Tenderer their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the Goods are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.

## 2.9 Registrable Interest

Any registrable interest involving the tenderer/subcontractor and members of the Government, members of the Oireachtas, or employees of Revenue and their relatives, must be fully disclosed in the response to this RFT or, in the event of this information only coming to their notice after the submission of a tender proposal and prior to the award of the contract, it should be communicated to Revenue immediately upon such information becoming known to the tenderer/subcontractor. The terms “Registrable Interest” and “Relative” shall be interpreted as per Section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at [www.irishstatutebook.gov.ie](http://www.irishstatutebook.gov.ie). Revenue will, in its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Contract entered into by a Tenderer.

## 2.10 Freedom of Information

Tenderers should be aware that, under the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, information provided by them during this public procurement competition may be liable to be disclosed.

Tenderers are asked to consider if any of the information supplied by them in their Tender should not be disclosed because of its confidentiality or commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Tenderers must, when providing such information, clearly identify the specific sections of their Tender containing such information and specify the reasons for its confidentiality or commercial sensitivity. Tenderers may not assert confidentiality or commercial sensitivity over the entire tender but must clearly identify the specific section containing such information. If Tenderers do not identify it as commercially sensitive, it is liable to be released in response to a Freedom of Information request without further consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about commercially sensitive information so identified before making a decision on a request received. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

## 2.11 Data Protection

“Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time.

The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the

meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender, is required to confirm via the Tenderers' Statement at **Appendix 3** to the RFT that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the [etenders.gov.ie](http://etenders.gov.ie) website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

## 2.12 Tax Clearance

It will be a condition of any contract pursuant to this Competition that the successful Tenderer shall, for the term of such contract, comply with all EU and domestic tax laws. Tenderers are referred to [www.revenue.ie](http://www.revenue.ie) for further information. Prior to the award of any contract arising out of this Competition, the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers, the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online.

### Non-resident Tenderers

For non-resident tenderers with no Tax Registration Number in the state, a Tax Clearance Certificate must be obtained from the Non-Resident Tax Clearance Unit, Office of the Collector General, Sarsfield House, Limerick, Ireland (phone +353 61 488000, Fax +353 61 488476 or email [nonrestaxclearance@revenue.ie](mailto:nonrestaxclearance@revenue.ie)).

## 2.13 Conflicts of Interest

Any conflict of interest or potential conflict of interest on the part of a Tenderer, Subcontractor or individual employee(s) or agent(s) of a Tenderer or Subcontractors(s) must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict of interest might be removed. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Goods contract entered into by a Tenderer.

## 2.14 Site Visit

Not Used

## 2.15 Insurance

The successful Tenderer shall be required to hold for the term of the Framework Contract the following insurances:

| Type of Insurance    | Indemnity Limit                                                                             |
|----------------------|---------------------------------------------------------------------------------------------|
| Employer's Liability | €12.7 million<br>For any one claim or a series of claims arising out of a single occurrence |
| Public Liability     | €6.5 million<br>For any one claim or a series of claims arising out of a single occurrence  |
| Product Liability    | €6.5 million<br>For any one occurrence and in the aggregate per insurance year              |

By signing the Tenderers' Statement at **Appendix 3**, Tenderers confirm that if awarded a Goods Contract under this Competition, (i) they will, from the Commencement Date of the contract, obtain and hold the types and levels of insurance specified in the above table (ii) the territorial limits and jurisdiction of its insurance policies include the Republic of Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above.

A formal confirmation from the Tenderer's insurance company or broker to this effect will be requested from the successful Tenderer prior to the award of (and shall be a condition of) any Goods Contract.

The successful Tenderer will, during the term of the Framework Contract, be required to:

- (a) immediately advise the Contracting Authority of any material change to its insured status;
- (b) produce proof of current premiums paid upon request; and
- (c) produce valid certificates of insurance upon request.

## 3. Selection and Award Criteria

### 3.1 Compliant Tenders

Only those Tenderers who have:

- submitted compliant tenders in accordance with Section 2.2 of the RFT;
  - declared by way of eESPD that either (i) no mandatory grounds for exclusion of the Tenderer pursuant to Regulation 57 apply to them, or (ii) where any mandatory grounds for exclusion apply (and where the Tenderer is not precluded from doing so under Regulation 57(17) of the Regulations), it can provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability despite the existence of any such relevant exclusion ground;
- and
- declared by way of eESPD that they satisfy the Selection Criteria as set out at part 3.2 below and, where requested, provided the evidence to demonstrate its fulfilment of the Selection Criteria.

will be evaluated in accordance with the published Award Criteria set out at part 3.3 below.

Tenderers should note

- the Contracting Authority reserves the right to exclude a Tenderer to whom a discretionary ground for exclusion pursuant to Regulation 57 of the Regulations applies from the evaluation;
- where a Tenderer is relying on the capacity of other entities for the purposes of fulfilling any of the Selection Criteria it must ensure that each such entity (i) completes and submits a separate eESPD in respect of each such entity and (ii) when requested by the Contracting Authority, submits proof, to the satisfaction of the Contracting Authority, that each such entity will place the necessary resources at the disposal of the Tenderer;
- where a Tenderer intends to subcontract any share of the Goods Contract to a Subcontractor but is not relying on the capacity of such Subcontractor for the purposes of fulfilling any of the Selection criteria below, it must ensure that that each such Subcontractor submits a separate eESPD in respect of such Subcontractor completing those sections of the eESPD which are specified in Section 2.D of the eESPD for this competition;
- the Contracting Authority reserves the right to ask Tenderers to submit evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;
- the Contracting Authority reserves the right to ask Tenderers to submit a Declaration in the form attached at Appendix 4 for the purposes of verification of the status of the Tenderer (including the Prime Contractor and any Subcontractor):

- in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, the Contracting Authority reserves the right to ask Tenderers to submit all or any of the supporting documents specified at paragraph 3.2 below;
- the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit information concerning the Tenderer, and any proposed subcontractors, for the purposes of Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the legal person is established; and
- the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit information concerning the origin of goods, if any, for the purposes of assessing compliance with Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
- if a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion ground and (iii) that it does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576) and (iv) that the origin of goods, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) then it shall be excluded from further participation in the Competition;
- if a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies, of the Selection Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion ground and (iii) that any proposed Subcontractor on whose capacity the Tenderer relies (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576) then it shall be excluded from further participation in this Competition unless it replaces the Subcontractor with one which meets all the relevant requirements of this RFT.

### 3.2 Selection Criteria

Tenderers will either Pass or Fail each of the Selection Criteria. In the event of one or more of the Selection Criteria achieving a fail, the Tenderer will be excluded from further participation in this competition.

#### **Economic and Financial Standing**

Tenderers must declare by way of eESPD that they satisfy the financial and economic standing requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority. Tenderers will either **PASS OR FAIL** this Selection Criterion.

#### **Requirement as to Minimum Financial Turnover:**

Tenderers must have an annual financial turnover which equals or exceeds an amount specified by the Contracting Authority as the minimum acceptable turnover. Tenderers must demonstrate an annual turnover equal to or in excess of **€600,000** (Ex VAT) for each of the three of the last 5 financial years or alternatively, if the date of establishment was more recent, the equivalent annual turnover of the Tenderer must be equal to or exceed **€600,000** (Ex VAT) for each year the Tenderer has been established.

The preferred bidder(s) will be required to furnish evidence to demonstrate that they meet the minimum levels of turnover requested by way of an external auditor's statement or audited accounts for the Corresponding years. They may also be asked to provide a letter from their principal bankers which states that all accounts held by them are currently in good standing.

Tenderers must provide the specified documentation when requested by the Contracting Authority within 5 days. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation, the Tenderer must inform the Contracting Authority of that valid reason as to why the documentation cannot be supplied and provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

The documentation required as specified above will be requested by the Contracting Authority prior to (and shall be a condition of) the award of any contract.

#### **Technical and Professional Ability**

Tenderers must declare by way of eESPD that they satisfy the technical and professional requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case. Tenderers will either **PASS OR FAIL** this Selection Criterion.

### **Previous Experience**

Tenderers must demonstrate satisfactory experience of at least 3 similar contracts of a similar scale and complexity where one example includes the supply of IMS Trace Detection Systems.

Tenderers should provide details of 3 contracts within the last 3 years of a similar scale and complexity to Revenue's current requirements. One example must include the supply of IMS Trace Detection Systems.

Tenderers should include customer contact details in each case, as Revenue may wish to speak to them as part of the tender evaluation process

Tenderers must provide the following information:

- Name of Client Organisation
- The nature and scope of the contract, demonstrating its similarity to this Contract
- The start and completion date of the contract
- The (approximate) value of the contract
- A named client reference (stating their position within the Client organisation and their contact details) who can verify the information provided

Where tenderers intend to use sub-contractors or third parties to support the solution (note the Tax Clearance obligations), they should provide a schematic of how the support model works, including clearly the role and responsibilities of any third parties or subcontractors and how the Contracting Authority can interact with each party.

Tenderers should note that economic operators relying on the capacity of other entities to fulfil any of the Selection Criteria must submit an undertaking with their tender, duly evidenced, from those entities that they will place the necessary resources at the disposal of the Tenderer. The Undertaking must demonstrate that the combined resources of the Candidate and that other entity or entities satisfy the specified capacity or ability.

### **Health and Safety**

Tenderers are required to confirm that they have a comprehensive Health and Safety policy in place and should provide a copy of same on request without delay.

### **Quality Assurance**

Tenderers are required to provide the Quality Assurance Systems they have in place (either in-house, 3rd Party certified - ISO 9001 or equivalent) and should provide a copy of same on request without delay.

### 3.3 Award Criteria

Only those compliant tenders that have qualified in accordance with all of the Selection Criteria will be evaluated on the basis of the Most Economically Advantageous Tender that fully complies with the requirements.

The Goods Contract will be awarded on the basis of the most economically advantageous tender as identified in accordance with the following criteria:

|   | Award Criteria                      | Weighting % | Marks available | Minimum Score Required |
|---|-------------------------------------|-------------|-----------------|------------------------|
| A | System Performance                  | 30%         | 3,000           | 1500                   |
| B | Training                            | 15%         | 1,500           | 750                    |
| C | Maintenance and After Sales Service | 10%         | 1,000           | 500                    |
| D | Delivery Timelines                  | 10%         | 1,000           | 500                    |
| E | Green Procurement                   | 5%          | 500             | N/A                    |
| F | Cost                                | 30%         | 3,000           | N/A                    |
|   | <b>TOTALS</b>                       |             | <b>10,000</b>   |                        |

**Tenderers should note:**

- they must achieve a minimum rating of 50% for each of the individual qualitative award criteria and sub-criteria (where applicable) in order to avoid elimination from the competition.
- Where a Tenderer does not achieve the minimum score for an award criterion, the tenderer will be eliminated from the Competition at that point and any subsequent responses to remaining award criteria will not be evaluated
- costs will only be considered if the tender has met the minimum scoring requirements in the individual qualitative award criteria and sub-criteria (where applicable).

The Award Criteria will be scored on the basis of the Tenderer's proposal in response to the requirements and specifications set out in **Appendix 1** to this RFT.

#### **Scoring Methodology**

Tenders will be awarded marks under each of the award criteria based on a qualitative assessment of the information and quantitative assessment of the information relating to cost.

Scoring will be from a total 10,000 marks and weighted as indicated above. The tender evaluation panel will decide on a rating and assign a mark within the selected rating for each of the qualitative award criteria and sub criteria based on the quality of the Tenderer's response in accordance with the scoring methodology description below.

| Scoring Band         | Scoring Methodology Description                                                                                                                                                           |
|----------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>5.</b><br>90-100% | The Tenderer's proposal is assessed as demonstrating an excellent to exceptional level of quality, comprehensiveness and understanding in respect of the qualitative criterion            |
| <b>4.</b><br>70-89%  | The Tenderer's proposal is assessed as demonstrating a good to very good level of quality, comprehensiveness and understanding in respect of the qualitative criterion.                   |
| <b>3.</b><br>50-69%  | The Tenderer's proposal is assessed as demonstrating a satisfactory to very satisfactory level of quality, comprehensiveness and understanding in respect of the qualitative criterion.   |
| <b>2.</b><br>20-49%  | The Tenderer's proposal is assessed as being unsatisfactory in that it is lacking in some degree of quality, comprehensiveness and understanding in respect of the qualitative criterion. |
| <b>1.</b><br>0-19%   | The Tenderer's proposal is assessed as being inadequate to very poor in that it is totally lacking in sufficient quality, comprehensiveness or understanding.                             |

Cost will be evaluated using the following standard formula:

$$\text{Score for Tender "X"} = \frac{\text{Maximum marks available} \times \text{Lowest Valid Tendered Fee}}{\text{Fee of Tender "X"}}$$

Tenders will be scored in inverse proportion to the maximum score which is awarded to the lowest cost tender assuming the tender meets the minimum scoring requirements in relation to the qualitative award criteria and sub-criteria (where relevant).

Subject to (2.1 Important Notices) and (3.6 Standstill Period) of this RFT, award of the Goods Contract to the highest ranked Tenderer will be conditional upon:

- (a) the Tenderer submitting the documentation, to the extent not already provided, within five days of notification by the Contracting Authority; and
- (b) the documentation submitted demonstrating that such Tenderer has the economic and financial capacity required.

### 3.4 Presentation of Proposals

Tenderers may be required to make a presentation of the proposal contained in their Tender. The Contracting Authority will not be responsible for the cost of such presentations. Performance at presentations will NOT be evaluated

### 3.5 “Proof of Concept” Trial Implementation

Not Used

### 3.6 Standstill Period

In circumstances where the European Communities (Public Authorities’ Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010) as amended by European Communities (Public Authorities’ Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory Instrument 192 of 2015) apply, no contract can or will be executed or take effect until at least fourteen (14) calendar days after the day on which the Tenderers have been sent a notice informing them of the result of this Competition (the “Standstill Period”) if such notice is sent by electronic means. The Standstill Period shall be sixteen (16) calendar days if such notice is sent by other means. The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period

Tenderers should note that the Contracting Authority may, when notifying Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the preferred bidder in respect of each award criterion assessed by the Contracting Authority.

### 3.7 Return of Signed Contracts

Following the expiry of the Standstill Period, the successful Tenderer must sign and return the Goods Contract and the Confidentiality Agreement within 5 days of being requested to do so by the Contracting Authority. A signed Goods Contract returned by the successful Tenderer is not binding on the Contracting Authority until it has been signed by the Contracting Authority.

Where the signed Goods Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period specified in the paragraph above then the Contracting Authority may proceed to award the Goods Contract to the next highest-ranked Tenderer in accordance with the paragraph above.

## Appendix 1 – Requirements and Specifications

Tenderers must address each of the issues and requirements in this part of the RFT and submit a detailed description in each case which demonstrates how these issues and requirements will be dealt with / met and their approach to the proposed delivery of the Goods. A mere affirmative statement by the Tenderer that it can / will do so or a reiteration of the tender requirements is NOT sufficient in this regard.

### Background

The Office of the Revenue Commissioners is responsible for the administration; assessment and collection of taxes and duties, and for implementing import and export controls. It also performs agency work on behalf of other Government Departments.

This work is carried out by staff in Revenue’s disparate network of approximately 90 offices in locations throughout the country.

A wide range of information and facts about Revenue is available at the official website, [www.revenue.ie](http://www.revenue.ie).

### General Requirements

Revenues Customs Service requires ion mobility spectroscopic (IMS) technology (the “system”) to perform real time detection and identification of trace chemicals which may be benign, hazardous and/or illegal. The chemicals may be located within legitimate cargo, postage/parcel consignments and personal effects. In this context “trace” refers to substances which are not visible to the naked eye.

Revenue Customs Service operates in a variety of environments. One system will be placed in Customs channels in each of Knock Airport, Kerry Airport, Dublin Port and in the primary mail and parcel hub in Athlone.

### Mandatory Requirements (PASS/FAIL)

All of the specified mandatory requirements below must be met for the tender to proceed to the Award Criteria Evaluation Stage. **Failure to do so will result in elimination from the competition.**

#### **Technical Requirements of the proposed System.**

Tenderers should note each of the following technical requirements for the proposed systems. Items MR1 – MR2 are mandatory requirements and will be evaluated on a pass/fail basis. (i.e. these items are not weighted qualitative Criteria. Tenderers are required to confirm they meet each mandatory requirement and demonstrate how each is met by their proposed systems.

Some additional information is also sought from tenderers marked as “Tenderer to Outline”. No weighting is attached to this additional information however, failure to respond to each requirement may result in the Tender being eliminated from the Competition.

Item A3 will be evaluated in accordance with Section 3.3 of this RFT.

#### MR1. System Overview

| Mandatory Requirements                         |                                                                                                    |
|------------------------------------------------|----------------------------------------------------------------------------------------------------|
| Sampling wand included                         | Must include wand or similar.                                                                      |
| Language                                       | All relevant documentation and instructions to be in English.                                      |
| Library Database                               | System will offer identification of substances by matching against an on-board library of spectra. |
| CE labelling                                   | Must comply with EU requirements                                                                   |
| Additional Information                         |                                                                                                    |
| System dimensions<br>(Width x Height x Length) | Tenderer to outline                                                                                |
| System weight (kg)                             | Tenderer to outline                                                                                |
| Method of Ionization                           | Tenderer to outline                                                                                |
| Means of sample collection                     | Tenderer to outline                                                                                |

#### MR2. Environmental Requirements and Power Supply

| Mandatory Requirements      |                                                                                                                 |
|-----------------------------|-----------------------------------------------------------------------------------------------------------------|
| Power Supply                | Must comply with Irish national requirements.                                                                   |
| Ionization Source           | If the system contains a sealed radioactive source, please provide type and activity.                           |
| Calibration Source          | Please outline the systems method of calibration.                                                               |
| Radiological checks         | Please state if the system requires radiological compliance checks. Tenderer to be responsible for such checks. |
| Additional Information      |                                                                                                                 |
| Operating Temperature Range | Tenderer to outline                                                                                             |
| Storage Temperature Range   | Tenderer to outline                                                                                             |
| Operating Humidity Range    | Tenderer to outline                                                                                             |
| Storage Humidity Range      | Tenderer to outline                                                                                             |

## Detailed Requirements

The following sections sets out the detailed requirements for the proposed trace detection systems.

### A. System Performance

**(3000 Marks available. Minimum score required 1500 Marks)**

In order to demonstrate the quality of their proposed systems, Tenderers should clearly and comprehensively respond to the questions set out below.

| Qualitative Criteria                                           |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
|----------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Detection and Identification I (1200 marks, Minimum score 600) | <p>Tenderers must describe and demonstrate how their system reliably identifies various narcotic compounds including but not limited to:</p> <ul style="list-style-type: none"> <li>i Cocaine</li> <li>ii Heroin</li> <li>iii Methamphetamine</li> <li>iv Amphetamine</li> <li>v Methylenedioxymethamphetamine (MDMA)</li> <li>vi Tetrahydrocannabinol (THC).</li> </ul> <p>Responses should include</p> <ul style="list-style-type: none"> <li>• The approximate system sensitivity to each of these substances in nanograms (ng) and evidence of this sensitivity and whether it is provided by in house testing or in a different way.</li> <li>• Detail on the systems methodology and how the identification process works. Outline how a positive detection is conveyed to the end user.</li> <li>• Any measures employed to minimise false positives and false negatives.</li> </ul> |
| Detection and identification II (700 Marks, Minimum Score 350) | <p>Tenderers should describe and demonstrate the systems capability to identify emerging and evolving narcotics such as</p> <ul style="list-style-type: none"> <li>(i) Fentanyl;</li> <li>(ii) Mephedrone;</li> <li>(iii) gamma-butyrolactone (GBL);</li> <li>(iv) Benzylpiperazine (BZP);</li> <li>(v) Naphyrone;</li> <li>(vi) Ketamine</li> <li>(vii) Synthetic cannabinoids;</li> </ul> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Other novel substances such as precursors.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                 |

|                                                                 |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|-----------------------------------------------------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                                 | <ul style="list-style-type: none"> <li>• The approximate system sensitivity to each of these substances in nanograms (ng).</li> <li>• Describe how the library is updated with new substances and give detail on the process and whether it is supplier led, or user led.</li> </ul>                                                                                                                                                                                                                                                                                                                                                                                                                 |
| Consumables (200 Marks, Minimum Score 100)                      | <p>Tenderers should describe all consumables (e.g swabs) required to operate the system and explain how their approach minimises operational disruption.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Consumables required</li> <li>• Expected lifespan and replacement frequency</li> <li>• Availability and delivery arrangements</li> <li>• Measures to ensure continuity of supply.</li> </ul> <p>On average Revenue require 2,000 tests per machine over 365 days. Consumables should be held in stock and available for delivery within 10 working days of receipt of an order. The costs of the consumables must be outlined at table '2.5 Consumables.'</p> |
| System Speed (200 Marks, Minimum Score 100)                     | <p>The Tenderer must state the time required for warm up of the system i.e. the time taken for the system to reach a steady state ready to analyse samples.</p> <p>The Tenderer must state the average time taken to deliver the results of its analysis and any factors which may impact a timely analysis.</p>                                                                                                                                                                                                                                                                                                                                                                                     |
| Delivery and analysis of results (400 Marks, Minimum Score 200) | <p>The Tenderer must outline the process of analysis and how these results are delivered to the user.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• How the user can view the spectrograph in detail and perform secondary analysis.</li> <li>• How the confidence interval of a particular result is displayed.</li> <li>• How the machine identifies false positive and false negative rates and provide false positive and false negative data if</li> </ul>                                                                                                                                                                                                      |

|                                                   |                                                                                                                                                                                                                                                  |
|---------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
|                                                   | available.                                                                                                                                                                                                                                       |
| Display (200 marks, Minimum Score 100)            | <p>The Tenderer must describe system interactivity.</p> <p>Responses should include:</p> <ul style="list-style-type: none"> <li>• Stylus, keyboard or touch screen functions</li> <li>• Relative advantages of this display for users</li> </ul> |
| Transfer capability (100 marks, Minimum Score 50) | Tenderer must detail if the system accepts installation of new spectra to its library which may have been downloaded from identical systems in different locations.                                                                              |

## **B. Training Services**

(1500 Marks available. Minimum score required 750 Marks)

The Contracting Authority requires the Successful Tenderer to deliver training to users of the system. Training will be required to be provided on site in the installation sites set out above and within 10 days of delivery and installation.

The Successful Tenderer will be required to provide Training to up to 10 Contracting Authority staff at each location using a 'Train the Trainer' approach. This training must:

- Provide operator training to applicable trainers to enable each Contracting Authority trainer to deliver training to other operational users of the system's functions.
- Provide the Contracting Authority trainer with sufficient training to ensure s/he can adequately train System users in terms of System features to support operational needs.

Tenderers must demonstrate by clearly and comprehensively describing how their proposed approach to training will meet the requirements set out above to include:

- An outline of the proposed training programme
- How additional training may be provided during the term of the contract
- Any proposed additional training/knowledge transfer supports included in their Tender.

## **C. Maintenance and After Sale Support Services**

(1000 Marks available. Minimum score required 500 Marks)

The Successful Tenderer will be responsible for providing a responsive and robust support and maintenance service to include both preventative maintenance and reactive maintenance in the event of issues with the systems. Tenderers should note that the Purchase price shall include the cost of maintenance for first 12 months of the term. Thereafter, annual support and maintenance will be required.

The following support services must be provided by the Successful Tenderer to be included in the annual support and maintenance fee and included as part of the Pricing Schedule in Appendix 2 of the RFT:

- At a minimum, at least 1 preventive maintenance per annum
- A point of contact for reporting and tracking all issues and enquiries that arise during the use of the systems;
- Resolution of technical and/or functional issues raised by the Contracting Authority with the following response times;
  - Telephone Response within 12 hours
  - On-site support within 48 hours
- Provision of Subject Matter Experts at no charge to resolve service-impacting incidents when appropriate.
- Implementation and testing of repairs/replacements/fixes/replacement parts etc supplied to fix incidents.

To demonstrate the quality of its proposed support services, Tenderers must clearly and comprehensively describe their proposed approach to the provision of support including, but is not limited to:

- How the requirements set out above will be achieved
- How the proposed support structure will operate
- Details of how spare and replacement parts will be managed; and
- Detail of the warranties proposed for the systems.
  - Tenderers should note that, a minimum of 1 year's warranty, from day of installation, is required to include fix/replacement of the systems.

#### **D. Delivery Timelines**

(1000 Marks available. (500 Minimum Score Required)

Delivery of the goods are required as soon as possible after conclusion of this competition, with early delivery being desirable.

Tenderers must set out the lead time, from the date of order, for delivery and installation for each of the 4 locations below. A complete breakdown of how your delivery timelines will be achieved must be provided in your proposal:

| Location      | Delivery Lead time in weeks |
|---------------|-----------------------------|
| Knock Airport |                             |
| Kerry Airport |                             |
| Dublin Port   |                             |
| DPD Athlone   |                             |

### **E. Green Procurement**

(500 Marks available. No Minimum score required)

Please confirm the company policy for environmental & sustainability practices. Please provide appropriate statements.

Tenderers must dispose of all packaging & waste, using environmentally friendly sources, after installation and commissioning has been completed.

Please confirm and detail.

Tenderers must demonstrate by clearly and comprehensively describing how their proposed approach to Green Procurement will meet the requirements set out above to include:

- An outline of the environmental measures proposed in the provision of the delivery of the system and the overall service requirements, including maintenance and support services.
- Details of CO2 emissions in the shipping and delivery of the system to be outlined and details of how these CO2 emissions are monitored and kept as low as possible through each stage of the process must be provided.
- Environmental approaches during system design and manufacture.
- As an end of life solution is also required when the backscatter van is being decommissioned, tenderers are to outline their approach to end-of-life of the complete self-propelled backscatter van and how they intend dispose of, recycle and reuse any parts of the system to keep environmental impact as low as possible.
- Please confirm your company policy for Environmental & Sustainability practices and provide appropriate statements.

### **Layout of Tender**

A separate **Tender Response Document** will be attached to the contract notice on the eTenders website. Tenderers must complete this Tender Response Document as instructed and include it with their tender submission.

**Tenderers should note that no other format of response is acceptable.**

**Tenderers who fail to complete and return this document will not be considered for award of contract.**

- All information requested in relation to Technical and Professional Ability under Selection Criteria should be provided.
- All information in relation to the Award Criteria should be provided.
- **The Tenderers' Statement at Appendix 3** should be signed, printed on the Tenderers' headed notepaper and submitted with the Tender Response Document.

- The electronic version of the European Single Procurement Document (“eESPD”) should be completed and submitted with the Tender. **Tenderers are reminded of their obligations in relation to other entities on whose capacity they may rely and/or sub-contractors.**
- **The Declaration at Appendix 4** should be duly completed, signed by an authorised signatory, witnessed by a practicing Solicitor/ Commissioner for Oaths on behalf of the Prime Contractor and any Subcontractor and submitted with the Tender Response Document.

If Tenderers require any assistance in relation to the submission of the eESPD, they should contact the eTenders helpdesk by email: [irish-eproc-helpdesk@eurodyn.com](mailto:irish-eproc-helpdesk@eurodyn.com)

Any supporting documentation should be clearly identified in the tender submission. Attachments should not be pasted into the response fields in the Tender Response document; however, the file name and document title should be quoted in the relevant response field and the document provided as a separate attachment to the Tender Response document.

## Appendix 2 – Pricing Schedule

The Pricing Schedule provided the Tender Response document as set out below must be completed in full, totalled, and returned as part of the Tender submission.

The prices quoted must be all-inclusive, fixed, expressed in Euro and exclusive of VAT. Tenderers are, therefore, advised to consider additional expenses (if any) associated with the delivery of the Goods. The VAT rate, if applicable, should be stated separately.

Tenderers must provide a Total Cost for the provision of the systems proposed in their response to this RFT.

The amount payable by the Contracting Authority under the Goods Contract shall not exceed the Total Cost (plus any applicable VAT). However, for the avoidance of doubt the Contracting Authority reserves the right to draw down at its sole discretion additional training days over the Term of the Goods Contract.

Tenderers should note that, should the actual number of days' effort required to install the Systems be greater than that estimated by the Successful Tenderer in its response to this RFT, the Successful Tenderer shall be responsible for all costs associated with any additional effort that may be required to complete the work as set out in this RFT and by responding to this RFT, the Tenderer so acknowledges and confirms.

Tenderers must complete the Total Costs Summary Table below. The Total Costs Summary Table (which is a roll-up of subsequent Cost Detail sections) shall represent the total costs of the System, delivery, installation, training, warranty, support and maintenance. The costs entered in the summary table must reconcile with the costs quoted in the subsequent Costs Detail tables 2.2 – 2.6. Tenderers should note that their Tender will be evaluated on the basis of the Total Cost for the Systems.

Tenderers must complete, using the Pricing Schedule Spreadsheet, all the Costs Details tables below. Where a cost is not applicable the Tenderer must populate the relevant table/field with a "Nil" response.

Tenderers must assume that for the purposes of this RFT all services will be performed in within the Island of Ireland, which may include but not limited to Dublin City and/or County, Kerry Airport, Knock Airport and Athlone mail and parcel hub. No travel and subsistence will apply for travel to or within these locations.

Tenderers should note that prices submitted in response to this Appendix 2 remain fixed for the Term of the Contract. Prices may be increased or decreased only on the fifth anniversary of the of the effective date of the Goods Contract and on every second anniversary of such date thereafter, and in each case only by the percentage by which the Consumer Price Index has increased or decreased in the edition of that index published by the Central Statistics Office (Ireland) most recently prior to that anniversary.

## 2.1 Total Costs Summary Table

Tenderers should note the following:

- The Contracting Authority will use a standard formula to calculate the marks in respect of 'Cost', whereby maximum marks are awarded to the lowest priced proposal and costs of the remaining Tenders are expressed as a percentage of the lowest priced tender (Inverse Proportionality).
- The Total Costs figure in the Total Costs Summary Table 2.1 below is the only figure that will be evaluated.

| Table Ref | Item                                                                                                           | Total Cost (€) Exclusive of VAT |
|-----------|----------------------------------------------------------------------------------------------------------------|---------------------------------|
| 2.2       | 4 Trace Detection Systems including initial 12-month Maintenance/ Support, Delivery, Installation and Training |                                 |
| 2.3       | Support and Maintenance Costs                                                                                  |                                 |
| 2.4       | Additional Training Costs                                                                                      |                                 |
| 2.5       | Consumables                                                                                                    |                                 |
| 2.6       | Any other Costs                                                                                                |                                 |
|           | <b>Total Costs</b>                                                                                             |                                 |

## 2.2 Systems Costs

| Total cost of supply (ex VAT) of 4 Trace Detection Systems initial 12- month Maintenance/ Support, Delivery, Installation and Training |                     |          |              |
|----------------------------------------------------------------------------------------------------------------------------------------|---------------------|----------|--------------|
| Make & Model                                                                                                                           | Deployment Location | Cost (€) | VAT Rate (%) |
|                                                                                                                                        | Knock Airport       |          |              |
|                                                                                                                                        | Kerry Airport       |          |              |
|                                                                                                                                        | Dublin Port         |          |              |
|                                                                                                                                        | DPD Athlone         |          |              |
| Total Cost                                                                                                                             |                     | €<br>-   |              |

## 2.3 Support and Maintenance Costs

| Support and Maintenance Costs |                 |         |           |                 |         |           |       |              |
|-------------------------------|-----------------|---------|-----------|-----------------|---------|-----------|-------|--------------|
| Deployment Location           | Years 2 - 5     |         |           | Years 6 - 10    |         |           | Total | VAT Rate (%) |
|                               | Annual Cost (€) | # Years | Sub Total | Annual Cost (€) | # Years | Sub Total |       |              |
| Knock Airport                 |                 | 4       |           |                 |         |           |       |              |
| Kerry Airport                 |                 | 4       |           |                 |         |           |       |              |
| Dublin Port                   |                 | 4       |           |                 |         |           |       |              |
| DPD Athlone                   |                 | 4       |           |                 |         |           |       |              |
| Total                         |                 |         |           |                 |         |           |       |              |

## 2.4 Additional Training Costs

The Contracting Authority may require additional training over the Term of the Services Contract either on specific days or groups of days. Any additional training will at the discretion of the Contracting Authority and where required, be drawn down on a half day basis. Tenderers should note that there is no commitment to draw down these additional training half days.

Where such Training is required, the Contracting Authority will provide sufficient prior notice to the Successful Tenderer.

Tenderers must submit a Cost for the provision 4 half day training sessions. Tenderers should note the 4 half days sought are solely for the purpose of evaluation and are not a commitment to procure same.

| Additional Training Half Days |     |                               |       |              |
|-------------------------------|-----|-------------------------------|-------|--------------|
| Training Location             | Qty | Cost (€) per Half Day Session | Total | VAT Rate (%) |
| Knock Airport                 | 1   |                               | € -   |              |
| Kerry Airport                 | 1   |                               | € -   |              |
| Dublin Port                   | 1   |                               | € -   |              |
| DPD Athlone                   | 1   |                               | € -   |              |
| Total Cost                    |     |                               | € -   |              |

## 2.5 Consumables

Tenderers must provide a breakdown all consumables required for system operation.

Tenderers must complete the table with the detail that they must include any and all required consumables as additional rows.

| Consumables          |      |              |
|----------------------|------|--------------|
| Description          | Cost | VAT Rate (%) |
| Tests per 2,000      |      |              |
| Add rows as required |      |              |
| Total Cost           | € -  |              |

## 2.6 Any other Costs

Tenderers must provide a breakdown of any other elements of cost associated with the proposed Solution that are not captured in Tables 2.2 – 2.5 above.

Tenderers must complete the table with the detail of these miscellaneous costs.

| Any Other Costs      |      |              |
|----------------------|------|--------------|
| Description          | Cost | VAT Rate (%) |
| Add rows as required |      |              |
|                      |      |              |
| Total Cost           | € -  |              |

## Payment Schedule

Any costs in respect of the purchase of each of the 4 systems will be paid on the successful delivery and installation of the ION Mobility Spectroscopic Trace Detection System minus any deposit paid or agreed at the discretion of the Contracting Authority.

For subsequent years: Payment in respect of maintenance/support will be made in advance on an annual basis for term of the contract. This will also apply should Revenue avail of the option to extend the contract.

## Appendix 3 – Tenderers’ Statement

Tenderers shall complete and return the following form of Tenderers’ Statement printed on the Tenderers’ headed notepaper and signed by the Tenderer.

### TENDERERS’ STATEMENT

**TO:** The Office of the Revenue Commissioners (the “Contracting Authority”)

**RE:** Request for Tenders for Four ION Mobility Spectroscopic Trace Detection Systems

Having examined your Request for Tenders (the “RFT”) including the Instructions to Tenderers, the Selection and Award Criteria, the Requirements and Specifications, and the Terms and Conditions of the Goods Contract, we hereby agree and declare the following:

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of the RFT; the Goods Contract and the Confidentiality Agreement and agree, if awarded a Goods Contract, to execute the Goods Contract at Appendix 5 to the RFT and the Confidentiality Agreement at Appendix 6 to the RFT.
3. We accept all the Selection and Award Criteria as set out in Part 3 of the RFT.
4. We agree to supply the Contracting Authority with the Goods in accordance with the RFT and our Tender.
5. We agree that, if awarded the Goods Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out in Part 2 of the RFT.
7. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the Tender Deadline specified in paragraph 2.6 of the RFT.
8. We shall, if awarded the Goods Contract under the RFT, have in place on the Effective Date of the Goods Contract all insurances (if any) as required by paragraph 2.15 of the RFT.
9. We confirm that all Data Subjects whose Personal Data is provided in our Tender have consented to the processing of such Personal Data by us, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.
10. We do not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

11. The origin of goods connected to our Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
12. The subcontractor(s) on whose capacity we rely as part of our Tender (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

**SIGNED**

**Company**

**(Authorised Signatory)**

**Print name**

**Address**

**Date**

## Appendix 4 – Declaration as to Personal Circumstances of Tenderer

Re: Request for Tenders for the Supply of Four ION Mobility Spectroscopic Trace Detection Systems

NAME: \_\_\_\_\_

ADDRESS: \_\_\_\_\_

I, [insert name of Declarant] having been duly authorised by [insert name of entity], sincerely declare that [insert name of entity] itself or any person who has is a member of the administrative, management or supervisory body of [insert name of entity] or has powers of representation, decision or control in [insert name of entity]:

- (a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;
- (b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or [insert name of entity];
- (c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;
- (d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision;
- (e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council;
- (f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council;
- (g) Is not in breach of its obligations relating to the payment of taxes or social security contributions;
- (h) That the preparation of the Tender was carried out independently;
- (i) Has, in the performance of all public contracts, complied with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the services provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016);

- (j) Is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations;
- (k) Is not guilty of grave professional misconduct;
- (l) Has not entered into agreements with other economic operators aimed at distorting competition;
- (m) Is not aware of any conflict of interest due to its participation in the Competition;
- (n) Has not had any prior involvement in the preparation of the Competition;
- (o) Has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;
- (p) Is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016);
- (q) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

I understand and acknowledge that the provision of inaccurate or misleading information in this declaration may lead to my business/firm/company/partnership being excluded from participation in this or future tenders, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1938. This declaration is made for the benefit of the Contracting Authority.

|                                                                                                                                                                                                                    |                                                               |
|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------|
| <p>_____<br/>Signature of Declarant</p>                                                                                                                                                                            | <p>_____<br/>Name of Declarant in print or block capitals</p> |
| <p>Declared before me by _____ who is personally<br/>known _____ to _____ me<br/>(or who is identified to me by _____ who is personally<br/>known _____ to _____ me)<br/>at _____ this _____ day of _____ 20__</p> |                                                               |

\_\_\_\_\_  
(signed)  
Practising Solicitor/Commissioner for Oaths

## Appendix 5 – Goods Contract

The Office of the Revenue Commissioners

and

[Insert successful Tenderer's full legal name]

Relating to the Supply of Goods pursuant to  
Request for Tenders for the supply of [insert type of Goods sought]

**THIS AGREEMENT is made on the [date e.g. 2nd] day of [month] [Year] BETWEEN**

The Office of the Revenue Commissioners, of Dublin Castle, Dublin 2, Ireland (“the Client”);

and

[Contractor’s full legal name] (“the Contractor”)

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

**WHEREAS:**

- A. By Request for Tender entitled “[Title of RFT]” advertised in the supplement of the Official Journal of the European Union, OJEU Notice Number [ ] of [ ] and dated [insert date of RFT] (“the RFT”), the Contracting Authority invited tenders from economic operators (“Tenderers”) for the provision of the goods described in Appendix 1 to the RFT (the “Goods”). References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on [www.etenders.gov.ie](http://www.etenders.gov.ie) between [insert date] and [insert date] (the “RFT Clarifications”). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date] (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the “Submission Clarifications”). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

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

5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).  
Delete and replace with “Not Used” if not applicable:  
The Client reserves the right to extend the Term for a period or periods of up to [insert number] months with a maximum of [insert number] such extensions permitted subject to the Contracting Authority’s obligations at law.  
Delete and replace with “Not Used” if not applicable  
The Client reserves the right to further extend the Term for a period or periods of up to (Insert number) months as required over the lifespan of the Goods subject to the agreement of terms and conditions by all parties.
6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

|                                        |                                            |
|----------------------------------------|--------------------------------------------|
| SIGNED for and on behalf of the Client | SIGNED for and on behalf of the Contractor |
| _____                                  | _____                                      |
| (being a duly authorised officer)      |                                            |
| Witness                                | Witness                                    |
|                                        |                                            |

## SCHEDULE A: TERMS AND CONDITIONS

### 1. CONTRACTOR'S OBLIGATIONS

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Goods and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Goods and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
  - 1. supply the Goods in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
  - 2. comply with and implement any policies, guidelines and any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
  - 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
  - 4. supply the Goods in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Goods are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B (4) above, to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as

possible of any changes to the name, contact details and legal representatives of its Subcontractors.

- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- I. In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Contractor shall comply with the following obligations:
  - i not to subcontract more than 50% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure;
  - ii for contracts whose subject matter covers the supply of goods, to ensure for the duration of the contract that goods or services supplied or provided in the execution of the contract and originating in the third country which is subject to the IPI measure represent no more than 50% of the total value of the contract, irrespective of whether such goods or services are supplied or provided directly by the successful tenderer or by a subcontractor;
  - iii to provide to the Client, upon request, adequate evidence corresponding to point (i) or (ii) above;

- iv to pay a proportionate charge, in the event of non-observance of the obligations referred to at point (i) or (ii) above, of between 10% and 30% of the total value of the contract.

## 2. KEY PERSONNEL

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission ("Key Personnel"), assigned by it to provide the Goods shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Goods to the Client. In the event that any of the Key Personnel assigned by the Contractor to provide the Goods under this Agreement becomes unable to provide the Goods for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

## 3. PAYMENT

- A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
  - 1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and operational protocols in place pursuant to clause 10A from time to time;
  - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
  - 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and the Goods for any billing period (including whether or not Goods have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and

4. The Client being in possession of the Contractor's Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status. The Contractor shall comply with all EU and domestic taxation law and requirements.
- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Goods will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

#### 4. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- A. The Contractor acknowledges, warrants, represents and undertakes that:
  1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Goods hereunder;
  2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
  3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
  4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Goods as they apply to the Contractor;
  5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;

6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” dated [insert date], which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
  7. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.7; and  
it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the
  8. performance of its obligations under this Agreement and for the Client to obtain the benefit of the Goods for its business purposes.
- B. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

## 5. REMEDIES

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor’s failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 5A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor’s indemnity under clause 6(G), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

- D. Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6(G) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 120 per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement] regardless of the number of claims.
- E. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows:
- ("the Retention Amount") which Retention Amount shall not at any given time exceed 20 per cent of the Charges. In such event the Client shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5E shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.
- F. Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time period promised or specified in the Specification, the Client may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Goods and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.

## 6. INTELLECTUAL PROPERTY

- A. Intellectual Property Rights ("IPR") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor's standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and other materials (other than software) (including without limitation all and any audio or audio-visual recordings,

transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.

- D. The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client’s Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing Goods similar to the Goods to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Goods and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Goods.
- G. The Contractor shall ensure that all and any necessary consents and licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Goods for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any losses (whether direct, indirect or consequential) liability, damages, claims, costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

At the request of the Client for and in respect of any such breach, the Contractor shall at its expense and option:

- (i) procure the necessary rights for the Client to continue use;
- (ii) replace the relevant deliverable with a non-infringing equivalent;
- (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or

- (iv) if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect or consequential) thereby accruing to the Client as a result of the breach.
- H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

## 7. CONFIDENTIALITY

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:-
1. its professional advisers subject to the provisions of this clause 7; or
  2. as may be required by law; or
  3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or
  4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and the Executive and the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement at Appendix 6 to the RFT between the Contractor and the Client dated [insert date] ("the Confidentiality Agreement").

The obligations in this clause 7 will not apply to any Confidential Information:

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

- C. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- D. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

## 8. FORCE MAJEURE

- A A 'Force Majeure Event' means an event or circumstance or combination of events and circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.

- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
1. the nature of the Force Majeure Event;
  2. the anticipated delay in the performance of obligations;
  3. the action proposed to minimise the impact of the Force Majeure Event;
- and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
- C. If the Force Majeure Event continues for 30 calendar days either Party may terminate at 14 days notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

## 9. TERMINATION

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving one (1) month written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving three (3) months written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 9(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
  2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
  3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and

4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware:
  - i. that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
  - ii. that the Contractor (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same)
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## 10. CONTRACT MANAGEMENT

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
  1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
  2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
  3. comply with all reasonable directions of the Client; and
  4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

## 11. DISPUTES

- A. In the event of any dispute arising out of or relating to this Agreement (the “Dispute”), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

## 12. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

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

## 13. NOTICES

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to

time agree primary and alternative contact persons and details for the purposes of this clause 13.

- B. All notices shall be deemed to have been served as follows:
1. if personally delivered, at the time of delivery;
  2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
  3. if communicated by email, on the next calendar day following transmission.

#### 14. ASSIGNMENT AND SUBCONTRACT

- A. Subject to a Party's obligations at law, any assignment to a third party, subcontract or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.
- B. Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Client may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

#### 15. ENTIRE AGREEMENT

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

#### 16. SEVERABILITY

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

## 17. WAIVER

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

## 18. NON-EXCLUSIVITY

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

## 19. MEDIA

No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or marketing material, shall be made by the Contractor without the prior written consent of the Client.

## 20. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- A. The Contractor confirms that it has carried out a conflict of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Goods and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or

employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

## 21. ACCESS TO PREMISES

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

## 22. EQUIPMENT

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Goods ("Equipment").
- B. All Equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.
- C. The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.
- D. The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
  - i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
  - ii. replace such item with a suitable substitute item of Equipment.
- E. On completion of the Goods the Contractor shall remove the Equipment used by the Contractor to provide the Goods and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage

to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

## 23. NON SOLICITATION

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

## 24. CHANGE CONTROL PROCEDURE

- A. At any time during the Term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Goods (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of an Impact Assessment, this Agreement and the Schedules should be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client's request for any variation is subsequently withdrawn but results in a delay in the performance of the Goods then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

## 25. DATA PROTECTION AND SECURITY

- A. In this Agreement the following terms shall have the meanings respectively ascribed to them:

“Data” means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to his employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Client provided under this Agreement and includes any Personal Data;

“Data Controller” has the meaning given under the Data Protection Laws;

“Data Processor” has the meaning given under the Data Protection Laws;

“Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.

“Data Subject” has the meaning given under the Data Protection Laws;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement: -
  - (1) process that Personal Data only on the written instructions of the Client;
  - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems

and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;

- i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
  - ii. the data subject has enforceable rights and effective legal remedies;
  - iii. the Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
  - iv. the Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and

storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.

- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:
  - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
  - (2) ensure that a back-up copy of any and all such Personal Data is made on a regular basis and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
  - (3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. The Client does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement
- N. Save for clauses 25B, 25C, 25D (4) and 25E, all the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.
- O. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

## **SCHEDULE B: GOODS: THE SPECIFICATION**

[Insert when completing contract]

## **SCHEDULE C: CHARGES**

[Insert when completing contract]

## **SCHEDULE D: SERVICE LEVELS**

[Insert when completing contract]

## **SCHEDULE E: DATA PROTECTION**

***[complete when completing the contract]***

### **Processing, Personal Data and Data Subjects**

- 1. Processing by the Contractor**
  - 1.1 Subject matter of processing**
  - 1.2 Nature of processing**
  - 1.3 Purpose of processing**
  - 1.4 Duration of the processing**
- 2. Types of personal data**
- 3. Categories of data subject**

## Appendix 6: Confidentiality Agreement

THIS AGREEMENT is made on the [date] day of [month] 20 [year] BETWEEN:

The [insert name of Contracting Authority], of [insert address] (hereinafter “the Contracting Authority”) of the one part;  
and

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

### WHEREAS

- A. By Request for Tenders dated [insert date] entitled [insert title] (the “RFT”) the Contracting Authority invited tenders (“Tenders”) for the provision of the Goods/Services described in Appendix 1 to the RFT (the “Goods” and “Services”) (“the Competition”). The Contractor submitted a response to the RFT dated the [insert date of Tender].

The Contractor has been identified as the preferred bidder in the Competition.

- B. For the purposes of the Competition and any subsequent contract awarded thereunder (if any) (“the Contract”), certain confidential information as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to the Client.

**NOW IT IS HEREBY AGREED** in consideration of the sum of €2.00 (the receipt of which is hereby acknowledged by the Contractor) as follows:

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
  - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and

- 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time.
4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
  - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
  - 4.2 not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to any person except:
    - i to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or
    - ii to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.
5. The obligations in this Agreement will not apply to any Confidential Information:
  - i in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority; or
  - ii which is or becomes public knowledge other than by breach of this clause; or
  - iii is independently developed by the Contractor without access to or use of the Confidential Information; or
  - iv is lawfully received from a third party (with full right to disclose).
6. The Contractor undertakes:

- 6.1 to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws );
- 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;
- 6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not.
7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:
  - “Data Controller” has the meaning given under the Data Protection Laws;
  - “Data Processor” has the meaning given under the Data Protection Laws;
  - “Data Subject” has the meaning given under the Data Protection Laws;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 10(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
  - (1) process that Personal Data only on the written instructions of the Client;
  - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
  - (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
  - (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;
    - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
    - ii. the data subject has enforceable rights and effective legal remedies;
    - iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

- iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall: -
  1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

2. ensure that a back-up copy of any and all such Personal Data is made on a regular basis and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
  3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. The Client does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement
- N. Save for clauses 11B, 11C, 11D (4) and 11E, all the obligations on the Contractor in this clause 11 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

|                                                       |                                            |
|-------------------------------------------------------|--------------------------------------------|
| SIGNED for and on behalf of the Contracting Authority | SIGNED for and on behalf of the Contractor |
| _____                                                 | _____                                      |
| (being a duly authorised officer)                     |                                            |
| Witness                                               | Witness                                    |
|                                                       |                                            |

## Schedule A to the Confidentiality Agreement: Data Protection

*[complete when completing the contract]*

### Processing, Personal Data and Data Subjects

1. Processing by the Contractor
  - 1.1 Subject matter of processing
  - 1.2 Nature of processing
  - 1.3 Purpose of processing
  - 1.4 Duration of the processing
2. Types of personal data
3. Categories of data subject