



## APPENDIX 5 – FRAMEWORK AGREEMENT TERMS AND CONDITIONS



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

Framework Agreement with a Single Party for The Supply, Delivery and Commissioning of Biopharma Processing Equipment in four (4) lots for Cork Education and Training Board.

#### PARTIES

**CORK EDUCATION AND TRAINING BOARD** of 21 Lavitts Quay, Cork City, Éire (Hereinafter referred to as the 'Client')

AND

[insert legal name of Framework Member] of \_\_\_ [insert address of Framework member] \_\_\_\_\_

(Hereinafter referred to as the "Framework Member" or "Member")

#### BACKGROUND

- (a) The Client has conducted a tender competition advertised on the Irish Government procurement website [www.etenders.gov.ie](http://www.etenders.gov.ie) (CFT. ID: xxxxxxxxx) on xxxxxxxxx.
- (b) The open procedure was used and an Invitation to Tender was issued with a tender submission deadline **XX Xxxxxx 20XX**.
- (c) Following evaluation of its tender against the published award criteria, the Framework Member is now appointed as the sole operator under this Framework Agreement.
- (d) The Client has procured this Framework on its own behalf and on behalf of the Framework Clients (as defined below) who may utilise this Framework from time to time.



## 1. Definitions

**“Commencement Date”** means after **xxxxxx**.

**“Competitive Procedure”** means the procurement process leading to the establishment of this Framework Agreement and/or award of a Call-Off Contract on foot of this Framework Agreement.

**“Call-Off Contract”** means any contract awarded on foot of this Framework Agreement, in the form contained at Schedule 4 hereto;

**“Data Controller”** has the meaning given to it under the Data Protection Laws.

**“Data Protection Laws”** means the Irish Data Protection Acts 1988 to 2018, the General Data Protection Regulation (EU) 2016/679, any other applicable law or regulation relating to the processing of personal data and to privacy, including the E-Privacy Directive and European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011, as such legislation may be supplemented, amended, revised or replaced from time to time.

**“Data Subject(s)”** has the meaning given to it under the Data Protection Laws.

**“Framework Agreement”** means these terms and conditions, including any Schedules hereto;

**“Framework Client”** means any one of The Education and Training Boards who are permitted to utilise this Framework to award Call-Off Contracts to the Framework Member;

**“Framework Period”** means the period in years set out in Clause 3.1;

**“Invitation to Tender”** means the document issued by the Client on **xxxxxx**, with the aim of establishing this Framework Agreement.

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

**“Party”** means the Client and/or the Framework Member.

**“Personal Data”** has the meaning given under the Data Protection Laws.

**“The Education and Training Boards”** means the statutory authorities which have responsibility for education and training, youth work and a range of other functions. The Chief Executive (CE) of each ETB carries out the executive functions of the ETB, including those in relation to procurement

**“Tender”** means the submission of the Framework Member in response to the Invitation to Tender, together with any clarifications accepted by the Client, a copy of which is contained at Schedule 1 hereto.

**1.1** To the extent that any specific term or condition in a Call-Off Contract is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant term or condition that is most favourable to the Client (and/or any other Framework Client) shall prevail.

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

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



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

## 2. Appointment of Framework Member

- 2.1 The Framework Member accepts its appointment to provide the required [Services/Goods], if instructed to do so from time to time by the Client (and/or any other Framework Client), under the terms and conditions of this Framework Agreement.
- 2.2 Membership of this Framework does not entitle the Member to be consulted in respect of, or awarded any contract during, the Framework Period. The Client may at its sole discretion choose not to enter into any contracts falling within the scope of this Framework Agreement, or to terminate the Agreement in accordance with Section 9.
- 2.3 This Framework Agreement sets out, amongst others, the award procedure for [Services/Goods] which may be required by the Client (and/or any other Framework Client), the main terms and conditions for any Call-Off Contract, and the obligations of the Framework Member during and after the Framework Period.
- 2.4 While this Framework Agreement will in general form the basis for the award of contracts during the Framework Period, the Client reserves the right to operate outside the terms of the Framework Agreement, for example if it considers that it is not achieving value-for-money or the nature of the contract would benefit from a separate competitive process.

## 3. Period of Framework Agreement

- 3.1 The period of the Framework Agreement will be for a maximum period of four (4) years.
- 3.2 For the avoidance of doubt, it should be noted that contracts awarded during the term of the Framework Agreement may extend beyond the life of the Framework Agreement.

## 4. Scope of Framework Agreement

- 4.1 This Framework Agreement relates to the provision of **The Supply, Delivery and Commissioning of Biopharma Processing Equipment in four (4) lots for Cork Education and Training Board.**
- 4.2 The maximum value of the framework over the life of the framework is €XXXXXX

It should be emphasized that this value is strictly for indicative purposes only and is not a guarantee of any spend over the life of the Framework Agreement.

- 4.3 The scope of Goods which may be awarded under this framework includes additional Call-Off Contracts within the scope of the Framework Agreement. Such contracts may comprise some



or all elements of the Goods as described in the detailed specification, being additional requirements which may arise.

## **5. Procedure for Award of Contracts**

- 5.1** Call-Off Contracts awarded under the framework may be by direct appointment to the Framework Member.
- 5.2** Where the terms of the original tender competition did not specifically address the needs relating to a specific contract which falls within the scope of the framework the Client (and/or any other Framework Client) will invite a supplementary tender from the Framework Member.
- 5.3** On each occasion that a Call-Off Contract is awarded to a Framework Member pursuant to this Clause, the Client (and/or any other Framework Client) shall issue a Call-Off Request to the successful Framework Member. The form of the Call-Off Request is set out at Schedule 5 hereto. Upon execution of a Call-Off Request by both the Framework Member and the Client (and/or any other Framework Client), the Framework Member shall [provided the Services/ supply the Goods] in accordance with the terms and conditions of the Call-Off Request and the Contract Terms and Conditions contained in Schedule 4 hereto, including any Special Terms and Conditions that will be set out in the Call-Off Request.
- 5.4** For the avoidance of doubt, and at the sole discretion of the Client the form of Call-Off Request may be amended from time to time.
- 5.5** It should be specifically noted that the Client (and/or any other Framework Client) reserves the right to terminate the Framework Agreement and to operate outside the terms of the framework agreement in the event that it considers that the nature of the contract would benefit from a separate competitive process.
- 5.6** The Framework Member acknowledges that the Client (and/or any other Framework Client), shall not be obliged to award any Call-Off Contract pursuant to this Clause 5 and that the Client may terminate the award procedure and/or initiate a new contract award procedure at any time at its sole discretion
- 5.7** No enforceable commitment of any kind, contractual or otherwise will exist unless and until a formal written Call-Off Contract has been executed by or on behalf of the Client (and/or any other Framework Client).



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## **6. Fixed Conditions for Contracts**

### **6.1 Pricing**

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

6.1.1 The maximum rates described detailed in Schedule 1 will be fixed for the initial one (1) year of the Framework Period and subject to satisfactory performance will be adjusted for inflation thereafter on each annual anniversary of the Commencement Date in accordance with the CPI Index.

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

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

### **6.2 Personnel**

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

### **6.3 Contract Manager**

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

## **7. Obligations of Framework Member**

### **7.1 Insurances**

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

### **7.2 Tax Clearance Status**

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



### **7.3 Changes to Declarations**

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

### **7.4 Corrupt Gifts and Inducements**

7.4.1 The Framework Member shall not give, provide or offer to any staff or agent of the Client a loan, fee, reward, gift, advantage, benefit or other payment during the Framework Period as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Agreement or any Call-Off Contract.

7.4.2 The Client shall be entitled at all times to request a Certificate from any person in its employment or in the employment of the Framework Member that no such gift has been given. In the event of any such gift having been given, the Client shall be entitled to terminate this Framework Agreement and any Call-Off Contract forthwith and to recover from the Framework Member all losses resulting from such termination together with an account or value of such gift.

### **7.5 Audits**

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

### **7.6 Changes**

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

### **7.7 Assignment**

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



## **7.8 Conflict of Interest**

The Framework Member is required to inform the Framework Member of any conflict of interest of which it becomes aware during the period of the Framework Agreement. Any registrable interest involving the Framework Member and the Client or employees of the Framework Member or their relatives must be communicated to the Framework Member immediately.

## **7.9 Service Level Agreement**

Call-Off Contracts under this framework agreement may be subject to the application of a Service Level Agreement which will outline the Key Performance Indicators applicable to the Call-Off Contract. The applicable Service Level Agreement is contained at Schedule D of the draft Call-Off Contract appended at Schedule 4 hereto.

## **7.10 Performance Review**

The Contracting Authority and Framework Member shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and/or a Call-Off Contract to agree milestones, compliance schedules and operational protocols as required by the Contracting Authority from time to time. If requested in writing by the Contracting Authority, the Framework Member shall meet formally with the Contracting Authority to report on progress and shall comply with all written directions of the Contracting Authority.

## **8. Termination of Appointment**

**8.1** The Client reserves the right to terminate this Framework Agreement by providing fourteen (14) days' notice in writing to the Framework Member. The Framework Member shall have no claim for damages or otherwise against the Client as a result of the Client terminating this Framework Agreement.

**8.2** Without prejudice to any other rights or remedies to which it may be entitled, the Client shall be entitled to terminate the appointment of the Framework Member forthwith and without liability for compensation or damages by giving written notice to the Framework Member at any time if:

8.2.1 The Member commits a material breach of any term or condition of this Framework Agreement, or a Call-Off Contract concluded under the Framework Agreement;

8.2.2 The Member fails to perform any obligation or responsibility under this Agreement or a Call-Off Contract concluded under the Framework Agreement, and, if such breach is capable of being remedied, fails to remedy the breach within fourteen (14) days of notice given by the Client requiring the Member to do so;

8.2.3 The Member's performance of an obligation under a Call-Off Contract is not in accordance with the terms of this Framework Agreement or the relevant Call-Off Contract, or fails to meet any standard prescribed by law;



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- 8.2.4 Any person employed by the Member or acting on its behalf offers or appears to offer a corrupt gift or inducement in the sense set out in Clause 7.4 above, whether with or without the knowledge of the Member;
  - 8.2.5 The Member convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;
  - 8.2.6 The Member ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
  - 8.2.7 The Member is unable to pay its debts within the meaning of Section 570 of the Companies Act 2014 or any analogous provision of law;
  - 8.2.8 An order is made, or an effective resolution is passed for the winding up of the Member's company other than for the purpose of a restructuring the terms of which have been agreed by the Client;
  - 8.2.9 A petition is presented, or an order is made, or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Framework Members company;
  - 8.2.10 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Framework Member;
  - 8.2.11 The Client reasonably believes that any of the events mentioned above is about to occur in relation to the Framework Member and notifies the Framework Member;
  - 8.2.12 The Framework Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this agreement or the relevant Call-Off Contract;
  - 8.2.13 Any representation made by the Framework Member in connection with this Framework Agreement or a Call-Off Contract shall in the opinion of the Client prove to be untrue or incorrect in a material respect as of the date when made;
  - 8.2.14 Any event analogous to those contemplated in Clauses 8.2.5 through 8.2.12 occurs to the Member within the laws of any other jurisdiction.

## **9. Termination of Framework Agreement**

- 9.1 In circumstances where the Framework Agreement is terminated as outlined in Clause 8.1 and 8.2, the Framework Member shall have no claim for damages or otherwise against the Client as a result of the Client terminating this Framework Agreement.
- 9.2 Termination of the Framework Agreement shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.
- 9.3 For the avoidance of doubt, termination of this Framework Agreement shall not affect the validity of any Call-Off Contract entered into by the Client (and/or any other Framework Client) and any provider of the service pursuant to that Framework Agreement.





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## **10. General**

### **10.1 Freedom of Information**

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

### **10.2 Applicable Law**

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

### **10.3 Resolution of Disputes**

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

### **10.4 Waiver**

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

### **10.5 Severability**

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



## 10.6 Public Procurement

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

## 11. Notices

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

|                       |                               |
|-----------------------|-------------------------------|
| The Framework CLIENT: | [Name of Framework Client]    |
| ADDRESS               | [Address of Framework Client] |
| eMail                 | [eMail of Framework Client]   |
| Tel                   | [Tel of Framework Client]     |

|                       |                               |
|-----------------------|-------------------------------|
| The Framework MEMBER: | [Name of Framework Member]    |
| ADDRESS               | [Address of Framework Member] |
| eMail                 | [eMail of Framework Member]   |
| Tel                   | [Tel of Framework Member]     |

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

- 11.2.1 If delivered, at the time of delivery to the addressee or its duly authorised agent;
- 11.2.2 If sent by pre-paid post, four (4) days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other party hereto);
- 11.2.3 If transmitted electronically on receipt of 'read receipt' or equivalent.

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



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

## **12 Data Protection**

**12.1** The Client is a Data Controller, and the Framework Member is a Data Processor for the purposes of Data Protection Laws, in the context of the provision of the Goods/Services by the Framework Member to the Client under this Framework Agreement. The Framework Member shall comply with its obligations under Data Protection Laws, in the collection and storage of Personal Data pursuant to the provision of Goods/Services under this Framework Agreement and shall enter into a data processing agreement with the Contracting Authority for the purposes of Article 28 of the GDPR. The Framework Member further agrees to enter into any relevant further agreements or arrangements, including data processing agreements or data sharing agreements, relevant to the provision of Services where required under this Framework Agreement or a Call-Off Contract, or as may be required by the Data Protection Laws in connection with processing Personal Data under or in connection with this Agreement.

**12.2** Notwithstanding the general obligation in Sub-Clause 12.1, where the Framework Member is processing Personal Data as a Data Processor for the Client, the Framework Member shall: -

- a) ensure that it has in place appropriate technical and contractual measures and take all measures required pursuant to Article 32 of the General Data Protection Regulation to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Data Protection Laws;
- b) provide the Client with such information as it may reasonably require to satisfy itself that the Framework Member is complying with its obligations under the Data Protection Laws;
- c) promptly notify Client of any breach of the security measures required to be put in place pursuant to Sub-Clause 12.2; and
- d) ensure it does not knowingly or negligently do or omit to do anything which places the Client in breach of the Client's obligations under the Data Protection Laws.

**12.3** The Framework Member and the Client shall not be construed as joint Data Controllers unless the conditions for processing of the Personal Data change such that the parties in conjunction with one another jointly, in a collaborative fashion, determine the purposes and means of processing the Personal Data. Notwithstanding this, should the Framework Member and the Client be deemed to be joint controllers in respect of any particular processing activity or activities, then they will enter into an appropriate 'arrangement' in the form of a written contract for the purposes of Article 26 of the GDPR, to govern such joint controller data sharing arrangements.

**12.4** The Framework Member will promptly inform the Client and in any event within twenty-four (24) hours of any requests from Data Subjects regarding rectification or erasure



of Personal Data included in a tender, or restriction of or objection to the processing of such Personal Data for the purposes set out herein. The Framework Member shall, to the extent that such a request affects the processing of such Personal Data by the Client, provide reasonable assistance to the Client to enable compliance with the Data Protection Laws. Notwithstanding the foregoing, the Framework Member shall remain responsible itself for dealing with requests from Data Subjects in respect of Personal Data, to the extent that such requests are directed by the Data Subject to the Framework Member (or any of its agents, employees or sub-contractors).

12.5 The Framework Member hereby indemnifies the Client against all claims, liabilities, costs, expenses, damages and losses suffered or incurred by the Client arising out of or in connection with any breach by the Framework Member (or any of its employees/agents/sub-contractors) of any terms of this Clause, or its obligations under the Data Protection Laws, or any use by the Framework Member of the Personal Data. This clause is intended to apply to the allocation of liability for losses relating to the Data Protection Laws as between the Client and the Framework Member, including with respect to compensation to Data Subjects, notwithstanding any provisions under the Data Protection Laws to the contrary, except: (i) to the extent not permitted by applicable law (including the Data Protection Laws); and (ii) that it does not affect the liability of either party to any Data Subject.

#### SIGNED:

##### On behalf of Cork Education and Training Board

|                                       |  |
|---------------------------------------|--|
| Name:<br><i>Block Letters</i>         |  |
| Position:                             |  |
| Signature:                            |  |
| Date:                                 |  |
| Witnessed by:<br><i>Signature</i>     |  |
| Witness Name:<br><i>Block Letters</i> |  |

##### On behalf of the Framework Member

|                               |  |
|-------------------------------|--|
| Name:<br><i>Block Letters</i> |  |
| Position:                     |  |
| Signature:                    |  |



|                                       |  |
|---------------------------------------|--|
| Date:                                 |  |
| Witnessed by:<br><i>Signature</i>     |  |
| Witness Name:<br><i>Block Letters</i> |  |



**Schedules to this agreement:**

- Schedule 1: Form of Tender – from the framework members' tender response
- Schedule 2: Resources – from the framework member's tender response
- Schedule 3: Insurances – evidence of insurances in place as per levels detailed at qualification / tender stage
- Schedule 4: Call-Off Contract Terms and Conditions (Call-Off)
- Schedule 5: Call-Off Request



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## **SCHEDULE 1 – FORM OF TENDER**

**[insert completed Form of Tender from tenderers proposal]**



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## SCHEDULE 2 – RESOURCES

**[insert completed Resource Allocation Table from tenderers proposal]**





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### **SCHEDULE 3 – INSURANCES**

**[insert confirmation of insurances received from tenderers]**



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

**[insert ETB Terms and Conditions from tender document]**