

APPENDIX 3 – DRAFT TERMS AND CONDITIONS OF THE FRAMEWORK AGREEMENT

*The following terms are provided as an indication of the intended format of the framework agreement to be signed with the eight highest-scoring framework operators emerging from this competition. Tenderers are **not** requested to sign these terms as part of their tender submission but should review them carefully and indicate any areas of interest by submitting a written query during the tender period.*

Multi-Party Framework Agreement for the Provision of PA's and Notetakers

PARTIES

Trinity College Dublin and University College Dublin
(Hereinafter referred to as 'the Contracting Authorities')

1. [XXXX]
2. [XXXX]
3. [XXXX]
4. [XXXX]
5. [XXXX]

(Hereinafter referred to as 'the Framework Operators' or 'Operators')

BACKGROUND

The Contracting Authority has conducted a tender competition for the establishment of a multi-party framework agreement for the provision of PAs.

- a. The framework agreement was advertised in the Official Journal of the European Union and via the Irish Government's Procurement Opportunities Portal (www.etenders.gov.ie).
- b. The negotiated procedure was used and an Invitation to Tender was issued with a deadline date for tender submissions of **XX/XX/2022**
- c. Following evaluation of the submitted tender against the published award criteria, the listed Framework Operators are now appointed as the members of this Framework Agreement.

DEFINITIONS

'Contract' means a contract falling within the advertised scope of this Framework Agreement, constituting a defined and agreed piece of work to be performed by a Framework Operator (i.e., a specific quantum of training);

'Framework Agreement' means these terms and conditions, including the Schedules hereto;

'Framework Period' means the period in years set out in Clause 2.1;

'Invitation to Tender' means the Invitation to Tender document issued by the Contracting Authority on XX/XX/2022;

'Cascade' means the method of drawdown used to call-off the services. The requirement will be offered to the highest ranked tender first and if they are not in a position to provide the necessary services, the next highest scoring tenderer will be approached and so on until the services are provided.

'Mini-Tender' means the submission provided by a Framework Operator in response to a Request for Mini-Tender;

'Price' means the amount in Euro chargeable by the Framework Operators in respect of services purchased by the Contracting Authority;

'Request for Mini-Tender' means the document issued to all Framework Operators by the Contracting Authority, requesting a proposal for the provision of certain specified training services under the Framework Agreement;

'Tender' means the submission of the Framework Operators in response to the Invitation to Tender document together with any clarifications, additions or amendments accepted by the Contracting Authority.

1. Appointment of Framework Operators

- 1.1 In consideration of payment by the Contracting Authority of good and valuable consideration, receipt of which is hereby acknowledged, the Framework Operators accept their appointment under the terms and conditions of this Framework Agreement.
- 1.2 Appointment to this Framework does not entitle the Operators to be consulted in respect of, or awarded, any contract during the Framework Period. The Contracting Authority 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 Clause 11.
- 1.3 While this Framework Agreement will, in general, form the basis for the award of contracts falling within the scope set out in Clause 3.1 during the Framework Period, the Contracting Authority may at its sole discretion decide to carry out a separate contract award procedure for contracts falling within the specified scope. In this event, the Contracting Authority shall observe all applicable public procurement rules and shall not afford any advantage to any Framework Operator.

2. Period of Framework Agreement

- 2.1 The Framework Agreement shall take effect on the Commencement Date and will be for a

maximum potential duration of four years.

3. Scope of Framework Agreement

- 3.1 This Framework Agreement relates to the delivery of training courses, workshops, individual training, coaching and mentoring for and on behalf of NovaUCD, as more precisely defined in Schedule 1 of this Agreement, which contains the Specification of Requirements issued by the Contracting Authority for the purposes of establishing the Framework Agreement.

4. Operation of the Framework Agreement

- 4.1 Contracts for the delivery of discrete training courses shall be awarded under this framework agreement in accordance with the procedure set out hereunder:

4.1.1 The Contracting Authority shall issue a Request for Mini-Tender document to all Framework Operators, specifying the scope of the training that is required (in terms of duration and subject-matter).

4.1.2 The Request for Mini-Tender document shall specify a timeframe for the return of Mini-Tenders that takes account of the complexity of the requirement in question and the likely time to be incurred in preparing a suitably responsive Mini-Tender.

4.1.3 The Request for Mini-Tender document shall state the precise award criteria and weightings that shall be employed in order to identify the Framework Operator to whom the Contract in question shall be awarded.

4.1.4 Further to Clause 4.1.3 above, the award criteria and associated weighting ranges to be employed in evaluating Mini-Tenders are as follows:

	CRITERION	WEIGHTING RANGE
A	Ultimate Cost	30 – 50%
B	Demonstrated Understanding of Services Required	0 – 50%
C	Technical Merit of Proposed Resources	0 – 50%
D	Proposed Delivery Considerations	0 – 50%

4.1.5 The Framework Operator submitting the most economically advantageous Mini-Tender, as identified by the application of the award criteria and weightings stated in the Request for Mini-Tender document, shall be awarded the Contract in question.

4.1.6 All Framework Operators will be informed in writing of the outcome of their Mini-Tender submission.

5. Failure to Supply

- 5.1 Repeated failures to participate in a Mini-Tender process when requested to do so by the Contracting Authority will give rise to a review meeting between the Contracting Authority and the Framework Operator in question. If any remediation measures proposed at such a review meeting are not implemented, to the satisfaction of the Contracting Authority, by the Framework Operator within an agreed timeframe, the Framework Operator may, at the sole discretion of the Contracting Authority, be removed from the Framework Agreement.

6. Conditions for Award of Contracts

- 6.1 Award of any Contract under the Framework Agreement may be subject to the Framework Operator to whom it is intended to award the Contract facilitating, upon request, the drafting and implementation of a Service Level Agreement, to include agreed key performance indicators, response times, escalation procedures and penalties.

7. Pricing

- 7.1 The Price chargeable in respect of all services supplied under the Framework Agreement shall be the Price proposed by the relevant Framework Operator in its Mini-Tender submission.
- 7.2 The Price proposed in a Mini-Tender submission shall be calculated by reference to daily rates and/or hourly rates, neither of which shall exceed the daily rates and hourly rates set out in Schedule 2 of this Agreement.

8. Personnel

- 8.1 The personnel assigned by a Framework Operator to deliver any Contract under this Framework Agreement shall be those identified in the Framework Operator's Tender or other personnel of equivalent qualifications, skills, professional expertise and experience expressly approved by the Contracting Authority.

9. Obligations of Framework Operators

- 9.1 Each Framework Operator is required to inform the Contracting Authority of any conflict of interest of which it becomes aware during the period of the Framework Agreement. Any registrable interest involving a Framework Operator and the Contracting Authority or employees of the Contracting Authority or their relatives must be communicated to the Contracting Authority immediately. The terms 'registrable interest' and 'relative' shall be interpreted as per Section 2 and the Second Schedule of the Ethics in Public Office Act, 1995.
- 9.2 Each Framework Operator is required to maintain, as a minimum, the forms of insurance set out in Schedule 3. These forms and levels of insurance may be subject to revision during the lifetime of the Agreement, in which case the Contracting Authority shall notify the Framework Operator in question of the revised requirements and allow thirty (30) days for the provision of evidence that the required policies are in place.

- 9.3 Each Framework Operator shall maintain in its possession a valid Tax Clearance Certificate issued by the Irish Revenue Commissioners throughout the Framework Period and for the duration of any Contract.
- 9.4 The Framework Operator shall retain a copy of its signed European Single Procurement Document, submitted with its Tender. If at any point during the Framework Period or during the currency of a Contract, the Framework Operator becomes aware of circumstances that might affect the validity of any of the statements in its European Single Procurement Document, it shall notify the Contracting Authority in writing of such circumstances at the earliest possible opportunity.
- 9.5 No Framework Operator shall give, provide or offer to any staff or agent of the Contracting Authority a loan, fee, reward, gift, advantage, benefit or other payment during the Framework Period as an inducement or reward for doing or forbearing to do, or for having done or forborne to do, any action in relation to the obtaining or execution of this Agreement or any Contract.
- 9.6 No Framework Operator shall assign the benefit of its appointment under this Framework Agreement, or under any Contract, or any part thereof without the written permission of the Contracting Authority.

10. Review Meetings

- 10.1 The Contracting Authority and each Framework Operator may liaise to address any issues arising that may impact on the performance of this Framework Agreement and to agree milestones, compliance schedules and operational protocols as required from time-to-time.

11. Termination of Appointment

- 11.1 Without prejudice to any other rights or remedies to which it may be entitled, the Contracting Authority shall be entitled to terminate the appointment of a Framework Operator forthwith and without liability by giving notice at any time if:
- 11.1.1 The Framework Operator in question commits a material breach of any term or condition of this Framework Agreement, or a Contract concluded under the Framework Agreement;
- 11.1.2 The Framework Operator in question fails to perform any obligation or responsibility under this Agreement or a Contract concluded under the Framework Agreement either at all or to a standard that the Contracting Authority, acting reasonably, considers satisfactory and, if such breach is capable of being remedied, fails to remedy the breach within fourteen (14) days of notice given by the Contracting Authority requiring the Operator to do so;

- 11.1.3 The Framework Operator in question repeatedly fails to participate in Mini-Tender procedures conducted under the Framework Agreement and has been afforded all reasonable opportunities to rectify this situation;
- 11.1.4 The Framework Operator in question performs an obligation under a Contract in a manner that is not in accordance with the terms of this Framework Agreement, including its Schedules, or any agreed Service Level Agreement, or fails to meet any standard prescribed by law;
- 11.1.5 Any person employed by the Framework Operator in question, or acting on its behalf, offers or appears to offer a corrupt gift or inducement in the sense set out in Clause 9.5 above, whether with or without the knowledge of the Framework Operator;
- 11.1.6 The Framework Operator in question convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;
- 11.1.7 The Framework Operator in question ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
- 11.1.8 The Framework Operator in question is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990) or any analogous provision of law;
- 11.1.9 An order is made or an effective resolution is passed for the winding up of the company of the Framework Operator in question, other than for the purpose of a restructuring, the terms of which have been agreed by the Contracting Authority;
- 11.1.10 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 company of the Framework Operator in question;
- 11.1.11 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Framework Operator in question;
- 11.1.12 The Contracting Authority reasonably believes that any of the events mentioned above is about to occur in relation to the Framework Operator in question and notifies the Framework Operator accordingly;
- 11.1.13 The Framework Operator in question has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Agreement or the relevant Contract;

11.1.14 Any representation made by the Framework Operator in question in connection with this Agreement or a Contract shall in the opinion of the Contracting Authority prove to be untrue or incorrect in a material respect as of the date when made;

11.1.15 Any event analogous to those contemplated in Clauses 11.1.5 through 11.1.12 occurs to the Framework Operator in question within the laws of any other jurisdiction.

The Framework Operator in question shall have no claim for damages or otherwise against the Contracting Authority as a result of the termination of its appointment in accordance with this Clause.

12. General

12.1 Each Framework Operator acknowledges that the Contracting Authority is subject to the Freedom of Information Acts 1997-2003, as amended. Accordingly, information furnished to the Contracting Authority by each Framework Operator may be released pursuant to the Contracting Authority's statutory obligations. If a Framework Operator considers that any of the information supplied by it to the Contracting Authority under this Framework Agreement or any Contract should not be disclosed because of its sensitivity, the Framework Operator in question must, when providing the information, indicate this and specify the reason for its sensitivity. The Contracting Authority 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.

12.2 This Agreement shall be governed by and construed in accordance with the laws of Ireland.

12.3 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.

12.4 Force Majeure

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

12.4.2 If however, force majeure causes a delay or failure in performance for a period longer than seven days, the Contracting Authority shall have the right to remove the Framework Operator in question from the Framework Agreement by giving seven days' notice in writing.

12.4.3 Force majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected in which it is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to, acts of God or

the public enemy, ex-procreation or confiscation of facilities, government intervention, war, hostilities, rebellion, terrorist activities, local or national emergency, sabotage or riots, floods, or unusually severe weather conditions which could not be reasonably anticipated, fires, explosions, or other catastrophe, national or district strikes or other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of a Framework Operator's workforce.

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

13. General Data Protection Regulation

- 13.1 As an organisation engaged in providing services to the Contracting Authority, each Framework Operator will be required to adhere to the following general provisions:

13.1.1 To the extent that it may be deemed a 'data processor' for the purposes of the General Data Protection Regulation ('the GDPR'), each Framework Operator will make itself fully aware of all applicable obligations under the GDPR and will put in place sufficiently robust mechanisms to ensure adherence to the relevant provisions of the GDPR.

13.1.2 To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, each Framework Operator will implement appropriate technical and organisational measures in such a manner that any processing activities undertaken will meet the requirements of the GDPR and ensure the protection of the rights of the data subject.

13.1.3 To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Framework Operator will comply with the provisions of Article 28(3)(a) to 28(3)(h) of the GDPR.

13.1.4 To the extent that it may be deemed a 'sub-processor' for the purposes of the GDPR, the Framework Operator will comply with the provisions of Article 28(4) of the GDPR.

- 13.2 In addition to the foregoing, each Framework Operator shall enter into the Confidentiality and Data Processing Agreement appended to these terms and conditions at Schedule 3. Each Framework Operator undertakes, without reservation, to be bound by the provisions of the Confidentiality and Data Processing Agreement and acknowledges that any breach of the provisions of the Confidentiality and Data Processing Agreement will be construed by the Contracting Authority as a breach of this Agreement that, depending upon its materiality, may give rise to the Agreement's termination.

- 13.3 For the avoidance of doubt, it is emphasised that the Confidentiality and Data Processing Agreement appended to these terms and conditions at Schedule 4 is to be governed and

construed solely in accordance with the laws of Ireland. The Irish Courts shall have exclusive jurisdiction to hear any disputes relating to, or deriving from, the Confidentiality and Data Processing Agreement.

14. Notices

- 14.1 The address, e-mail address, facsimile and telephone numbers of the parties for the purpose of the giving of notices under this Agreement are as follows:

For the Contracting Authority:
[XXXX]

For the Framework Operator:
[XXXX]

- 14.2 All notices to the Contracting Authority or a Framework Operator from the other party under this Agreement or the relevant Contract shall be in writing and sent to the appropriate address set out above.
- 13.3 All notices, documents and communications provided under this Agreement or the relevant Contract shall be in the English language.

IN WITNESS whereof the parties hereto have executed this Framework Agreement the day and year first herein WRITTEN

SIGNATURES

SIGNED for and on behalf of [XXXX] by:

Signed: _____

Date: _____

Witnessed by: _____

SIGNED for and on behalf of the Contracting Authority by:

Signed: _____

Date: _____

Witnessed by: _____