## 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 framework operator 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.*

**Single-Party Framework Agreement for the Provision of a Sign Language Interpretation Service**

**PARTIES**

Trinity College Dublin, University College Dublin

(Hereinafter referred to as 'the Contracting Authority')

[XXXX]

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

**BACKGROUND**

The Contracting Authority has conducted a tender competition for the establishment of a single-party framework agreement for the provision of a Sign Language Interpretation Service.

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 open 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 Framework Operator is now appointed as the single operator under 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 the Framework Operator;

DRAFT

*'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 tender document issued by the Contracting Authority on XX/XX/2022;

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

*'Request for Supplementary Tender'* means a document issued by the Contracting Authority at any point during the Framework Period requesting a proposal for the provision of services;

'*Supplementary Tender'* means the written submission of the Framework Operator in response to a Request for Supplementary Tender;

'*Tender*' means the submission of the Framework Operator in response to the Invitation to Tender together with any clarifications, additions or amendments accepted by the Contracting Authority;

*'Initial Contract'* means a contract of six months' duration for the provision of the interpretation services specified in Schedule 4 of this Agreement;

*'Commencement Date'* means the date upon which this framework agreement shall come into effect, being XX/XX/2017.

## 1. Appointment of Framework Operator

1.1 In consideration of payment by the Contracting Authority of good and valuable consideration, receipt of which is hereby acknowledged, the Framework Operator accepts its appointment under the terms and conditions of this Framework Agreement.

1.2 Appointment to this Framework does not entitle the Operator 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 the Framework Operator.

DRAFT

## 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 provision of a sign language interpretation service, as described in the specification of requirements contained in the Invitation to Tender and Scope of Services document

3.2 The Initial Contract comprises the provision of the required services for a period of six months from the Commencement Date. For the avoidance of doubt, no guarantee is offered, nor should any guarantee be inferred, regarding the volume of interpretation services to be procured during the initial contract.

3.3 Following the expiry of the initial contract, matters such as the performance of the successful framework member, budgetary considerations and the continued strategic appropriateness of the agreement will be assessed in order to determine the number and frequency of further contracts awarded under this agreement.

3.4 The Contracting Authority may legitimately cease to use this framework agreement in order to avail of any national or centralised agreement that becomes available in the future. The Contracting Authority shall exercise its sole discretion in this regard.

## 4. Award of Contracts

4.1 Contracts under this Framework Agreement may be awarded either on foot of the Invitation to Tender or on foot of a Request for Supplementary Tender in accordance with the procedure set out in Clause 5.

## 5. Procedure for Supplementary Tenders

5.1 In general, it is envisioned that the majority of work required under this framework agreement will be directly awarded on foot of the Invitation to Tender document. From time-to-time, however, in accordance with Article 33.3 of Directive 2014/24/EU, the Contracting Authority may elect to issue a Request for Supplementary Tender during the Framework Period, in accordance with the following procedure. It is emphasised that Supplementary Tenders will be sought solely in respect of work falling within the advertised scope of the framework agreement.

5.1.1 The Contracting Authority will issue a Request for Supplementary Tender to the Framework Operator in writing, specifying the conditions that will apply in respect of the Supplementary Tender.

DRAFT

5.1.2 The Contracting Authority shall specify the scope of the Supplementary Tender, and in particular whether the applicable terms and fees will be determined by reference to the Tender or, where relevant, the Supplementary Tender.

5.1.3 The Contracting Authority shall fix a deadline for the receipt of the Supplementary Tender taking into account the complexity of the Contract and the time needed to prepare an appropriate proposal.

5.1.4 Following evaluation of the Supplementary Tender, the Contracting Authority shall determine whether it meets its stated requirements and whether a Contract will be awarded.

5.2 The Contracting Authority shall not be responsible for any costs incurred by the Framework Operator in the preparation of a Supplementary Tender or any related site visits.

5.3 The Contracting Authority shall not be obliged to award any Contract on foot of a Request for Supplementary Tender and may terminate the award procedure at any time at its sole discretion.

**6. Conditions for Award of Contracts**

6.1 Award of any Contract under the Framework Agreement, including the Initial Contract to be awarded under this Framework Agreement, may be subject to the Framework Operator 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 maximum Prices chargeable in respect of all services contracted during the initial twelve months of this Agreement shall be those set out in the Form of Tender and Pricing Schedules submitted as part of the Tender (Schedule 1 of this Agreement). Upon the expiry of this twelve month period, the maximum Price chargeable for similar service will be adjusted for inflation on each annual anniversary of the Commencement Date of the framework. This adjustment shall be in accordance (whether positive or negative) with the CPI index.

7.2 For services other than those required under the Initial Contract, prices will be sought by way of a supplementary tender, as described in Clause 5.

7.3 The Contracting Authority may seek, or the Framework Operator may offer, lower prices at any time during the Framework Period. In particular, where a given item, supply or service is being offered to other purchasers at a lower price, the Contracting Authority

DRAFT

may request adjustment of the Pricing Schedules or Form of Tender to reflect this. The Contracting Authority may reject any aspect of a Supplementary Tender on the grounds that the Price offered is not acceptable.

8. **Personnel**

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

**9. Obligations of Framework Operator**

9.1 The 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 the 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 The Framework Operator is required to maintain, as a minimum, the forms of insurance set out in Schedule 2. These forms and levels may be subject to revision during the lifetime of the Agreement, in which case the Contracting Authority shall notify the Framework Operator of the revised requirements and allow thirty (30) days for the provision of evidence that the required policies are in place. The levels of insurance required in respect of individual Contracts may vary, in which case the Contracting Authority shall notify the Framework Operator of the required levels of insurances in the relevant Request for Supplementary Tender or at the earliest opportunity.

9.3 The 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 submitted European Single Procurement Document (ESPD), as used during the evaluation of tender submissions prior to the establishment of this framework agreement. If at any point during the Framework Period or during the lifetime of a Contract the Operator becomes aware of circumstances that might affect the validity of any of the statements in its ESPD, it shall notify the Contracting Authority in writing of such circumstances at the earliest possible opportunity.

9.5 The Framework Operator shall not 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

DRAFT

having done or forborne to do, any action in relation to the obtaining or execution of this Agreement or any Contract.

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

**10. Review Meetings**

10.1 The Contracting Authority and the Framework Operator shall liaise on a regular basis 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 the Framework Operator forthwith and without liability by giving notice at any time if:

11.1.1 The Operator 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 Operator 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 Operator's performance of an obligation under a Contract 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;

11.1.4 Any person employed by the Operator 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 Operator;

11.1.5 The Operator convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;

11.1.6 The Operator ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;

DRAFT

11.1.7 The Operator 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;

11.1.8 An order is made or an effective resolution is passed for the winding up of the Operator's company other than for the purpose of a restructuring the terms of which have been agreed by the Contracting Authority;

11.1.9 A petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Operator's company;

11.1.10 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Operator;

11.1.11 The Contracting Authority reasonably believes that any of the events mentioned above is about to occur in relation to the Operator and notifies the Operator;

11.1.12 The Operator 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;

11.1.13 Any representation made by the Operator 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;

11.1.14 Any event analogous to those contemplated in Clauses 11.1.5 through 11.1.13 occurs to the Operator within the laws of any other jurisdiction.

The Framework Operator 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 The 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 the Operator may be released pursuant to the Contracting Authority's statutory obligations. If the 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 Operator 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.

DRAFT

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 terminate this Agreement by 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 the 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. Notices**

13.1 The names and e-mail address of the parties for the purpose of the giving of notices under this Agreement are as follows:

For the Contracting Authority:

For the Framework Operator:
[XXXX]

DRAFT

13.2 All notices to the Contracting Authority or the 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: _____

DRAFT