



DATED _____

(1) THE LAND DEVELOPMENT AGENCY

AND

(2) _____

**FRAMEWORK AGREEMENT WITH MULTIPLE FRAMEWORK MEMBERS
FOR THE **PROVISION OF SITE INVESTIGATION SERVICES (NATIONWIDE)****

Table of Contents

1. Definitions and Interpretation	3
2. Appointment	5
3. Non-Exclusivity	5
4. Period of Framework Agreement	5
5. Scope of Framework Agreement	5
6. Procedure for the award of Call-Off Contracts	6
7. Notification of the award of a Call-Off Contract	8
8. Fixed Terms for Call-Off Contracts	8
9. Obligations of Framework Member	10
10. Termination of Appointment of Framework Member	12
11. Termination of Framework Agreement	13
12. Consequences of Termination and Expiry	13
13. Transfer and Sub-Contracting	14
14. General	14
15. Notices	15
16. Resolution of Disputes	15
17. Jurisdiction	16
Schedule 1 Framework Scope of Services	19
Schedule 2 Rates	20
Schedule 3 Personnel	21
Schedule 4 Insurances	22
Schedule 5 Article 57 of Dir 2014/18/EU (Declaration)	23
Schedule 6 Call-Off Order	24
Schedule 7 Request for Mini-Tender	26
Schedule 8 Key Performance Indicators	28
Schedule 9 Confidentiality Agreement	29
Schedule 10 Sub-Consultants	31
Schedule 11 Call-Off Contract Terms and Conditions	32
Schedule 12 Sub-Consultant Collateral Warranty	33
Schedule 13 Invitation to Tender	34
Schedule 14 Tender Submission	35
Schedule 15 Data Processor Agreement	36

Subject to contract / contract denied (To be removed on signing contract)

THIS FRAMEWORK AGREEMENT is made on

BETWEEN:

- (1) **THE LAND DEVELOPMENT AGENCY**, a designated activity company with company registration number 710453 and whose registered office is at 2nd Floor, Ashford House, Tara Street, Dublin 2, D02 VX67 (the "**Employer**") including its successors, assigns and Affiliates; and
- (2) **[FRAMEWORK MEMBER]**, a company established under **[insert detail]** law with company registration number **[insert]** and its registered address at **[insert]** (hereinafter referred to as the "**Framework Member**" which expression includes its successors and permitted assigns) of the other part,

RECITALS

(A) Notice and Award Procedure

The Employer has conducted a tender competition in accordance with Directive 2014/24/EU all applicable procurement rules for the establishment of a framework agreement (within the meaning of the aforesaid directive) with multiple Framework members for provision of Site Investigation Services. The tender competition under the **Open procedure** was advertised in the Official Journal of the European Union on **XXXXX** with a reference number of **XXXXXXXXX** (the 'Contract Notice').

(B) Appointment

Following evaluation of tenders received in accordance with the Invitation to Tender, the Employer wishes to appoint the Framework Member to this Framework Agreement as one of several Framework Members to provide Services, if instructed to do so from time to time by the Employer, subject to and in accordance with the terms and conditions of this Framework Agreement.

(C) Framework Members

The Framework Members appointed to the Framework Agreement are **[insert]**

(the '**Framework Members**').

(D) Framework Purchasers

Not used

(E) Purpose

This Framework Agreement sets out, amongst others, the award procedure for contracts which may be required by the Employer, the main terms and conditions for any Call-Off Contract, and the obligations of the Framework Members during and after the Framework Period.

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

- 1.1 In this Framework Agreement the following terms have the meaning given to them below:

"Applicable Law" means any law applicable in the State and includes without limitation, common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation;

"Call-Off Contract" means the legally binding agreement for the provision of Services between the Employer and a Framework Member in accordance with the terms of this Framework Agreement.

"Call-Off Contract Terms and Conditions" means the general terms and conditions which will apply to any Call-Off Contract and which are set out at Schedule 11, including any future amendment thereto or redraft thereof;

“Call-Off Order” means the document set out in Schedule 6 (including any future amendment thereto or redraft thereof) issued by the Employer to a Framework Member in accordance with the procedure set out in Sub-Clause 6(1) instructing that Framework Member to provide Services;

“Commencement Date” means [insert date 202X];

“Conflict of Interest” means any actual or potential conflict of interest (including any relationship, filial or otherwise, or any interest, whether arising through personal, company or professional association, or current or prospective contractual obligations) which the Framework Members or any of its Personnel may have including, without prejudice to the generality of the foregoing, any actual or potential conflict relating to any aspects of (i) this Framework Agreement; (ii) the Services, (iii) a Call-Off Contract, (iv) the Employer, (v) a Framework Member, (vi) any stakeholders or other parties having an interest in [title of framework agreement as indicated in the published contract notice], and/or (vii) any economic Framework Member or tenderer in any way connected with the [title of framework agreement as indicated in the published contract notice] or any the Services.

“CPI Index” means the Consumer Price Index as published by the Central Statistics Office in Ireland;

“Directive 2014/24/EU” means the European Directive transposed into Irish law on 5th May under SI 284 European Union (Award of Public Authority Contracts) Regulations 2016.

“Framework Agreement” means this Agreement, including the Recitals to, and Schedules of, this Agreement;

“Framework Member” means the economic operator appointed to this framework agreement.

“Framework Period” means the period set out in Sub-Clause 4(1);

“Invitation to Tender” means the document issued by the Employer on [insert date] with any clarifications, additions or amendments issued by the Employer, as evidenced in Schedule 13;

“Key Performance Indicators” means the key performance indicators as set out in Schedule 8

“Mini-Tender” means the written submission by a Framework Member in response to a Request for Mini-Tender; and

“Party” means the Employer and/or the Framework Member;

“Personnel” means all persons employed by the Framework Member together with the Framework Member's servants, agents and suppliers of any tier used in the performance of its obligations under this Framework Agreement or a Call-Off Contract;

“Request for Mini-Tender” means the document set out in Schedule 7 (including any future amendment thereto or redraft thereof) issued by the Employer to a Framework Member in accordance with the procedure set out in Sub-Clause 6(7) requesting a Mini-Tender from that Framework Member for the provision of Services; and

“Services” means any of the services falling within the scope set out in Sub-Clause 5(1);

“Sub-Consultant/Contractor” means the legal person identified in Schedule 10 or any authorised replacement in accordance with Sub-Clause 8(5)(2); and

“Sub-Consultant/Contractor Collateral Warranty” means the warranty which the Employer may require the Framework Member to procure from its Sub-Consultant/Contractor in accordance with Sub-Clause 8(5)(5) and which is set out in Schedule 12, including any future amendment thereto or redraft thereof; and

“Tender” means the submission by the Framework Member in response to the Invitation to Tender, together with any clarifications, additions or amendments accepted by the Employer, as evidenced in Schedule 14.

1.2 In this Framework Agreement, unless where otherwise specified:

- 1.2.1 headings are included for ease of reference only and shall not affect the construction of this Framework Agreement;
 - 1.2.2 references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;
 - 1.2.3 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
 - 1.2.4 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;
 - 1.2.5 references to a day mean a calendar day;
 - 1.2.6 references to a month mean a calendar month;
 - 1.2.7 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;
- 1.3 To the extent that any specific term or condition in a Call-Off Contract or Sub-Consultant Collateral Warranty is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant term or condition in the Call-Off Contract Terms and Conditions or Sub-Consultant Collateral Warranty shall prevail.

2. Appointment

- 2.1 In consideration of payment by the Framework Member of good and valuable consideration, receipt of which is hereby acknowledged, the Framework Member accepts its appointment subject to the terms and conditions of this Framework Agreement.
- 2.2 If for any reason it is not possible to admit to the Framework Agreement one or more of the tenderers invited following the conclusion of this competitive process or having awarded a contract under the Framework Agreement, the Employer reserves the right to invite the next highest scoring tenderer to join the Framework Agreement, deliver the contract as appropriate to the circumstances pertaining to the Framework.

3. Non-Exclusivity

The Framework Member acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been or shall be granted by the Employer for Services from the Framework Member and that the Employer is at all times entitled to enter into other contracts and agreements with other service providers for the provision of any or all Services, or services which are the same as or similar to the Services.

4. Period of Framework Agreement

- 4.1 This Framework Agreement shall take effect on the Commencement Date and expire four (4) years thereafter unless terminated earlier in accordance with these terms and conditions.
- 4.2 The maximum duration of the Framework Agreement will be three (3) years subject to satisfactory annual review of performance. This may be extended for one (1) additional year.
- 4.3 For the avoidance of any doubt, the term of a Call-Off Contract may last for longer than the Framework Period.

5. Scope of Framework Agreement

- 5.1 This Framework Agreement relates to the provision of **Site Investigation Services** as more particularly described in the Invitation to Tender and evidenced in Schedule 1.
- 5.2 Not Used.
- 6. Procedure for the award of Call-Off Contracts**
- 6.1 As and when the Employer decides to source Services through this Framework Agreement, then it may award a Call-Off Contract to the Framework Member based on the following:
- 6.1.1 The Employer reserves the right, acting reasonably, having regard to the nature of the services required, the timing for the performance of the Services, the resources required to perform them, experience, expertise and performance of Framework Members to date and such other factors as it considers relevant or appropriate acting reasonably, to select, a Framework Member directly to perform Services and award a Call-Off Contract to that Framework Member directly; or
- 6.1.2 in accordance with the procedure set out in Sub-Clause 6(7).
- 6.2 When awarding a Call-Off Contract, the Parties and the Framework Member shall not make any substantial amendments to the terms laid down in this Framework Agreement.
- 6.3 On each occasion that a Call-Off Contract is awarded to the Framework Member pursuant to this Clause 6, the Employer and the Framework Member shall enter into a contract in accordance with the Call-Off Contract Terms and Conditions.
- 6.4 The Framework Member acknowledges that the Employer shall not be obliged to award any Call-Off Contract pursuant to this Clause 6 and that the Employer may terminate the award procedure at any time at its sole discretion.
- 6.5 The Employer shall not have nor accept any responsibility or liability whatever arising from the award of a Call-Off Contract by another Framework Purchaser (other than the Employer) pursuant to this Clause 6.
- 6.6 The Employer may, from time to time, obtain specific specialist services;
- 6.6.1 up to a value of €25,000 (twenty- five thousand euro), that are covered by this Framework directly from one of the firms admitted to the Framework Agreement in accordance with Recital 61 of Directive 2014/24/EU.
- 6.6.2 up to a value of €50,000 (fifty thousand euro) and in this circumstance shall operate a cascading six party rotational framework, the first appointment to go to the top ranked member, second appointment to the second placed, and so on to the sixth ranked. In the event that the approached framework member is incapable of performing the work on the basis of capacity issues, a conflict of interest or underperformance of previous contracts, the next ranked framework member will be approached. This process will be repeated until the work in question has been awarded to one of the framework members or the framework is exhausted. In the event the Employer is unable to agree a fee that represents value for money under the cascade rotational method for the works in question, the Employer reserves the right to approach the next ranked framework member at its sole discretion should it become apparent that doing so would offer greater value for money.
- 6.7 Procedure for the award of a Call-Off Contract based on a Mini-Tender
- 6.7.1 The Employer may issue a Request for Mini-Tender at any time during the Framework Period.
- 6.7.2 The Employer will complete a Request for Mini-Tender indicating the scope of the Call-Off Contract to be awarded, the award criteria (subject to the provisions of Sub-Clause 6(7)(7))

and such other terms and conditions as the Employer may set out in accordance with Schedule 7.

6.7.3 The Employer shall fix a deadline for the receipt of the Mini-Tender taking into account the complexity of the scope of requirements and the time needed to prepare an appropriate Mini-Tender.

6.7.4 The Employer will issue the Request for Mini-Tender by email to all Framework Members who are capable of performing the Call-Off Contract.

6.7.5 Mini-Tenders shall be submitted in writing and their content shall remain confidential until at least the stipulated time limit for replies has expired. The Mini-Tender shall comply with the requirements of the Request for Mini-Tender and the terms set out in Clause 8.

6.7.6 Any clarifications requested by a Framework Member in relation to a Request for Mini-Tender shall be submitted in writing by email and any responses containing further material information will be issued in writing to all other Framework Members.

6.7.7 Award Criteria

The criterion for the award of a Call-Off Contract pursuant to this Sub-Clause 6(7) will be the lowest priced or most economically advantageous Mini-Tender in terms of one or more of the following award criteria:

- (a) Ultimate Cost (20% – 100%)
- (b) Resourcing of the Project/Technical Merit of the Team (0% - 80%)
- (c) Execution Methodology (0% - 80%)
- (d) Proposed Project Programme (0% - 80%)
- (e) Projects Risks and Mitigation Strategy (0% - 80%)

In order to reflect the requirements of the particular Call-Off Contract to be awarded, each Request for Mini-Tender will set out the precise award criteria, scope and weightings applicable to the award of the Call-Off Contract in question.

6.7.8 Following evaluation of all valid Mini-Tenders received against the award criteria set out in the Request for Mini-Tender, if the Employer is satisfied, and decides that it wishes to enter into a Call-Off Contract with the successful Framework Member, it will enter into the Call-Off Contract with the successful Framework Member.

6.7.9 The Employer shall not be responsible for any costs incurred by the Framework Member or any Sub-Consultant in the preparation of a Mini-Tender or any related site visits.

6.7.10 In circumstances where a mini tender competition is run between the members of the Framework, and a competition is not successfully concluded, for example, where no tenders are received, or the tenders received are not capable of acceptance for any reason, the Employer reserves the right to consult any member of the Framework regarding proposals for performing the required services and to directly award the required services to such member where this is the most expedient way to proceed, taking into account any relevant considerations.

6.7.11 The Employer reserves the right to amalgamate sites to form a single project for mini-tender competition where efficiencies can be gained and this is deemed advantageous to the LDA, for example, due to scope, programme, location etc

6.8 Procedure for the award of a Call-Off Contract to a Runner-Up Framework Member

6.8.1 The Employer reserves the right to engage in the procedure set out in Sub-Clause 6(8)(3) in order to award a Call-Off Contract to another Framework Member where, following a competitive procedure pursuant to Sub-Clauses 6(6) or 6(7),

- (a) it is not possible to conclude a Call-Off Contract with the designated successful Framework Member emerging from that competitive procedure; or
- (b) the Call-Off Contract has been terminated in accordance with the Call-Off Contract Terms and Conditions.

6.8.2 Not Used

6.8.3 Runner-Up Procedure

- (a) the Employer shall consult with the next highest scoring Framework Member arising from that competitive procedure;
- (b) the Employer shall not make any material modifications to the scope and terms of the Call-Off Contract to be awarded pursuant to Sub-Clause 6(8)(1); and
- (c) If the Employer is satisfied and decides that it wishes to enter into a Call-Off Contract with the Framework Member, it will enter into the Call-Off Contract with the Framework Member.

7. Notification of the award of a Call-Off Contract

7.1 When the Employer has made an award decision pursuant to Sub-Clauses 6(7) or 6(8)(1), the Employer will issue a notification by email to all Framework Members that have submitted a Mini-Tender. The notification will contain the following information:

7.1.1 in the case of the successful Framework Member, any decisions reached concerned the award of the Call-Off Contract; and

7.1.2 in the case of the unsuccessful Framework Members,

- (a) any decisions reached concerned the award of the Call-Off Contract,
- (b) the reasons for the rejection of the Mini-Tender,
- (c) the characteristics and relative advantages of the Mini-Tender selected, and
- (d) the name of the successful Framework Member.

7.2 Not Used

7.3 When the Employer has decided to cancel a competitive procedure pursuant to Sub-Clauses 6(7) or 6(8)(1), the Employer shall issue a notification by email to all Framework Members that have submitted a Mini-Tender informing them of the cancellation of the competition and the reasons for same.

8. Fixed Terms for Call-Off Contracts

8.1 The terms contained in this Clause 8 shall apply to the award of any Call-Off Contract. Failure by the Framework Member to meet its obligations under this Clause 8 shall be considered a material breach of this Framework Agreement for the purposes of Sub-Clause 10(2)(1).

8.2 Personnel

8.2.1 The Personnel assigned by the Framework Member to deliver any Call-Off Contract shall be those identified in its Tender and evidenced in Schedule 3 or Mini-Tender, or other Personnel of equivalent qualifications, skills and expertise approved by the Employer in accordance with Sub-Clause 8(2)(2).

8.2.2 The Framework Member shall only be permitted to replace or supplement a Personnel member identified in Schedule 3 if:

- (a) so, requested by the Employer pursuant to Sub-Clause 9(11); or
- (b) necessary to do so due to that person's death, illness or incapacity; or
- (c) due to the departure of the member of the Personnel from the employment of the Framework Member.

In such cases the Framework Member shall submit to the Employer details of the proposed replacement or additional Personnel and, subject to the Employer's consent (which shall not be unreasonably withheld or delayed), shall so replace or supplement the Personnel identified in Schedule 3 as appropriate. The Employer be entitled to reject a proposed Personnel member on the ground, inter alia, that he does not have equivalent qualifications, or skills, or expertise as the Personnel being replaced.

8.2.3 The Framework Member shall ensure that the rates of pay and conditions of employment of the Personnel comply with all Applicable Law.

8.3 Maximum Rates

8.3.1 The maximum rates chargeable by the Framework Member under a Call-Off Contract shall be those identified in its Tender and evidenced in Schedule 2.

8.3.2 The maximum rates described in Sub-Clause 8(3)(1) will be fixed for the duration of the Framework Period.

8.3.3 Not Used

8.3.4 Not Used

8.3.5 The Employer 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 Services, which are the same as or similar to the Services, generally in the open market at a lower rate than the maximum rates described in Sub-Clause 8(3)(1), the Employer may request adjustment of Schedule 2 to reflect this.

8.4 Key Performance Indicators

The Key Performance Indicators (KPI's) applicable to reviewing and measuring performance of Services by the Framework Member shall be as evidenced in Schedule 8 including any future amendment or redraft thereof.

8.5 Sub-Consultant

8.5.1 The Sub-Consultant assigned by the Framework Member to deliver any Call-Off Contract shall be that identified in its Tender and evidenced in Schedule 10 or Mini-Tender, or other Sub-Consultant approved by the Employer in accordance with Sub-Clause 8(5)(2).

8.5.2 The Framework Member will not replace a Sub-Consultant without the prior written consent of the Employer. The Employer shall be entitled to instruct the Framework Member to replace any Sub-Consultant if the Employer/that Framework Purchaser believes (acting reasonably) that the Sub-Consultant is incompetent or fails to perform its obligations in respect of any Call-Off Contract to the satisfaction of the Employer/that Framework Purchaser. Any such

replacement shall be of comparable qualifications and expertise as the incumbent Sub-Consultant and shall have the legal capacity and credit status to enter into and meet the obligations of any Call-Off Contract as they fall due.

- 8.5.3 The Framework Member shall ensure that the Tender, or the Mini-Tender, clearly sets out in detail the Services to be provided by the Sub-Consultant.
- 8.5.4 During the performance of a Call-Off Contract, the Framework Member shall be responsible to the Employer for the management and supervision of the Sub-Consultant/Contractor and for the acts and omissions of the Sub-Consultant/Contractor as if they were its own.
- 8.5.5 The Framework Member acknowledges and agrees that the Employer may require the Framework Member, as a condition of, or pre-condition to the award of, a Call-Off Contract to promptly execute under seal and deliver a Sub-Consultant Collateral Warranty from any or all of its Sub-Consultants of any tier proposed to deliver Services under a Call-Off Contract.

9. Obligations of Framework Member

9.1 Insurances

- 9.1.1 As and from the Commencement Date, the Framework Member is required to procure and maintain the forms and levels of insurance set out in Schedule 4. This may be subject to revision during the Framework Period, in which case the Employer shall notify the Framework Member of the revised requirements and allow thirty (30) days for the provision of evidence that the required policies are in place.
- 9.1.2 Where the forms and/or levels of insurance required in respect of individual Call-Off Contracts are different to those set out in Schedule 4, the Employer shall notify the Framework Member of the required changes in the relevant Request for Mini-Tender or as soon as reasonably practicable.
- 9.1.3 The insurance required under Sub-Clause 9(1)(1) and/or 9(1)(2) shall be provided by reputable and well-established insurers approved by the Employer (whose approval shall not be unreasonably withheld or delayed).
- 9.1.4 At any time during the Framework Period, the Framework Member shall produce to the Employer, on request, copies of all insurance policies referred to in this Sub-Clause 9(1) or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.
- 9.1.5 Where the insurance policies held by the Framework Member in accordance with Schedule 4 are due to lapse prior to the end of the Framework Period, it shall be the responsibility of the Framework Member to ensure that the said insurance policies are renewed and that the insurance details are notified to the Employer.
- 9.1.6 If, for whatever reason, the Framework Member fails to give effect to and maintain in effect the insurances required by this Framework Agreement then the Employer may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Framework Member.

9.2 Tax Clearance Certificate

The Framework Member shall, and shall procure that any Sub-Consultant of any tier shall, for the term of any Call-Off Contract, comply with all EU and domestic taxation law and requirements, including the maintenance of a valid Tax Clearance Certificate (or equivalent).

9.3 Changes to Declaration

The Framework Member shall retain a copy of its signed Declaration under Article 57 of Directive 2014/24/EU as set out in Schedule 5. 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 its Declaration, it shall notify the Employer in writing of such circumstances at the earliest possible opportunity.

9.4 Confidentiality

- 9.4.1 The Framework Member must not disclose to anyone information that the Employer notifies the Framework Member is confidential except as necessary to perform the Framework Member's obligations under this Framework Agreement or a Call-Off Contract or to comply with the law.
- 9.4.2 The Framework Member undertakes to comply with all reasonable directions of the Employer with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement as set out in Schedule 9.
- 9.4.3 The Framework Member acknowledges that the Employer is subject to the Freedom of Information Act 2014, as amended. In the event of the Employer receiving a request for information related to this Framework Agreement, the Employer shall consult with the Framework Member in respect of the request. The Framework Member shall identify any information that is not to be disclosed on grounds of commercial sensitivity and shall state the reasons for this sensitivity. The Employer will consult the Framework Member about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the Irish courts.
- 9.4.4 Within fourteen (14) days of the date of expiry of this Framework Agreement or of termination pursuant to Clauses 10 or 11, the Framework Member shall return to the Employer any data and confidential information belonging to the Employer in the Framework Member's possession, power or control, either in its then current format or in a format nominated by the Employer (in which event the Employer will reimburse the Framework Member reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by the Employer, save that it may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Framework Agreement, or such period as is necessary for such compliance.
- 9.4.5 The terms of this Sub-Clause 9(4) are perpetual, and this Sub-Clause 9(4) survives the expiry of this Framework Agreement or a termination pursuant to Clauses 10 or 11.

9.5 Applicable Law

The Framework Member shall provide the Services in accordance with applicable Laws including but not limited to all obligations in the fields of environmental, health and safety, waste management, data protection, freedom of information, social and labour law that apply at the place where the Services 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.

9.6 Conflict of Interest

- 9.6.1 The Framework Member confirms that it has carried out a conflicts of interest check and is satisfied that it has no Conflict of Interest in relation to the Services and its obligations undertaken under this Framework Agreement.
- 9.6.2 The Framework Member hereby undertakes to advise the Employer forthwith should any actual or potential Conflict of Interest arise during the Framework Period and to comply with the Employer's directions in respect thereof.

9.7 Registrable Interests

Any registrable interest involving the Framework Member (and any Sub-Consultant or agent as the case may be) and the Employer, 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 Employer immediately upon such information becoming known to the Framework Member (or any Sub-Consultant or agent as the case may be) and to comply with the Employer's directions in respect thereof, to the satisfaction of the Employer. The terms "registrable interest" and "relative" shall be interpreted as per the Standards in Public Office Act, 2001, as amended.

9.8 Corrupt Gifts and Inducements

9.8.1 The Framework Member shall not give, provide or offer to any staff or agent of the Employer 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 Framework Agreement or any Call-Off Contract.

9.8.2 Any breach of this Sub-Clause 9(8) or the commission of any offence by a Framework Member, subcontractor, agent or employee under the Prevention of Corruption Act 2018, as amended, shall entitle the Employer to terminate this Framework Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Framework Member of the amount or value of any such gift, consideration or commission.

9.9 Audit

The Framework Member shall keep and maintain until a minimum of six (6) years after the expiry of the Framework Period, full and proper records and all documents relating to the performance of its obligations under this Framework Agreement and shall allow the Employer and any auditors access to such records.

9.10 Publicity

Unless otherwise directed by the Employer, the Framework Member shall not make any press announcements or publicise this Framework Agreement in any way without the Employer's prior written consent.

9.11 Performance Review

9.11.1 The Employer 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 Employer from time to time. If requested in writing by the Employer, the Framework Member shall meet formally with the Employer to report on progress and shall comply with all written directions of the Employer.

9.11.2 The Framework Member agrees to:

- (a) liaise with and keep the Employer fully informed of any matter which might affect the observance and performance of the Framework Member's obligations, including the time scale of completion of the key components of the Services;
- (b) comply with the reporting arrangements and protocols required by the Employer from time to time; and
- (c) comply with all reasonable directions of the Employer.

9.12 Failure by the Framework Member to meet its obligations under this Clause 9 shall be considered a material breach of this Framework Agreement for the purposes of Sub-Clause 10(2)(1).

10. Termination of Appointment of Framework Member

10.1 Subject to the provisions of Sub-Clause 10(2), the appointment of the Framework Member to this Framework Agreement may be terminated by the Employer without cause at any time during the Framework Period by serving thirty (30) days written notice to the Framework Member and without liability for compensation or damages.

- 10.2 The Employer shall have the right (in addition to any other rights which it has at law) to terminate the appointment of the Framework Member to this Framework Agreement forthwith and without liability for compensation or damages on the happening of any of the following events:
- 10.2.1 if the Framework Member commits any material breach of any provision of this Framework Agreement or of a Call-Off Contract and if such breach is capable of being remedied, fails to remedy such breach to the reasonable satisfaction of the Employer within fourteen (14) days of the notice given by the Employer requiring the Framework Member to do so; or
 - 10.2.2 if the Framework Member becomes insolvent, becomes bankrupt, 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; or
 - 10.2.3 if any event analogous to those contemplated in Sub-Clause 10(2)(2) occurs to the Framework Member within the laws of any other jurisdiction; or
 - 10.2.4 in circumstances where the Employer becomes aware of that any of the excluding circumstances listed in Article 57 of Directive 2014/24/EU apply to the Framework Member; or
 - 10.2.5 if any representation made by the Framework Member in connection with this Framework Agreement or a Call-Off Contract shall in the opinion of the Employer, acting reasonably, prove to be untrue or incorrect in a material respect as of the date when made; or
 - 10.2.6 if the Framework Member (or any subcontractor, agent or employee) commits any breach of Sub-Clause 9(8) or any offence under Prevention of Corruption Acts, 2018, as amended. In this instance, the Employer shall be also entitled to recover the amount of any loss resulting from such termination, including but not limited to recovery from the Framework Member of the amount or value of any such gift, consideration or commission.
- 10.3 The Framework Member shall not be entitled to any additional amounts or compensation in the event that this Framework Agreement is terminated in accordance with this Clause 10.

11. Termination of Framework Agreement

- 11.1 Subject to the provisions of Sub-Clause 11(2), this Framework Agreement, or the provision of any part thereof, may be terminated by the Employer at any time during the Framework Period by serving thirty (30) days written notice to the Framework Member and without liability for compensation or damages.
- 11.2 Not Used.
- 11.3 The Framework Member shall not be entitled to any additional amounts or compensation in the event that this Framework Agreement is terminated in accordance with this Clause 11.

12. Consequences of Termination and Expiry

- 12.1 Expiry of this Framework Agreement or termination pursuant to Clauses 10 or 11 shall not cause any Call-Off Contract to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms or unless the notice of termination pursuant to Clauses 10 or 11 states that it is also to constitute notice terminating all Call-Off Contracts between the Employer and the Framework Member.
- 12.2 The Framework Member shall have no claim against the Employer for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred as a result of termination pursuant to Clauses 10 or 11.

- 12.3 Expiry of this Framework Agreement or termination pursuant to Clauses 10 or 11 shall not affect any antecedent and accrued rights, obligation or liabilities of either Party, nor shall it affect any provision of this Framework Agreement that is expressly or by implication intended to come into or continue in force on or after such termination or expiry.

13. Transfer and Sub-Contracting

- 13.1 This Framework Agreement is personal to the Framework Member and the Framework Member shall not assign, novate or otherwise dispose of this Framework Agreement or any part thereof without the previous consent in writing of the Employer. Notwithstanding the provisions of Sub-Clause 8(5), the Framework Member shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement without the prior written consent of the Employer. Such consent shall not be unreasonably withheld.
- 13.2 The Employer shall be entitled to assign, novate or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the Employer provided that such assignment, novation or disposals shall not increase the burden of the Framework Member's obligations under this Framework Agreement.
- 13.3 Failure by the Framework Member to meet its obligations under Sub-Clause 13(1) shall be considered a material breach of this Framework Agreement for the purposes of Sub-Clause 10(2)(1).

14. General

14.1 Amendments

This Framework Agreement may only be amended by a document in writing signed by authorised representatives of each Party.

14.2 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.

14.3 Severability

If any term or provision herein is found to be invalid, unlawful or unenforceable, then such term or provision shall be deemed severed from the Framework Agreement and all other terms and provisions shall remain in full force and effect.

14.4 Force Majeure

14.4.1 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.

14.4.2 If, however, force majeure causes a delay or failure in performance for a period longer than seven (7) days, the Employer shall have the right to terminate this Framework Agreement by seven (7) days' notice in writing.

14.4.3 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, expropriation 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 Member's workforce.

14.5 Public Procurement

Nothing in this Framework Agreement shall prevent the Employer 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 Employer so as to enable it to comply with the said obligations.

15. Notices

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

15.1.1 For The Land Development Agency

Contact Name:	Phelim O' Neill
Address:	The Land Development Agency, Second Floor, Ashford House, 18 – 23 Tara Street, Dublin 2, D02 VW67
Fax:	
E-mail:	poneill@lda.ie
Phone:	+353 (0)1 6856566

15.1.2 For the Framework Member:

Contact Name:	[insert detail]
Address:	[insert detail]
Fax:	[insert detail]
E-mail:	[insert detail]
Phone:	[insert detail]

- 15.2 Any notice or other communication whether required or permitted to be given by one Party 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:

15.2.1 if delivered, at the time of delivery to the addressee or its duly authorised agent;

15.2.2 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 Framework Agreement (or such other address as is from time to time notified to the other Party);

15.2.3 if transmitted by fax or electronic means on receipt of 'read receipt' or equivalent.

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

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

- 15.5 Any Party may, by notice to the other in compliance with this Clause 15 change the contact details set out at Sub-Clause 15(1).

16. Resolution of Disputes

- 16.1 Any dispute or difference of any kind whatsoever which arises or occurs between the parties or their respective assigns in relation to anything or matter arising under, out of, or in connection with this Framework Agreement shall, in the first instance, shall, be subject to settlement by negotiation in good faith between the senior management of both parties.
- 16.2 If after thirty (30) days such negotiations prove unsuccessful either party shall be entitled to refer such dispute or difference to arbitration before a single arbitrator appointed by the parties or in default of agreement as to the choice of arbitrator appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Irish Branch. The place of arbitration shall be in Ireland.
- 16.3 Any dispute referred to arbitration shall be deemed to be a submission to arbitration in accordance with the Arbitration Act 2010 or any Act amending same. The award of the arbitrator shall be fixed and binding upon the parties provided only that any arbitration under this clause shall not, save in respect of the alleged failure to pay or wrongful withholding of such monies by the Employer, proceed during the continuance of the provisions of such Services and in any event shall not prevent or delay in any way the performance of the obligation of the Framework Member to complete the Services in accordance with this Framework Agreement or any Call Off Contract.

17. Jurisdiction

The Employer and the Framework Member accept the exclusive jurisdiction of the Irish courts, subject to the provisions of Clause 16, and agree that this Framework Agreement is to be governed by and construed according to the laws of Ireland.

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

SIGNED for and on behalf of
The Land Development Agency
By duly authorised signatories:

Signature of Authorised Person

Print Name: _____

Signature of Authorised Person

Print Name: _____

In the presence of the following witness:

Signature of Witness

Print Name: _____

Address: _____

Occupation: _____

SIGNED for and on behalf of **[INSERT FULL LEGAL NAME OF THE FRAMEWORK MEMBER]**

Or

GIVEN under the **COMMON SEAL** of **[INSERT FULL LEGAL NAME OF THE FRAMEWORK MEMBER]**

Director

Person duly authorised

in the presence of:

Witness to Signature

Witness' address

Witness' occupation

Schedule 1 Framework Scope of Services

Framework scope of services to be as set out in the Invitation to Tender/Request for Tender

DRAFT

Schedule 2 Rates

DRAFT

Schedule 3 Personnel

DRAFT

Schedule 4 Insurances

DRAFT

Schedule 5 Article 57 of Dir 2014/18/EU (Declaration)

DRAFT

Schedule 6 Call-Off Order**CALL-OFF ORDER**

By email only to [Framework Member's email address]

Employer	The Land Development Agency
Order under Framework Agreement entitled:	Multi Framework Members Framework Agreement for Site Investigation Services of [date]
Date of Order	[date]
Deadline for Response by Framework Members	[date & time] by email to [xxx]

Dear Framework Member,

Pursuant to Sub-Clause 6(1) of the Framework Agreement, the Employer proposes to award a Call-Off Contract to you in respect of the following Services:

(i) Scope of Services Required

The Employer requires [xxx]

(ii) Fixed Terms for Call-Off Contracts

In accordance with Clause 8 of the Framework Agreement, the following terms will apply to the Call-Off Contract:

[xxx]

(iii) Call-Off Contract Terms and Conditions

In accordance with Sub-Clause 6(3) of the Framework Agreement, if the Framework Member accepts this Call-Off Order, the Employer and the Framework Member shall enter into a Call-Off Contract in accordance with the terms and conditions set out in Schedule 11 of the Framework Agreement, **with the following amendments:**

[xxx]

The Framework Member is hereby invited to inform the Employer by email to [address] no later than [date & time] of whether it accepts the Call-Off Order.

If you have any queries on the above, please do not hesitate to contact me.

Yours sincerely,

[contact]

On behalf of the **Employer**

Schedule 7 Request for Mini-Tender**REQUEST FOR MINI-TENDER**

By email only to [Framework Member's email address]

Employer	The Land Development Agency
Request under Framework Agreement entitled:	Multi Framework Members Framework Agreement for Site Investigation Services of [date]
Date of Request	[date]
Deadline for Receipt of Mini-Tender	[date & time] by post to [xxx]

Dear Framework Member,

Pursuant to Sub-Clause 6(7) of the Framework Agreement, you are hereby invited to submit a Mini-Tender in respect of the following Services:

(i) Scope of Services Required

The Employer requires [xxx]

(ii) Award Criteria

The most economically advantageous Mini-Tender in terms of the following criteria, rules and weightings:

Ref	Criterion	Weighting	Maximum Score Available	Minimum Score Required
A	[xxx]	[xxx]	[xxx]	[xxx]
B	[xxx]	[xxx]	[xxx]	[xxx]
C	[xxx]	[xxx]	[xxx]	[xxx]
D	[xxx]	[xxx]	[xxx]	[xxx]
	[Cost/Fee Proposal]	[xxx]	[xxx]	n/a

Framework Members should note that for each of the qualitative criteria above (A-D) at least the minimum score indicated must be achieved in order to avoid elimination from the competition.

Framework Members will be required to ensure that their Mini-Tenders provide detailed information on their offers for assessment against the award criteria stated above. To this end, the following information will be assessed under each of the award criteria:

Criterion A [xxx]

Criterion B [xxx]

NB. The Mini-Tender must comply with the requirements of this Request for Mini-Tender and the provisions of Clause 8 of the Framework Agreement (Fixed Terms for Call-Off Contracts).

(iii) Mini-Tender Validity Period

Framework Members are required to keep their Mini-Tender open for acceptance by the Employer for a period of [xxx] from the Deadline for Receipt of Mini-Tenders.

(iv) Call-Off Contract Terms and Conditions

In accordance with Sub-Clause 6(3) of the Framework Agreement, if the Employer accepts the Mini-Tender submitted in response to this Request, the Employer and the Framework Member shall enter into a contract in accordance with the Call-Off Contract Terms and Conditions set out in Schedule 11 of the Framework Agreement, **with the following amendments:**

[xxx]

(v) Standstill Period

The Employer estimates that the value of this Call-Off Contract **does/does not** exceed the EU Threshold, so a standstill period as defined in Sub-Clause 7(2) of the Framework Agreement **will/will not apply** to the award of this Call-Off Contract.

(vi) Procedure for queries

All queries regarding this Request for Mini-Tender should be emailed to [xxx] no later than [date and time].

If you have any queries on the above, please do not hesitate to contact me.

Yours sincerely,

[contact]

On behalf of the **Employer**

Schedule 8 Key Performance Indicators

DRAFT

Schedule 9 Confidentiality Agreement

THIS AGREEMENT is made on [date]

BETWEEN:

- (1) **THE LAND DEVELOPMENT AGENCY**, having its offices at Ashford House, 18-23 Tara Street, Dublin 2, D02 VX67 (for the purposes of this Agreement referred to as the "**Employer**" which expression includes its successors and permitted assigns and anybody to whom its functions are transferred under Applicable Law) of the one part; and
- (2) [INSERT], a company with its registered address at [INSERT] (for the purposes of this Agreement referred to as the "**Framework Member**" which expression includes its successors and permitted assigns) of the other part,

WHEREAS

(A) In this Agreement:

- (a) the "**Framework**" means the Framework Agreement dated [insert detail] made between the Employer and the Framework Member for **Site Investigation Services** (the "**Services**").
- (b) other capitalised terms shall have the meaning attributed to them in the Framework save where indicated otherwise.

(B) Pursuant to the Framework, the Employer may award a Call-Off Contract to the Framework Member for the provision of Services.

(C) For the purposes of the delivery of Services under a Call-Off Contract, certain confidential information will be disclosed or supplied either by the Employer or by the Framework Member to the other party.

NOW IT IS HEREBY AGREED in consideration of the sum of €2 (the receipt of which is hereby acknowledged by the Framework Member) as follows:

1. For the purpose of this agreement "**confidential information**" shall mean such technical and/or commercial information, including but not limited to any documents, drawings, sketches or designs, materials, samples or prototypes disclosed or supplied either by the Employer or by the Framework Member to the other party in any format, and which at the time of its disclosure or supply is identified as confidential or proprietary. Oral information which is confidential or proprietary shall be recorded in writing by the disclosing party within thirty (30) days after disclosure, and the resulting document shall specifically state the date of disclosure and designate the information as confidential or proprietary.
2. This Agreement shall be effective as of the Commencement Date of the Framework and shall thereafter continue until the expiry of a period of ten (10) years following the termination or expiry of the last Call-Off Contract awarded to the Framework Member under the Framework.
3. The Employer and the Framework Member each undertake to treat any and all confidential information as confidential, to use it solely for the purpose of the Services, not to disclose it to any third party, and not to make it publicly available or accessible in any way, except with the prior written consent of the disclosing party.
4. The obligations set out in Clause 3 shall not apply with respect to any confidential information which:
 - 3.1 the receiving party can prove has been known to the receiving party prior to the time of its receipt pursuant to this Agreement; or
 - 3.2 is in the public domain at the time of disclosure or thereafter enters the public domain without breach of the terms of this Agreement on the part of the receiving party; or
 - 3.3 the receiving party can prove becomes known to the receiving party through disclosure by sources other than the disclosing party, having a right to disclose such information; or

- 3.4 the receiving party can prove has been developed independently by an employee of the receiving party who has not had access to any of the confidential information of the disclosing party.
5. Unless it is necessary for the purpose stated in this Agreement and provided that any disclosed confidential information or any copy thereof is made accessible only to such representatives who have a need to know, the receiving party shall not, without the prior written consent of the disclosing party, copy or reproduce any item or document supplied to the receiving party - being or containing in whole or in part confidential information. The receiving party shall return such item or document and any copies thereof at the supplying party's request, and at the latest on termination of this Agreement. This shall not apply to copies of electronically exchanged confidential information made as a matter-of-routine information technology back-up, and to confidential information or copies thereof which must be stored by the receiving party according to mandatory law, provided that such confidentiality information or copies thereof shall be subject to an indefinite confidentiality obligation.
 6. All confidential information shall remain the exclusive property of the disclosing party as well as all patent, copyright, trade secret, trademark and other intellectual property rights therein. No license or conveyance of any such rights to the receiving party is granted or implied under this Agreement. No commercial obligation on the part of either party is intended or undertaken. The parties agree that any confidential information is made available "as is" and that no warranties of any kind are granted or implied with respect to the quality of confidential information, including but not limited to, its fitness for any purpose, non-infringement of third party rights, accuracy, completeness or correctness.
 7. The party receiving confidential information including materials, samples, prototypes or similar items, in any format, shall not analyse it, chemically, by reverse engineering, or otherwise, in order to determine the identity and/or properties of its components. To the extent that such items have not been destroyed or used during evaluation tests and unless there is no other agreement between the Employer and the Framework Member, they shall be returned to the supplying party upon request, and at the latest on termination or expiry of the Framework or any Call-Off Contract awarded to the Framework Member thereunder, whichever is later.
 8. The Framework Member acknowledges that the Employer is subject to the Freedom of Information Act 2014, as amended. In the event of the Employer receiving a request for information related to the Framework or a Call-Off Contract, the Employer shall consult with the Framework Member in respect of the request. The Framework Member shall identify any information that is not to be disclosed on grounds of commercial sensitivity and shall state the reasons for this sensitivity. The Employer will consult the Framework Member about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the courts.
 9. Ancillary agreements, amendments or additions hereto must be made in writing.
 10. This Agreement shall be construed and interpreted by the laws of Ireland and the Irish courts shall have exclusive jurisdiction.
 11. If any provisions of this agreement are invalid or unenforceable, the validity of the remaining provisions shall not be affected. The parties shall replace the invalid or unenforceable provision by a valid and enforceable provision that will meet the purpose of the invalid or unenforceable provision as closely as possible.

.....
Signed on behalf of the Employer

.....
Date

.....
Signed on behalf of the Framework Member

.....
Date

Schedule 10 Sub-Consultants

Sub-Consultant Name	Address and Contact Details	Service to be delivered

Schedule 11 Call-Off Contract Terms and Conditions

[Insert LDA Site Investigation Services Appointment]

DRAFT

Schedule 12 Sub-Consultant Collateral Warranty

DRAFT

Schedule 13 Invitation to Tender

DRAFT

Schedule 14 Tender Submission

[Attach Framework Member's Tender Submission]

DRAFT

Schedule 15 Data Processor Agreement

[Attach LDA DPA]

DRAFT