

APPENDIX 3A – FRAMEWORK AGREEMENT TERMS AND CONDITIONS

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

IMPORTANT NOTE:

The following terms are provided as an indication of the intended format for the framework agreement to be signed with the successful Framework Member admitted to the framework in accordance with the terms of the Competition. Tenderers are **not** requested to sign these terms as part of their tender submission but should review them carefully.¹

Framework Agreement with a Framework Member in a Multi Party Framework for **The Supply, Delivery, Installation and Commissioning of a Creative Media Video Centre to the Cork College of FET**

PARTIES

CORK EDUCATION AND TRAINING BOARD of 21 LAVITTS QUAY, CORK (Hereinafter referred to as the 'Client')

AND

[insert legal name of Framework Member] of ___ [insert address of Framework member]
(Hereinafter referred to as the "Framework Member" or "Member")

BACKGROUND

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

¹ Delete note prior to signing.

1. Definitions

“Call Off Contract” means a contract for Services/Goods awarded to a Framework Member on foot of this Framework Agreement using either the Cascade or Mini-Tender process in the form contained at Schedule 4 hereto.

“Call Off Request” means the request issued by email and/or by phone to a Framework Member inviting that Framework Member to provide Services/Goods.

“Cascade” means the procedure identified in Clause 5.5.

“Commencement Date” means after [xxxxx].

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

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

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

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

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

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

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

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

“Mini Tender” means the procedure identified in Clause 5.6.

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

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

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

“Request for Mini Tender” means an invitation from the Client as part of a Mini Tender between all the Framework Members for the award of a Contract falling within the scope of the Framework Agreement.

“Services”/“Goods” means [●] as identified in the Call for Tender and/or Request for Mini Tender and bring the services/goods the subject of a Call-Off Contract;

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

“The Education and Training Boards” means the statutory authorities which have responsibility for education and training, youth work and a range of other functions. ETBs manage and operate second-level schools, further education colleges, multi-faith community national schools and a range of adult, further education and training centres delivering education apprenticeship and training programmes. There are 16 Education and Training Boards spread throughout the country. The Chief Executive (CE) of each ETB carries out the executive functions of the ETB, including those in relation to procurement.

- 1.1 To the extent that any specific term or condition in a Call-Off Contract is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant term or condition that is most favourable to the Client (and/or any other Framework Client) shall prevail.
- 1.2 Headings are included for ease of reference only and shall not affect the construction of this Framework Agreement.
- 1.3 Unless the contract requires otherwise, words in the singular may include the plural and vice versa.
- 1.4 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

2. Appointment of Framework Member

- 2.1 The Framework Member accepts its appointment as one of several framework operators to provide Services/Goods, if instructed to do so from time to time by the Client (and/or any other Framework Client), under the terms and conditions of this Framework Agreement.

- 2.2 The operators appointed to the Framework Agreement are as follows

[insert the names of all the framework members including this framework member ...]

(the 'Framework Members').

- 2.3** This Framework Agreement sets out, amongst others, the award procedure for Services/Goods which may be required by the Client (and/or any other Framework Client), the main terms and conditions for any Call-Off Contract, and the obligations of the Framework Member during and after the Framework Period.
- 2.4** Membership of this Framework does not entitle the Member to be consulted in respect of, or awarded any contract during, the Framework Period. The Client may at its sole discretion choose not to enter into any contracts falling within the scope of this Framework Agreement, or to terminate the Agreement in accordance with Section 10.
- 2.5** While this Framework Agreement will in general form the basis for the award of contracts during the Framework Period, the Client reserves the right to operate outside the terms of the Framework Agreement, for example if it considers that it is not achieving value-for-money or the nature of the contract would benefit from a separate competitive process.
- 2.6** [DELETE IF NOT APPLICABLE ie if this is for your ETB only]

The Client is acting as a central purchasing body procuring the required services on behalf of the following Education and Training Boards (the "ETB's"). Whilst the successful tenderer will enter into this framework with the Client, each relevant call-off contract awarded under the framework may be with any of the ETB's (i.e. Framework Client).

[Include list of ETB's that may use the Framework to enter call-off contracts here]²

3. Period of Framework Agreement

- 3.1.** The Framework Agreement shall take effect on the Commencement Date.
- 3.2.** The period of the Framework Agreement will be for a maximum period of two (2) years, with the option of extending for a maximum of two (2) additional one (1) year periods, up to a total of four (4) years.
- 3.3.** For the avoidance of doubt, it should be noted that contracts awarded during the term of the Framework Agreement may extend beyond the life of the Framework Agreement.

4. Scope of Framework Agreement

- 4.1** This Framework Agreement relates to the provision of **The Supply, Delivery, Installation and Commissioning of Science Equipment in 6 Lots** to the **Cork Education and Training Board**
- 4.2** The maximum value of the framework over the life of the framework is €4,000,000 (ex. VAT)

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

- 4.3 The scope of Services/Goods which may be awarded under this framework includes additional Call-Off Contracts within the scope of the Framework Agreement. Such contracts may comprise some or all elements of the Services/Goods as described in the detailed specification, being additional requirements which may arise.

5. Procedure for the award of Call-Off Contracts

- 5.1 As and when the Client (and/or any other Framework Client) decides to source Goods/Services through this Framework Agreement, then it may award a Call-Off Contract to the Framework Member based on the Tender in accordance with the procedure set out in Sub-Clause 5.5 or, alternatively, on a Mini-Tender received in accordance with the procedure set out in Sub-Clause 5.6.
- 5.2 When awarding a Call-Off Contract, the Client and the Framework Member shall not make any substantial amendments to the terms laid down in this Framework Agreement.
- 5.3 On each occasion that a Call-Off Contract is awarded to the Framework Member pursuant to this Clause 5, the Client and the Framework Member shall enter into a contract in accordance with the Call-Off Contract Terms and Conditions contained in Schedule 4 hereto.
- 5.4 The Framework Member acknowledges that the Client (and/or any other Framework Client), shall not be obliged to award any Call-Off Contract pursuant to this Clause 5 and that the Client may terminate the award procedure and/or initiate a new contract award procedure at any time at its sole discretion.
- 5.5 Procedure for the award of a Call-Off Contract based on the Tender (the ‘**Cascade Method**’)
- 5.5.1 Where all the terms necessary for the performance of a Call-Off Contract are included in this Framework Agreement, the Client may issue a Call-Off Request to a Framework Member at any time during the Framework Period. Recourse to this procedure is without prejudice to the provisions of Sub-Clause 5.6.1.2. The form of the Call-Off Request is set out at Schedule 5 hereto. Upon execution of a Call-Off Request by both the Framework Member and the Client (and/or any other Framework Client), the Framework Member shall [provided the Services/ supply the Goods] in accordance with the terms and conditions of the Call-Off Request and the Contract Terms and Conditions contained in Schedule 4 hereto, including any Special Terms and Conditions that will be specified in the Call-Off Request.
- 5.5.2 Subject to Sub-Clauses 5.5.8 and 5.5.9, the ranking of the Framework Members as determined by the objective criteria used to establish this Framework Agreement and contained in the Invitation to Tender is as follows:
- (a) [] (the ‘**First-Ranked Framework Member**’)
- (b) [] (the ‘**Second-Ranked Framework Member**’)
- (c) [] (the ‘**Third-Ranked Framework Member**’)

(d) [] (the '**Fourth-Ranked Framework Member**')

The Client will communicate any changes to this ranking by email to all Framework Members.

The Client will complete a Call-Off Request indicating the scope and term of the Call-Off Contract to be awarded subject to the terms set out in Clause 6.

5.5.3 The Client will consult with the First-Ranked Framework Member to establish whether any capacity/performance issues or a conflict of interest dictate that the First-Ranked Framework Member is unable to perform the proposed Call-Off Contract. In the event that the First-Ranked Framework Member is unable to perform the Call-Off Contract subject to this Sub-Clause 5.5.3, the Client will consult with the next ranked Framework Member. This process will be repeated until the Client has deemed that a Framework Member is not precluded from performing the Call-Off Contract.

5.5.4 Subject to Sub-Clause 5.5.3, the Client will issue the Call-Off Request by email to the First-Ranked Framework Member to the address given in or notified under Clause 15. The Call-Off Request will indicate the relevant deadline for the receipt of confirmation by the First-Ranked Framework Member of its acceptance of the Call-Off Request. The form of the Call-Off Request is set out at Schedule 5 hereto.

5.5.5 The First-Ranked Framework Member shall inform the Client by email within the stipulated deadline whether it accepts the Call-Off Request. Upon receipt of this acceptance, the Client will enter into the Call-Off Contract with the First-Ranked Framework Member.

5.5.6 In the event that the First-Ranked Framework Member does not accept the Call-Off Request, the Client will issue that Call-Off Request by email to the next ranked Framework Member seeking their acceptance. This process will be repeated until a Framework Member has accepted the Call-Off Request or the Client terminates the award procedure.

5.5.7 Ranking Relegation Procedure

The Client reserves the right to relegate the First-Ranked Framework Member and move them to last position in the ranking under one of the following circumstances:

5.5.7.1 Where the First-Ranked Framework Member does not perform a Call-Off Contract to the requirements set out in this Framework Agreement or the Call-Off Request on more than two (2) occasions and the Client is not satisfied with the reasons provided by the First-Ranked Framework Member to justify the poor/non-performance; or

5.5.7.2 Where the First-Ranked Framework Member has not accepted a Call-Off Request on more than two (2) consecutive occasions.

The above ranking relegation procedure shall apply equally to all Framework Members in circumstances where the Client consults with or issues a Call-Off Request to the next ranked Framework Member in accordance with Sub-Clause 5.5.3 and Sub-Clause 5.5.6 above.

5.5.8 Ranking Renewal Procedure - In the event that the Client exercises the option to extend the framework, in accordance with Sub-Clause 3.1, the Client will issue a Request for Mini-Tender in accordance with the procedure set out in Sub-Clause 5.6 in order to update the ranking of Framework Members set out in Sub-Clause 5.5.2.

5.6 Procedure for the award of a Call-Off Contract based on a Mini-Tender

5.6.1 The Client may issue a Request for Mini-Tender at any time during the Framework Period where:

5.6.1.1 not all the terms necessary for the performance of a Call-Off Contract are included in this Framework Agreement; or

5.6.1.2 all the terms necessary for the performance of a Call-Off Contract are included in this Framework Agreement but the Client deems that the Call-Off Contract warrants a re-opening of competition amongst the Framework Members due to the quantity, value or characteristics of the Goods.

5.6.2 The Client (and/or Framework Client) will issue 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 5.6.7 and such other terms and conditions as the Client (and/or Framework Client) may set out in its request for Mini-Tender.

5.6.3 The Client (and/or Framework Client) 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.

5.6.4 The Client will issue the Request for Mini-Tender by email to all Framework Members.

5.6.5 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 7.

5.6.6 Any clarifications requested by a Framework Member in relation to a Request for Mini-Tender shall be submitted in writing by email to the email address provided in Clause 12 of this Framework Agreement (unless otherwise specified by the Client)

and any responses containing further material information will be issued in writing to all other Framework Members.

5.6.7 Award Criteria

The criterion for the award of a Call-Off Contract pursuant to this Sub-Clause 5.6 will be the most economically advantageous Mini-Tender in terms of one or more of the following award criteria:

- (a) [Ultimate Cost]**
- (b) [Quality and Range of Equipment offered]**
- (c) [Supply-Chain, Delivery, Assembly & Installation Proposals]**
- (d) [Warranty]**
- (e) [After Sales Service and Customer Care]**
- (f) [Environmental Considerations]**

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.

5.6.8 Following evaluation of all valid Mini-Tenders received against the award criteria set out in the Request for Mini-Tender, if the Client 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.

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

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

6.1 When the Client has made an award decision pursuant to Sub-Clause 5.6.1 (Mini-Tender) the Client will issue a notification by email to all Framework Members that have submitted a Mini-Tender. The notification will contain the following information:

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

6.1.2 in the case of the unsuccessful Framework Members,

6.1.2.1 any decisions reached concerning the award of the Call-Off Contract,

6.1.2.2 summary information on the reason for the rejection,

6.1.2.3 the characteristics and relative advantages of the Mini-Tender selected, and

6.1.2.4 the name of the successful Framework Member.

- 6.2** Where the Client estimates that the value of the Call-Off Contract awarded exceeds the EU Threshold, the notification in Sub-Clause 6(1) will state that the Client will not conclude the Call-Off Contract until a period of at least fourteen (14) days have elapsed from the day after the day on which Client issues the notification.
- 6.3** When the Client has decided to cancel a competitive procedure pursuant to Sub-Clause 5(6), the Client 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.

7. Fixed Conditions for Contracts

7.1 Pricing

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

- 7.1.1** The maximum rates described detailed in Schedule 1 will be fixed for the initial year [1] of the Framework Period and subject to satisfactory performance will be adjusted for inflation thereafter on each annual anniversary of the Commencement Date in accordance with the CPI Index.
- 7.1.2** Notwithstanding the Client (and/or Framework Client) may elect to enter into consultations with the Framework Member to adjust the maximum rates as a result of increases or decreases that occur in relevant salaries or expenses, or material prices invoiced as part of a Call-Off Contract, or are made by Law.
- 7.1.4** The Client (and/or Framework Client) may seek, or the Framework Member may offer, lower rates at any time during the Framework Period. In particular, where the Framework Member is offering goods, which are the same as or similar to the Goods, generally in the open market at a lower rate than the maximum rates, the Client (and/or Framework Client) may request adjustment of Schedule 1 to reflect this.

7.2 Contract Manager

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

7.3 Personnel

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

7.4 [Service Level Agreement]

Call-Off Contracts under this framework agreement may be subject to the application of a Service Level Agreement which will outline the Key Performance Indicators applicable to the Call-Off Contract. The applicable Service Level Agreement is contained at Schedule D of the draft Call-Off Contract appended at Schedule 4 hereto]³

8. Obligations of Framework Member

8.1 Insurances

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

8.2 Tax Clearance Status

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

8.3 Changes to Declarations

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

8.4 Corrupt Gifts and Inducements

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

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

8.5 Audits

³ Amend depending on approach re SLA.

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

8.6 Changes

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

8.7 Assignment

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

8.8 Conflict of Interest

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

8.9 Performance Review

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

9. Termination of Appointment

- 9.1** The Client reserves the right to terminate this Framework Agreement by providing fourteen (14) days' notice in writing to the Framework Members. The Framework Member shall have no claim for damages or otherwise against the Client as a result of the Client terminating this Framework Agreement.
- 9.2** Without prejudice to any other rights or remedies to which it may be entitled, the Client shall be entitled to terminate the appointment of the Framework Member forthwith and without liability for compensation or damages by giving written notice to the Framework Member at any time if:

- 9.2.1 The Framework Member commits a material breach of any term or condition of this Framework Agreement, or a Call-Off Contract concluded under the Framework Agreement;
- 9.2.2 The Member fails to perform any obligation or responsibility under this Agreement or a Call-Off Contract concluded under the Framework Agreement, and, if such breach is capable of being remedied, fails to remedy the breach within fourteen (14) days of notice given by the Client requiring the Member to do so;
- 9.2.3 The Framework Member's performance of an obligation under a Call-Off Contract is not in accordance with the terms of this Framework Agreement or the relevant Call-Off Contract, or fails to meet any standard prescribed by law;
- 9.2.4 Any person employed by the Framework Member or acting on its behalf offers or appears to offer a corrupt gift or inducement in the sense set out in Clause 8.4 above, whether with or without the knowledge of the Framework Member;
- 9.2.5 The Framework Member convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;
- 9.2.6 The Framework Member ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
- 9.2.7 The Framework Member is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014 or any analogous provision of law;
- 9.2.8 An order is made, or an effective resolution is passed for the winding up of the Framework Member's company other than for the purpose of a restructuring the terms of which have been agreed by the Client;
- 9.2.9 A petition is presented, or an order is made, or a resolution passed, or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Framework Members company;
- 9.2.10 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Framework Member;
- 9.2.11 The Client reasonably believes that any of the events mentioned above is about to occur in relation to the Framework Member and notifies the Framework Member;
- 9.2.12 The Framework Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this agreement or the relevant Call-Off Contract;
- 9.2.13 Any representation made by the Framework Member in connection with this Framework Agreement or a Call-Off Contract shall in the opinion of the Client prove to be untrue or incorrect in a material respect as of the date when made;
- 9.2.14 Any event analogous to those contemplated in Clauses 9.2.5 through 9.2.12 occurs to the Member within the laws of any other jurisdiction.

10. Termination of Framework Agreement

- 10.1** In circumstances where the Framework Agreement is terminated as outlined in Clause 9.1 and 9.2, the Framework Member shall have no claim for damages or otherwise against the Client as a result of the Client terminating this Framework Agreement.

10.2 Termination of the Framework Agreement shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

10.3 For the avoidance of doubt, termination of this Framework Agreement shall not affect the validity of any Call-Off Contract entered into by the Client (and/or any other Framework Client) and any provider of the service pursuant to that Framework Agreement.

11. General

11.1 Freedom of Information

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

11.2 Applicable Law

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

11.3 Resolution of Disputes

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

11.4 Waiver

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

11.5 Severability

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

11.6 Public Procurement

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

12. Notices

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

The Client
Cork Education and Training Board
[21 Lavitt's Quay]
[Cork]
[T12 HYT9]

E-mail address
Tel: +353 XX XXXXXXXX

The Framework member
[Name of contact for notices]
[Address Line 1]
[Address Line 2]
[Address Line 3]

E-mail address
Tel: +353 XX XXXXXXXX

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

12.2.1 If delivered, at the time of delivery to the addressee or its duly authorised agent;

12.2.2 If sent by pre-paid post, four (4) days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other party hereto);

12.2.3 If transmitted electronically on receipt of 'read receipt' or equivalent.

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

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

13 Data Protection

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

13.2 Notwithstanding the general obligation in Sub-Clause 13.1, where a Framework Member is processing Personal Data as a Data Processor for the Client, the Framework Member shall:-

- a) ensure that it has in place appropriate technical and contractual measures and take all measures required pursuant to Article 32 of the General Data Protection Regulation to ensure the security of the Personal Data (and to guard against unauthorised or unlawful processing of the Personal Data and against accidental loss or destruction of, or damage to, the Personal Data), as required under the Data Protection Laws;
- b) provide the Client with such information as it may reasonably require to satisfy itself that the Framework Member is complying with its obligations under the Data Protection Laws;

- c) promptly notify Client of any breach of the security measures required to be put in place pursuant to Sub-Clause 13.2; and
- d) ensure it does not knowingly or negligently do or omit to do anything which places the Client in breach of the Client's obligations under the Data Protection Laws.

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

13.4 Each Framework Member will promptly inform the Client and in any event within twenty-four (24) hours, of any requests from Data Subjects regarding rectification or erasure of Personal Data included in a tender, or restriction of or objection to the processing of such Personal Data for the purposes set out herein. Each Framework Member shall, to the extent that such a request affects the processing of such Personal Data by the Client, provide reasonable assistance to the Client to enable compliance with the Data Protection Laws. Notwithstanding the foregoing, each Framework Member shall remain responsible itself for dealing with requests from Data Subjects in respect of Personal Data, to the extent that such requests are directed by the Data Subject to the Framework Member (or any of its agents, employees or sub-contractors).

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

SIGNED:

On behalf of CORK EDUCATION AND TRAINING BOARD

Name: _____
(Block letters)

Position: _____

Signature: _____

Date: _____

Witnessed by: _____
(signature)

Witness name: _____
(Block letters)

On behalf of the Framework Member

Name: _____
(Block letters)

Position: _____

Signature: _____

Date: _____

Witnessed by: _____
(signature)

Witness name: _____
(Block letters)

Schedules to this agreement:

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

SCHEDULE 1 – FORM OF TENDER

[insert completed Form of Tender from tenderers proposal]

SCHEDULE 2 – RESOURCES

[insert completed Resource Allocation Table from tenderers proposal]

SCHEDULE 3 – INSURANCES

[insert confirmation of insurances received from tenderers]

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

[insert ETB Terms and Conditions from tender document]

SCHEDULE 5 – SAMPLE CALL-OFF REQUEST

To:

Framework Member	[•]
[Contracting Authority/Framework Client] ⁴	[•]
Issue Date	[•]
Description of the [Services/Goods]	[•]
Applicable Rates for Services	Fixed as per tendered rates.
Location	
Date for Commencement:	[•]
Date for Completion of Services (as defined in the Call-Off Terms & Conditions)	[•]
Person responsible for co-ordinating Call-Off Request on behalf of Contracting Authority/Framework Client	[•]

1. In accordance with the provisions of the Call-Off Contract, the Framework Member is instructed to proceed with [provision of the Services/supply of the Goods] with regard to the requirements specified above. The [provision of the Services/supply of the Goods] is [to commence on the Date for Commencement (as noted above)] and the [provision of the Services/supply of the Goods] [are to be completed by the Date for Completion (as noted above)] in accordance with the terms of the Call-Off Terms and Conditions as appended at Schedule 4 to the Framework Agreement.
2. In undertaking the [provision of the Services/supply of the Goods] as required under this Call-Off Request, the Framework Member shall comply with all applicable requirements of the Call-Off Contract as appended at Schedule 4 to the Framework Agreement.
3. Upon signing and return by the Framework Member of this Call-Off Request to the Framework Client, the Framework Member agrees, with effect from the date set out below (or, if no date is stated, with effect from the date of receipt of the returned signed Call-Off Request) to [provide the Services/supply of the Goods] as specified in the Call-Off Request on the terms

⁴ Update where Framework Client is entering into the call-off contract.

and subject to the conditions of the Call-Off Contract and this Call-Off Request shall constitute a legally binding contract between the Framework Member and the Framework Member forming part of the Call-Off Contract with effect from such date.

4. Capitalised terms used in this Call-Off Request have the meaning ascribed to them in the Call-Off Terms and Conditions where applicable.

IN WITNESS of which the Parties have signed this Agreement the day and year first above written.

Signed by:

Duly authorised for and on behalf
of the [Client/Framework Client]:

Authorised Signatory

Duly authorised for and on
behalf of the Framework
Member

Date:

Authorised Signatory