

APPENDIX 4 – IDA IRELAND’S FRAMEWORK AGREEMENT TERMS AND CONDITIONS

Subject to Contract / Contract Denied

THIS FRAMEWORK AGREEMENT is made on the [date] day of [month] 202[year] BETWEEN:

- (1) **Industrial Development Agency (Ireland)**, having its Head Office at Three Park Place, Hatch St. Upper, Dublin 2 and Strategic Property Department at IDA Athlone Business & Technology Park, Dublin Road, Athlone (the "IDA" or "IDA IRELAND" 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 supplier name], a company established under [insert] law with company registration number [insert] and its registered address at, [insert], (hereinafter referred to as the "Framework Member" or "Member" which expression includes its successors and permitted assigns) of the other part,

(each a "Party" and together the "Parties").

RECITALS

(A) Notice and Award Procedure

IDA Ireland has conducted a tender competition advertised on the Irish Government procurement website www.etenders.gov.ie and/or in the supplement to the Official Journal of the European Union, OJEU Notice Number [e.g. 2024/S 188-424912] dated the [insert date] and entitled ["insert"], the Call for Tenders (the "CFT") by Open procedure. The CFT including any clarifications in relation to the CFT issued by IDA Ireland between the [insert date] and the [insert date] is hereby incorporated by reference into this Agreement. A copy of the CFT is set out in Schedule 2.

The Framework Member submitted a response to the CFT dated the [insert date] (the "Tender Submission"). References to the Tender Submission shall include any clarifications issued by the Framework Member in writing to IDA Ireland between the [insert date] and the [insert date] (the "Submission Clarifications"). The Tender Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement. A copy of the Tender Submission is set out in Schedule 3.

(B) Appointment

Following evaluation of Tender Submissions received in accordance with the CFT, the Framework Member to this Single Supplier Framework Agreement to provide the services, if required to do so from time to time by IDA Ireland, subject to and in accordance with the terms and conditions of this Agreement.

1. DEFINITIONS AND INTERPRETATION

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

“Call-off Contract” means the legally binding agreement pursuant to the scope and provisions of the Framework Agreement to be entered into by the IDA and the Framework Member under and pursuant to which the Framework Member will provide Services in accordance with Clause 7 of the Agreement and the terms and conditions set out in Schedule 1 of the Framework Agreement;

“Call-off Mechanism” means any of the procedures set out in Clause 7 of the Agreement by which the IDA may award Services under the Agreement;

“Commencement Date” means [Insert Date] or the date on which the Agreement comes into force, namely: the date on which the Agreement is signed by all of the Parties; or, if signed by the Parties on different days, the date on which it is signed by the last Party to sign;

“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 Member 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 Agreement; (ii) the Services, (iii) a Call-off Contract, (iv) the IDA, (v) any stakeholders or other parties having an interest in the Services and/or (vi) any economic operator or tenderer in any way connected with the Services or any of the Services;

“Data Protection Laws” means all national and EU laws relating to processing of personal data and privacy, including (but not limited to) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the Electronic Communications Data Protection Directive (2002/58/EC), and all applicable laws and regulations affecting the Framework Member relating to the processing of personal data and privacy and all applicable similar or related legislation in any competent jurisdiction to include any guidelines and codes of practice issued by the Data Protection Commission or other supervisory authority for data protection in Ireland;

“Deliverables” means all documents, products and materials developed by the Framework Member or its agents, contractors, and employees as part of or in relation to the Services in any form, including without limitation information technology hardware, software, computer programs, data, reports, and specifications (including drafts);

“Directive 2014/24/EU” means Directive 2014/24/EU of the European Parliament and of the Council of 26 February 2014 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts 2014 OJ L94/65;

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

“Agreement Period” means the period set out in Sub-Clause 5.1;

“Key Personnel” means those Personnel identified in the Framework Member’s Tender Submission who are proposed to deliver the Services under the Agreement and relevant Call-off Contract;

“Letter/Email of Instruction” means the letter or email issued to a Framework Member by IDA Ireland on award of a Call-off Contract to provide the required Services in accordance with Clause 7 of the Agreement;

“Party” means IDA Ireland 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 Agreement or a Call-off Contract;

“Request for Mini Tenders” means an invitation to submit a supplementary tender issued by IDA Ireland pursuant to Clause 7 of the Agreement;

“Call for Tenders” or **“CFT”** means the document issued by IDA Ireland on the [Insert date], together with any clarifications, additions or amendments issued by IDA Ireland, as set out in Schedule 2;

“Services” means any of the services, falling within the scope set out in Sub-Clause 6.1, including without limitation any deliverables and services to be provided by the Framework Member to the IDA (i) described in the Tender Submission, (ii) identified in this Agreement, or (iii) otherwise necessary to comply with this Agreement.

“Sub-Contractor” means a legal person identified as a sub-contractor in the Tender Submission or any authorised replacement in accordance with Sub-Clause 8.4.3;

“Tender Submission” means the tender document(s) dated the [Insert date] submitted by the Framework Member to IDA Ireland in response to IDA Ireland’s Call for Tenders together with any clarifications, additions or amendments accepted by IDA Ireland, as set out in Schedule 3.

1.2 In this Agreement, unless where otherwise specified:

- 1.2.1 headings are included for ease of reference only and shall not affect the construction of this Agreement;
- 1.2.2 references in this 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 Agreement so numbered;
- 1.2.3 unless the context requires otherwise, the masculine gender includes the feminine and neuter and the singular number includes the plural and vice versa;
- 1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other persons of whatever kind and however constituted and their successors and permitted assigns or transferees;
- 1.2.5 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;
- 1.2.6 references to a day mean a calendar day;
- 1.2.7 references to a month mean a calendar month; and
- 1.2.8 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.

2. CONFLICT

The provisions of the Call for Tender and the Tender Submission shall apply to the relationship of the parties under this Agreement. If there is an inconsistency between any of the provisions in the Call for Tender, the Tender Submission and this Agreement, the following order of priority shall prevail:

- 2.1.1 This Agreement;
- 2.1.2 The Call-off Contract;
- 2.1.3 The Call for Tender;
- 2.1.4 The Tender Submission.

3. APPOINTMENT OF FRAMEWORK MEMBER

3.1 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 Agreement.

4. NON-EXCLUSIVITY

4.1 The Framework Member acknowledges that, in entering this Agreement, no form of exclusivity or volume guarantee has been granted by IDA Ireland for Services from the Framework Member and that IDA Ireland is at all times entitled to enter into other contracts and agreements with other service providers for the provision of any or all services, which are the same as or similar to the Services. In the event of the latter IDA Ireland shall observe all applicable public procurement rules and shall not afford any advantage to the Framework Member.

5. PERIOD OF AGREEMENT

- 5.1** This Agreement shall take effect on the Commencement Date and expire **four (4) years** thereafter unless terminated earlier in accordance with these terms and conditions (the “**Agreement Term**”).
- 5.2** Framework Member performance will be continually monitored over the term of the Agreement.
- 5.3** For the avoidance of any doubt, the term of a Call-off Contract may last for longer than the Period.

6. SCOPE OF AGREEMENT

- 6.1** This Agreement relates to the provision of a Single Supplier Framework for Building Surveyor Services for IDA Buildings Reinstatement Values for Insurance Valuations, 2026-2030 as more particularly described in the Call for Tender.
- 6.2** There is no guarantee of any spend under the Agreement.

7. PROCEDURE FOR THE AWARD OF CALL-OFF CONTRACTS

7.1 Procedure for Direct Drawdowns

- 7.1.1** On each occasion that IDA Ireland wishes to award a Call-off Contract through Call-off Mechanism – Direct Drawdown as set out in Schedule 7, the IDA shall email its requirements to the Framework Member, indicating the scope of the Services required, along with any special terms and conditions pertaining to the Call-off Contract.

- 7.1.2 Charges payable for any Services using this drawdown mechanism shall be subject to Schedule 4 - The Charges.
- 7.1.3 The Framework Member acknowledges that IDA Ireland is under no obligation to activate any minimum level or value of services under this drawdown.
- 7.2 When awarding a Call-off Contract, IDA Ireland and the Framework Member shall not make any substantial amendments to the terms laid down in this Agreement.
- 7.3 On each occasion that a Call-off Contract is awarded to the Framework Member pursuant to this Clause 7, IDA Ireland and the Framework Member shall enter into a Call-off Contract in accordance with the Call-off Contract Terms and Conditions at Schedule 1.
- 7.4 The Call-off Contract Terms and Conditions set out at Schedule 1 will apply to all Call-off Contracts awarded pursuant to this Agreement. No other terms of engagement will be considered or accepted by IDA Ireland as part of the Agreement.
- 7.5 The Framework Member acknowledges that IDA Ireland shall not be obliged to award any Call-off Contract pursuant to this Clause 7 and that IDA Ireland may terminate an award procedure at any time at its sole discretion.

8. CALL-OFF CONTRACTS

8.1 The terms contained in this Clause 8 shall apply to the award of all Call-off Contracts. 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 11.2.1.

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 Submission, or other Personnel of equivalent qualifications, experience, skills and expertise approved by IDA Ireland 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 its Tender Submission if:
- (a) so requested by IDA Ireland in accordance with this Agreement 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.
- 8.2.3 In such cases the Framework Member shall submit to IDA Ireland details of the proposed replacement or additional Personnel and, subject to IDA Ireland's consent (which shall not be unreasonably withheld or delayed), shall so replace or supplement the Personnel identified in its Tender Submission as appropriate. IDA Ireland shall be entitled to reject a proposed Personnel member on the grounds, inter alia, that they do not have equivalent qualifications, or experience, or skills, or expertise as the Personnel being replaced.

8.2.4 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 Submission and set out in Schedule 4 to this Agreement.

8.3.2 IDA Ireland may seek, or the Framework Member may offer, lower rates at any time during the Contract 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, IDA Ireland may request adjustment of the maximum rates to reflect this.

8.4 Sub-Contractor

8.4.1 Any Sub-Contractor relied on by the Framework Member in its' Tender Submission in relation to technical and professional ability must perform the Services in relation to which the Framework Member has relied on its experience.

8.4.2 In addition, any Sub-Contractor assigned by the Framework Member to deliver any Call-off Contract shall be identified in its Tender Submission, or other Sub-Contractor approved by IDA Ireland in accordance with Sub-Clause 8.4.3.

8.4.3 The Framework Member will not replace a Sub-Contractor without the prior written consent of IDA Ireland. IDA Ireland shall be entitled to instruct the Framework Member to replace any Sub-Contractor if IDA Ireland believes (acting reasonably) that the Sub-Contractor is incompetent or fails to perform its obligations in respect of any Call-off Contract to the satisfaction of IDA Ireland. Any such replacement shall have equivalent or higher qualifications, experience and expertise as the incumbent Sub-Contractor 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.

8.4.4 The Framework Member shall ensure that the Tender Submission includes, distinguishes between, and clearly particularises the Services to be provided by the Sub-Contractor.

8.4.5 During the performance of a Call-off Contract, the Framework Member shall be responsible to IDA Ireland for the management and supervision of the Sub-Contractor and for the acts and omissions of the Sub- Contractor as if they were its own.

8.4.6 The Framework Member acknowledges and agrees that IDA Ireland 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-Contractor collateral warranty from any or all of its Sub-Contractors 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 the Call for Tender.

This may be subject to revision during the Contract Period, in which case IDA Ireland 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 section 4.2 of the Call for Tender, IDA Ireland shall notify the Framework Member of the required changes in the relevant Call-off Contract or at the earliest opportunity.
- 9.1.3 The insurance required under Sub-Clause 9.1.1 and/or 9.1.2 shall be written by reputable and well-established insurers approved by IDA Ireland (whose approval shall not be unreasonably withheld or delayed).
- 9.1.4 At any time during the Contract Period, the Framework Member shall produce to IDA Ireland, 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 the Call for Tender are due to lapse prior to the end of the Contract 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 IDA Ireland.
- 9.1.6 If, for whatever reason, the Framework Member fails to give effect to and maintain in effect the insurances required by this Agreement then IDA Ireland 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-Contractor of any tier shall, for the term of any Call-off Contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance and the maintenance of a valid Tax Clearance Certificate issued by the Revenue Commissioners of Ireland.

9.3 Changes to Declaration

The Framework Member and any Sub-Contractor shall retain a copy of its signed Declaration of Personal Circumstances of the Tenderer. If at any point during the Contract 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 or its Sub-Contractors' Declaration, it shall notify IDA Ireland in writing of such circumstances at the earliest possible opportunity.

9.4 Confidentiality

- 9.4.1 The provisions of the Second Schedule, paragraph 5, subparagraphs (1), (2) and (3) of the Industrial Development Act 1993, (as amended by the Industrial Development (Enterprise Ireland) Act 1998) which states that a person shall not disclose any information obtained by that person while performing duties (or as a result of having performed) duties as, inter alia, an adviser or consultant to IDA Ireland or an employee of such person while performing duties relating to such advice or consultation, shall apply to the Framework Member, except in respect of disclosures permitted by Clause 9.4.4.

- 9.4.2 Any such disclosure by the Framework Member in breach of Sub-Clause 9.4.1 may give rise to termination pursuant to Sub-Clause 11.2 of the Agreement.
- 9.4.3 In addition to the statutory obligations of confidentiality as set out in Sub-Clause 9.4.1, the Framework Member undertakes that it shall not at any time disclose to any person information that IDA Ireland notifies the Framework Member is confidential or any confidential information concerning the business, affairs, customers, clients, or supplier of the IDA, except as permitted by Clause 9.4.4.
- 9.4.4 The Framework Member may disclose IDA Ireland's confidential information:
- (a) to its employees, officers, representatives, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Agreement.

The Framework Member shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this Clause 9.4; and
 - (b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.
- 9.4.5 The Framework Member shall not use IDA Ireland's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Framework Agreement.
- 9.4.6 The Framework Member undertakes to comply with all reasonable directions of IDA Ireland with regard to the use and application of all and any confidential information.
- 9.4.7 The Framework Member acknowledges that IDA Ireland is subject to the Freedom of Information Acts 2014. In the event of IDA Ireland receiving a request for information related to this Agreement, IDA Ireland 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. IDA Ireland 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. IDA Ireland accepts no liability whatsoever in respect of any consequential damage suffered as a result of such obligations.
- 9.4.8 Within fourteen (14) days of the date of termination or expiry of this Agreement, the Framework Member shall return to the IDA any data and confidential information belonging to IDA Ireland in the Framework Member's possession, power or control, either in its then current format or in a format nominated by IDA Ireland (in which event IDA Ireland will reimburse the Framework Member's reasonable data conversion expenses), together with all training manuals and other related documentation, and any other information and all copies thereof owned by IDA Ireland, 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 Agreement, or such period as is necessary for such compliance.
- 9.4.9 The terms of this Sub-Clause 9.4 are perpetual, and this Sub-Clause 9.4 survives the expiry or termination of this Agreement.

9.5 Data Protection and Security

9.5.1 The Framework Member shall comply with its obligations under the Data Protection Laws and all regulations made thereunder, in the collection, storage and any processing of data pursuant to the provision of Services under this Agreement.

9.5.2 Where the Framework Member acts as processor on behalf of IDA Ireland in relation to personal data processed in connection with this Agreement (**Personal Data**), the Framework Member shall:

- (a) process the Personal Data only to the extent, and in such a manner as is necessary for the purposes specified in this Agreement and in accordance with the documented instructions of the IDA and only in accordance with the Data Protection Laws;
- (b) promptly respond to any request from IDA Ireland requiring the Framework Member to amend, transfer or delete the Personal Data;
- (c) implement technical and organisational security measures appropriate to the risks of processing the Personal Data, including pseudonymisation and encryption of Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident, and a process for regularly testing, assessing and evaluating the effectiveness of security measures;
- (d) not to engage another processor without IDA Ireland's prior specific or general written authorisation. In the case of general written authorisation, the Framework Member shall inform IDA Ireland of any intended changes concerning the addition or replacement of other processors, thereby giving IDA Ireland the opportunity to object to such changes.
- (e) subject to 9.4.2(d), to require any sub-processor that the Framework Member engages to process the Personal data on IDA Ireland's behalf, to adhere to the same obligations that the Framework Member undertakes in these terms and conditions, to ensure such processing meets the requirements of the Data Protection Law, and the Framework Member will remain fully liable for any breach by a sub-processor of its obligations in relation to the processing of the Personal Data.
- (f) not transfer the Personal Data outside the EEA without IDA Ireland's written consent and only on such terms as are required by Data Protection Laws, including where necessary "standard contractual clauses" as approved by the European Commission;
- (g) notify IDA Ireland (by email: dpo@ida.ie) without undue delay and at least within 48 hours after becoming aware of a personal data breach;
- (h) ensure that persons authorised to process the Personal Data are bound by confidentiality provisions;
- (i) assist IDA Ireland in ensuring compliance with the obligations regarding security of processing, notifications of breaches, data protection impact assessments and prior consultations taking into account the nature of the processing and the information available to the Framework Member;

- (j) at the choice of IDA Ireland, to delete or return any Personal Data to IDA Ireland on the expiration or termination of this Agreement and delete existing copies unless applicable law requires the storage of the data;
- (k) provide IDA Ireland with assistance in complying with any subject access request served under Data Protection Laws;
- (l) promptly inform IDA Ireland (by email: dpo@ida.ie) about the receipt of any subject access request; and
- (m) not disclose or release any Personal Data in response to a subject access request without first consulting with and obtaining the consent of IDA Ireland.

9.5.3 The Framework Member agrees to provide IDA Ireland with contact details of at least one employee as point of contact for all issues arising out of the Data Protection Laws.

9.5.4 The Framework Member shall indemnify IDA Ireland against all claims and proceedings and all liability, loss, costs, and expenses incurred by IDA Ireland as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of the Framework Member's or its processor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by that party, its employees, or agents.

9.5.5 In this clause **controller, processor, data subject, data, personal data, and processing** shall have the same meanings as set out in the Data Protection Laws, and **process** shall be construed accordingly.

9.6 Conflict of Interest

9.6.1 The Framework Member confirms that it has carried out a conflict of interest check and is satisfied that it has no Conflict of Interest in relation to the Services and its obligations undertaken under this Agreement.

9.6.2 The Framework Member hereby undertakes to advise IDA Ireland forthwith should any actual or potential Conflict of Interest arise during the Contract Period and to comply with IDA Ireland's directions in respect thereof.

9.7 Compliance

9.7.1 The Framework Member shall comply with all relevant legislation, regulatory requirements, and best industry practice in the provision of the Services. The term 'legislation' shall be deemed to mean any Act of the Oireachtas (Parliament), regulation, statutory instrument, European Community or other international obligation, direction of a regulatory or other competent authority, condition of any consent, authorisation, lease, or other permission granted by any regulatory or other competent authority and any decision of a court of competent jurisdiction, in each case having effect in Ireland.

9.7.2 The Framework Member will be solely responsible in law for the employment, remuneration, taxes, immigration, visa, and work permits or other authorisations appropriate to the work carried out for, or on behalf of IDA Ireland. IDA Ireland reserves the right to seek confirmation that the relevant legal requirements are being met.

9.8 Registrable Interests

Any registrable interest involving the Framework Member (and any Sub-Contractor or agent as the case may be) and IDA Ireland, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to IDA Ireland immediately upon such information becoming known to the Framework Member (or any Sub-Contractor or agent as the case may be) and to comply with the IDA's directions in respect thereof, to the satisfaction of IDA Ireland. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 as amended.

9.9 Corrupt Gifts and Inducements

- 9.9.1 The Framework Member shall not give, provide, or offer to any staff or agent of IDA Ireland 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 Agreement or any Call-off Contract.
- 9.9.2 Any breach of this Sub-Clause 9.9 or the commission of any offence by the Framework Member, any subcontractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the IDA to terminate this Agreement forthwith and 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.

9.10 Audit

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

9.11 Publicity

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

9.12 Transfer of Undertakings

The Framework Member shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "**TUPE Regulations**") and failure to so comply shall constitute a serious breach of this Agreement. The Framework Member shall indemnify, save harmless and keep the IDA indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said TUPE Regulations.

9.13 Third Country Access

- 9.13.1 In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Framework Member shall comply with the following obligations:
- i. Not to subcontract more than 50% of the total value of the Agreement to economic operators originating in a third country which is subject to an IPI measure;

- ii. For Call-off Contracts whose subject matter covers the supply of goods, to ensure for the duration of the contract that goods or services supplied or provided in the execution of the Call-off Contract and originating in the third country which is subject to the IPI measure represent no more than 50% of the total value of the Call-off, irrespective of whether such goods or services are supplied or provided directly by the Framework Member or by a subcontractor;
- iii. To provide IDA Ireland, upon request, adequate evidence corresponding to point (i) or (ii) above;
- iv. To pay a proportionate charge, in the event of non-observance of the obligations referred to at point (i) or (ii) above, of between 10% and 30% of the total value of the Call-off Contract.

9.13.2 Notwithstanding any other provision within this Agreement, IDA Ireland agrees that where the Framework Member is required to comply with a new direction/instruction and/or a new/revised policy issued by IDA Ireland ("**Specific Instruction**") the Framework Member's obligation will be to apply commercially reasonable endeavours to comply with that Specific Instruction, and that obligation will only apply if the Specific Instruction is issued in writing to the Framework Member's Contact.

9.14 Performance Review

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

9.14.2 The Framework Member agrees to:

- (a) liaise with and keep IDA Ireland 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 set out in the Request for Tender and otherwise as may be required by IDA Ireland from time to time; and
- (c) comply with all reasonable directions of IDA Ireland.

9.14.3 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 11.2.1.

10. INDEMNITY

10.1 The Framework Member shall be liable for and shall indemnify IDA Ireland for and in respect of all and any losses, claims, demands, damages, or expenses which IDA Ireland may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, willful default or fraud of the Framework Member, its employees, subcontractors, or agents or any of them or as a result of the Framework Member's breach of this Framework Agreement. The terms of this clause shall survive termination of this Framework Agreement for any reason.

11. TERMINATION OF FRAMEWORK AGREEMENT

11.1 Subject to the provisions of Sub-Clause 11.2, this Framework Agreement, or the provisions of any part thereof, may be terminated by IDA Ireland at any time during the Framework Period by serving sixty (60) days written notice to the Framework Member. Neither Party shall be entitled to any additional amounts or compensation in the event that this Framework Agreement is terminated in accordance with this Clause 11.

11.2 Without prejudice to any other rights or remedies to which it may be entitled, IDA Ireland shall be entitled to terminate the appointment of the Framework Member to this Framework Agreement forthwith and without liability for compensation or damages by giving notice at any time if:

- 11.2.1 The Framework Member commits any material breach of any provision of this Framework Agreement or of a Call-off Contract and term or condition of this Framework Agreement, or a Call-off Contract concluded under the Framework Agreement; or
- 11.2.2 The Framework 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 such breach to the reasonable satisfaction of IDA Ireland within fourteen (14) days of notice given by IDA Ireland requiring the Framework Member to do so; or
- 11.2.3 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;
- 11.2.4 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 Sub-Clause 9.9 above, whether with or without the knowledge of the Framework Member; or
- 11.2.5 In circumstances where IDA Ireland becomes aware that any of the excluding circumstances listed in the Framework Member's "**Declaration as to Personal Circumstances**", which confirms that none of the excluding circumstances listed or referred to in Article 57 of Directive 2014/24/EU apply to the Framework Member;
- 11.2.6 The Framework Member (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same); or

- 11.2.7 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; or
 - 11.2.8 The Framework Member ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law; or
 - 11.2.9 The Framework Member is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990) or any analogous provision of law; or
 - 11.2.10 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 restructuring the terms of which have been agreed by IDA Ireland; or
 - 11.2.12 An encumbrancer takes possession of, or a receiver is appointed to, any of the property or assets of the Framework Member; or
 - 11.2.13 IDA Ireland reasonably believes that any of the events mentioned above is about to occur in relation to the Framework Member and notifies the Framework Member; or
 - 11.2.14 The Framework Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Framework Agreement or any Call-off Contract;
 - 11.2.15 Any representation made by the Framework Member in connection with this Framework Agreement or a Call-off Contract which in the opinion of IDA Ireland prove to be untrue or incorrect in a material respect as of the date when made; or
 - 11.2.16 Where the Framework Agreement or a Call-off Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Article 72 of Directive 2014/24/EU; and/or
 - 11.2.17 Any event analogous to those contemplated in Sub-Clauses 11.2.5 through 11.2.14 occurs to the Framework Member within the laws of any other jurisdiction.
- 11.3 IDA Ireland may, at any time, terminate this Framework Agreement early on such notice as it considers appropriate in the event that a challenge to the award of this Framework Agreement or a Call-off Contract to the Framework Member or to any aspect of the competition leading to award of this Framework Agreement is or has been made by any person on the grounds of non-compliance with applicable public procurement rules. If the IDA exercises its right of termination pursuant to this Sub- Clause 11.3 the Framework Member shall not be entitled to any payment or to any compensation whatsoever as a result or in respect of early termination of this Framework Agreement (other than any payment that properly accrued prior to the date of termination).
- 11.4 In the event that this Framework Agreement or a Call-off Contract is declared "ineffective", IDA Ireland shall have no liability to the Framework Member other than in respect of Services provided prior to the date on which such "ineffectiveness" order takes effect, which cost shall be assessed in accordance with Schedule 4 of the Framework Agreement. Under no circumstances shall the Framework Member be entitled to any payment or compensation for any loss or damage arising from any such declaration of ineffectiveness, including loss of profit for Services not provided or for loss of opportunity or reputation or breach of statutory duty or otherwise.

12. CONSEQUENCES OF TERMINATION AND EXPIRY

Termination or expiry of this Framework Agreement 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 terminating the Framework Agreement with the Framework Member states that it is also to constitute notice terminating all Call-off Contracts between IDA Ireland and the Framework Member.

12.1 The Framework Member shall have no claim against IDA Ireland 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 the termination of this Framework Agreement or any Call-off Contract pursuant to Clause 11.

12.2 Termination or expiry of this Framework Agreement 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-CONTRACING

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 Call-off Contract or any part thereof without the previous consent in writing of IDA Ireland. Without prejudice to the provisions of Sub-Clause 8.4, 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 IDA Ireland, such consent not be unreasonably withheld.

13.2 IDA Ireland 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 IDA Ireland provided that such assignment, novation or disposal 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 11.2.1.

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 More particularly, to the extent that the provision of the Services is impacted by COVID-19 and any reasonable concerns or measures taken to protect the health and safety interests of either Party's personnel, the Parties will work together to amend the relevant Call-off Contract under this Framework Agreement, or this Framework Agreement as necessary, to provide for the Services to be delivered in an appropriate manner, including any resulting modifications with respect to the timelines, location or manner of the delivery of Services.

14.4.3 If, however, force majeure causes a delay or failure in performance for a period longer than thirty (30) days, IDA Ireland shall have the right to terminate this Framework Agreement by seven (7) days' notice in writing.

14.4.4 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, diseases, epidemics or pandemics (including COVID-19) or 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 Counterparts and Execution

This Framework Agreement shall, if required, be executed in two or more counterparts, each of which shall be deemed to be an original and which together shall constitute one and the same Framework Agreement. This Framework Agreement shall become effective and be dated (and each counterpart shall be dated) on the date the last party has executed and delivered the Framework Agreement. The parties hereby consent to the use of electronic signatures in connection with the execution of this Framework Agreement. Each of the Parties to this Framework Agreement confirms that this has been executed by their duly authorised officers.

14.6 Public Procurement

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

15. NOTICES

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

For IDA Ireland:

Contact Name: []
Address: []
E-mail: []
Phone: []

For the Framework Member:

Contact Name: []
Address: []
E-mail: []
Phone: []

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 electronic means, twenty-four (24) hours after transmission.

15.3 All notices to IDA Ireland or the Framework Member from the other Party under this Framework Agreement or any 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 any 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 or any Call-off Contract shall, in the first instance, be referred to a Mediator to be appointed by agreement between the parties and, in the absence of agreement within five (5) working-days of the receipt by one Party of a written notice to concur in the appointment of a Mediator, by the Chairman of the Chartered Institute of Arbitrators Irish Branch.

16.2 In the event that the dispute or difference is not resolved within fifteen (15) working-days of the appointment of the Mediator, the dispute or difference shall be referred to an Arbitrator to be agreed between the Parties and, in default of agreement within ten (10) working-days of the receipt by one Party of a written notice to concur in the appointment of an Arbitrator, by the Chairman of the Chartered Institute of Arbitrators Irish Branch, such arbitration to be governed by the Arbitration Act 2010 as amended or replaced and shall be conducted in accordance with the Model Law as defined in the Arbitration Act 2010. The Arbitrator shall have no connection with the Mediator or Mediation Proceedings unless both Parties have otherwise consented in writing.

16.3 Nothing contained in this Clause 16 shall restrict either Party's freedom to commence legal proceedings where such proceedings are required urgently to preserve any legal right or remedy, to protect any Intellectual Property Rights or rights in Confidential Information or to otherwise prevent irreparable harm.

17. CHANGE CONTROL

Any request for a material change to the Services will be dealt with in accordance with the Change Control Procedure set out in Schedule 8 to this Framework Agreement.

18. JURISDICTION

IDA Ireland 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 and any Call-off Contract is to be governed by and construed according to the laws of Ireland.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date shown at the beginning of this Agreement.

SIGNED for and behalf of **IDA Ireland**

SIGNED for and behalf of [Framework Member]

[Name]

(being a duly authorised person)

[Name]

(being a duly authorised person)

[Name]

(being a duly authorised person)

[Name]

(being a duly authorised person)

1. Interpretation

Unless otherwise specified herein, a defined term used in these Terms and Conditions shall have the same meaning as assigned to it in the Framework Agreement. In these Terms and Conditions each capitalised term will have the meaning set out below:

“Business Day” means a day other than a Saturday, Sunday, or public holiday in the Republic of Ireland, when banks in Dublin, Ireland are open for business;

“Call-off Contract” means the legally binding agreement pursuant to the scope and provisions of the Framework Agreement to be entered into by IDA Ireland and the Framework Member under and pursuant to which the Framework Member will provide Services in accordance with Clause 7 of the Framework Agreement and the terms and conditions set out in Schedule 1 of the Framework Agreement;

“Call-off Contract Deliverables” means such products, work, services, or dates and deadlines by which particular deliverables or obligations of the Framework Member are scheduled to be completed or delivered by the Framework Member, as set out in the relevant Letter of Instruction under any Call-off Contract;

“Call-off Mechanism” means any of the procedures set out in Clause 7 of the Framework Agreement by which IDA Ireland may award Services under the Framework Agreement;

“Call-off Services” means the services provided by the Framework Member as more particularly described in the Letter of Instruction;

“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 Member 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) IDA Ireland, (v) any stakeholders or other parties having an interest in the Services and/or (vi) any economic operator or tenderer in any way connected with the Services or any of the Services;

“Charges” means the payments set out in Schedule 4 of the Framework Agreement;

“Engagement” means the engagement of the Framework Member by IDA Ireland pursuant to the Framework Agreement and in accordance with these terms and conditions;

“Framework Agreement” means the means the Framework Agreement entered into by IDA Ireland and the Framework Member;

“Key Personnel” means the Framework Member’s personnel assigned to complete the Call-off Contract;

“Letter of Instruction” means the letter or email issued to a Framework Member by IDA Ireland on award of a Call-off Contract to provide the required Services in accordance with Clause 7 of the Framework Agreement;

2. Engagement

1. IDA Ireland shall engage the Framework Member and the Framework Member shall provide the Call-off Services on these terms and conditions and subject to the Framework Agreement.
2. For the avoidance of doubt the following document (as applicable) is deemed to form part of the Call-off Contract:
 - (a) The Letter of Instruction.

3. Obligations of the Framework Member

- A. The Framework Member agrees to provide the Call-off Services to IDA Ireland in accordance with the Call-off Contract.
- B. The Framework Member shall meet any performance dates specified in the Call-off Contract, always provided that if no performance dates are so specified the Framework Member shall perform the Services within a reasonable time.
- C. In supplying the Call-off Services, the Framework Member shall:
 1. Perform the Call-off Services with the highest level of care, skill, and diligence and generally in the carrying out of its obligations under the Call-off Contract and in the appointment, monitoring and retention of its agents and Subcontractors;
 2. Provide the Call-off Services in accordance with good industry practice, profession or trade and comply with all applicable laws including but not limited to all obligations in the field of health and safety, waste, environmental, social, and labour law that apply at the place where the Call-off Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social, and labour law listed in Annex X of **Directive 2014/24/EU**. The Framework Member shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration, and work permits of all personnel retained for the purposes of complying with the Call-off Contract.

3. Co-operate with IDA Ireland in all matters relating to the Call-off Services and comply with the instructions of the IDA Ireland;
 4. Use personnel who are suitably qualified, experienced and skilled to perform the tasks assigned to them, and in sufficient number to ensure that it fulfils its obligations under the Call-off Contract;
 5. Ensure that it obtains, and maintains all consents, licenses, and permissions (statutory, regulatory, contractual, or otherwise) it may require, and which are necessary to comply with its obligations in the Call-off Contract;
 6. Comply with and implement any policies, guidelines and/or any project governance protocols issued by the IDA from time to time and notified to the Framework Member in writing; and
 7. Comply with all local security and health and safety arrangements as notified to it by IDA Ireland.
- D. The Framework Member is deemed to be the prime contractor under the Call-off Contract and the Framework Member assumes full responsibility for the discharge of all obligations under the Call-off Contract and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Framework Member as prime contractor hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the Call-off Contract, including but not limited to Clause 3.C above, to the extent that it or they are retained by the Framework Member. Subject to Clause 14, the Framework Member shall notify IDA Ireland as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- E. During the Engagement the Framework Member shall be an independent contractor and not the employee of IDA Ireland. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Framework Member are not and shall not hold themselves out to be (and shall not be held out by the Framework Member as being) servants or agents of IDA Ireland for any purposes whatsoever.
- F. Nothing in these terms and conditions shall prevent the Framework Member from being engaged, concerned, or having any financial interest in any capacity in any other business, trade, profession, or occupation during the Engagement provided that:
- (a) Such activity does not cause a breach of any of the Framework Member's obligations under these terms and conditions; and
 - (b) The Framework Member shall give priority to the provision of the Call-off Services to IDA Ireland over any other business activities undertaken by the Framework Member during the course of the Engagement.
- G. IDA Ireland acknowledges that the Framework Member may from time to time be dependent on IDA Ireland to facilitate the Framework Member in the carrying out of its duties under the Call-off Contract. IDA Ireland agrees to use its reasonable endeavours to so facilitate the Framework Member within the timescales and in the manner agreed by it in writing in accordance with Clause 12.

- H. The Framework Member shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "**TUPE Regulations**") and failure to so comply shall constitute a serious breach of the Call-off Contract. The Framework Member shall indemnify, save harmless and keep IDA Ireland indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said TUPE Regulations.

4. Key Personnel

- A. The Framework Member undertakes and acknowledges that it is responsible for ensuring that all key personnel assigned by it to provide the Call-off Services shall be available for the duration of the Engagement. The Framework Member acknowledges that the Key Personnel are essential to the proper provision of the Call-off Services to IDA Ireland.
- B. In the event that any of the Key Personnel assigned by the Framework Member to provide the Call-off Services becomes unable to provide the Call-off Services for whatever reason then, the Framework Member acknowledges and undertakes that it shall immediately notify the IDA in writing of the inability of any Key Personnel and replace that person with a person of equivalent qualification, experience, and expertise (the "**Replacement Personnel**"). The Framework Member shall provide to IDA Ireland such details as IDA Ireland may reasonably require in writing regarding any Replacement Personnel. IDA Ireland shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

5. Payment

- A. Subject to the terms and conditions of the Call-off Contract and to the provisions of this Clause 5, IDA Ireland agrees to pay to the Framework Member the charges as stipulated in Schedule 4 of the Framework Agreement. The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
- B. Unless it has been specifically authorised to do so by IDA Ireland in writing, the Framework Member shall not:
1. have any authority to incur any expenditure in the name of or for the account of IDA Ireland; or
 2. hold out as having authority to bind IDA Ireland.
- C. No other costs including third party costs must be incurred on behalf of IDA Ireland without prior written approval in advance by IDA Ireland.
- D. The Framework Member is not entitled to deduct any fees from any sums held by the Framework Member on behalf of IDA Ireland.
- E. Payment in full or in part of the Charges claimed under this Clause 5 shall be without prejudice to any claims or rights of IDA Ireland against the Framework Member in respect of the provision of the Call-off Services.
- F. Discharge of the Charges is in consideration of:
1. Material compliance by the Framework Member with the provisions of the Call-off Contract including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to Clause 12 from time to time;

2. The furnishing by the Framework Member of a valid invoice and such supporting documentation as may be required by the IDA from time to time. Framework Member pre- printed terms and conditions are hereby disallowed;
 3. Invoices being submitted to the IDA Ireland Contact (as set out in the Letter of Instruction or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Call-off Services for any billing period (including whether or not the Call-off Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by IDA Ireland's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of IDA Ireland or upon such deemed acceptance the invoice shall be payable by IDA Ireland. Payment is subject to any rights reserved by IDA Ireland under any other provision of the Framework Agreement and the Call-off Contract; and
 4. IDA Ireland being in possession of the Framework Member's current Tax Clearance Registration number and/or a copy of the Framework Member's Tax Clearance Certificate in accordance with the Tax Clearance Certification Scheme. The Framework Member shall comply with all applicable EU and domestic taxation law and requirements. The Framework Member may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by IDA Ireland.
- G. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
 - H. Wherever under any Call-off Contract any sum of money is recoverable from or payable by the Framework Member (including any sum which the Framework Member is liable to pay to IDA Ireland in respect of any breach of the Call-off Contract), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Framework Member under the Call-off Contract or under any other agreement or contract with IDA Ireland. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
 - I. The Charges shall include any and all costs or expenses incurred by the Framework Member, its employees, servants, and agents in the performance of its obligations under the Call-off Contract.
 - J. The Charges shall be discharged as provided for in this Clause 5 subject to the retention by IDA Ireland in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Framework Member. Any and all taxes applicable to the provision of the Call-off Services will be the sole responsibility of the Framework Member and the Framework Member so acknowledges and confirms.

6. Warranties, Representations and Undertakings

- A. The Framework Member acknowledges, warrants, represents, and undertakes that:

1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under the Call-off Contract and to provide the Call-off Services hereunder;
 2. it is entering into the Call-off Contract with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. it is entering into the Call-off Contract with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance, or practices as may affect the provision of the Call-off Services as they apply to the Framework Member;
 5. it has taken all and any action necessary to ensure that it has the power to enter into the Call-off Contract;
 6. the status of the Framework Member, as declared in the Framework Member's "**Declaration as to Personal Circumstances**" which confirms that none of the excluding circumstances listed or referred to in Article 57 of Directive 2014/24/EU apply to the Framework Member, remains unchanged;
 7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in Clause 8 below) that are necessary for the performance of its obligations under the Call-off Contract and for IDA Ireland to obtain the benefit of the Call-off Services for its business purposes;
 8. IDA Ireland shall be under no obligation to purchase any minimum number or value of Call-off Services.
 9. it retains and shall maintain for the duration of the Framework Agreement insurances for the nature and amount specified in the CFT. The Framework Member undertakes to advise the IDA forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Framework Member shall carry out all directions of IDA Ireland with regard to compliance with this Clause 6A.9;
- B. The Framework Member undertakes to notify IDA Ireland forthwith of any material change to the status of the Framework Member with regard to the warranties, acknowledgements, representations, and undertakings as set out at Clause 6A and to comply with all reasonable directions of IDA Ireland with regard thereto which may include termination of the Call-off Contract.

7. Remedies

- A. The Framework Member shall be liable for and shall indemnify IDA Ireland for and in respect of all and any losses, claims, demands, damages or expenses which IDA Ireland may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, willful default or fraud of the Framework Member, its employees, Subcontractors or agents or any of them or as a result of the Framework Member's failure to exercise skill, care and diligence as outlined in Clause 3.C.

The terms of this Clause 7A shall survive termination of the Call-off Contract for any reason.

- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Framework Member's indemnity under Clause 8 (Intellectual Property), a breach by the Framework Member of Clause 10 (Data Protection and Security) or in respect of reputational damage, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should IDA Ireland find itself obliged to order similar services elsewhere in consequence of the failure of the Framework Member to deliver Call-off Services, IDA Ireland shall be entitled to recover from the Framework Member any excess prices which may be paid by the IDA to an alternative contractor.
- D. Except as otherwise expressly provided by the Call-off Contract, all remedies available to either Party for breach of the Call-off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

8. Intellectual Property

- A. Intellectual Property Rights ("**IPR**") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the commencement of the Engagement and all IPR in any materials, acquired or developed by or for the Framework Member or IDA Ireland independently of the Call-off Contract, and any IPR in the Framework Member's standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of the Call-off Contract (collectively "**the Materials**") (or any part or parts thereof) shall vest in IDA Ireland and the Framework Member so acknowledges and confirms. For the avoidance of doubt the Framework Member hereby assigns all Intellectual Property Rights, title, and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to IDA Ireland absolutely.
- D. IDA Ireland grants to the Framework Member a royalty-free non-exclusive licence to use IDA Ireland's pre-existing IPR for the duration of the Engagement to the extent necessary to enable the Framework Member to fulfil its obligations under the Call-off Contract.

Save as expressly set out in this Clause 8 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired, or developed such intellectual property.

- E. The Framework Member shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of the Call-off Contract.
- F. Nothing in the Call-off Contract shall prohibit or be deemed to prohibit the Framework Member from providing services similar to the Call-off Services to any party other than the Parties hereto. In no event shall the Framework Member be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Call-off Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies, and techniques that are acquired or used in the course of providing the Call-off Services.
- G. The Framework Member shall ensure that all and any necessary consents and/or licences for any software, instrument, modality, or methodology are obtained and in place before use for the purposes of the Call-off Contract (to include but not be limited to ensuring that the IDA shall be vested with all necessary rights so as to enable the IDA to enjoy the benefit of the Call-off Services for its business purposes). The Framework Member hereby indemnifies IDA Ireland and shall keep and hold IDA Ireland harmless from and in respect of all and any losses (whether direct, indirect, or consequential) liability, damages, claims, costs, or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of the Call-off Contract.

At the request of IDA Ireland for and in respect of any such breach, the Framework Member shall at its expense and option:

- i. procure the necessary rights for IDA Ireland to continue use;
 - ii. replace the relevant deliverable with a non-infringing equivalent;
 - iii. replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
 - iv. if the Framework Member cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to IDA Ireland Charges paid for such deliverable less a reasonable amount for the IDA's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect, or consequential) thereby accruing to the IDA as a result of the breach.
- H. Upon the termination of the Call-off Contract for whatever reason, the Framework Member shall immediately deliver up to IDA Ireland all the Materials prepared up to the date of termination. The provisions of this Clause 8 will survive the expiration or termination of the Call-off Contract for any reason.

9. Confidentiality

- A. Each of the Parties to the Call-off Contract agrees to hold confidential all information, documentation and other material received, provided, or obtained arising from their participation in the Call-off Contract ("**Confidential Information**") and shall not disclose same to any third party (and shall use their best endeavours to prevent the publication or disclosure) except to:
1. its professional advisers subject to the provisions of this Clause 9; or
 2. as may be required by law; or
 3. as may be necessary to give effect to the terms of the Call-off Contract subject to the provisions of this Clause 9; or
 4. in the case of IDA Ireland by request of any person or body or authority whose request IDA Ireland or persons associated with IDA Ireland (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Framework Member undertakes to comply with all reasonable directions of IDA Ireland with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Schedule 5 to the Framework Agreement (the "**Confidentiality Agreement**"). If requested by IDA Ireland, the Framework Member shall procure that its employees or sub-contractors who have access to Confidential Information shall sign the Confidentiality Agreement.

The obligations in this Clause 9 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
 2. which is or becomes public knowledge other than by breach of this Clause 9; or
 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. The Framework Member acknowledges that the security of the State and its information is of paramount importance to IDA Ireland. The Framework Member also acknowledges the Second Schedule, paragraph 4, subparagraphs (1), (2) and (3) of the Industrial Development Act 1993, as amended by the Industrial Development (Enterprise Ireland) Act 1998, which states that a person shall not disclose any information obtained by that person while performing duties (or as a result of having performed) duties as, inter alia, an adviser or consultant to IDA Ireland or an employee of such person while performing duties relating to such advice or consultation. Accordingly, the Framework Member confirms that it will, if requested by IDA Ireland, from time to time, submit full personal details of personnel (including those of Subcontractors) who are assigned to provide the Call-off Services (or any part thereof) under the Call-off Contract. The Framework Member further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Framework Member shall comply with all reasonable directions of IDA Ireland arising therefrom.

- D. In circumstances where IDA Ireland is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of IDA Ireland receiving a request for information related to the Call-off Contract, IDA Ireland shall consult with the Framework Member in respect of the request. The Framework Member shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. IDA Ireland will consult the Framework Member about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. IDA Ireland accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- E. The terms of this Clause 9 shall survive expiry, completion, or termination for whatever reason of this Call-off Contract.

10. Data Protection and Security

- A. In these Terms and Conditions the following terms shall have the meanings respectively ascribed to them:
- “Data”** means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with IDA Ireland (including but not limited to its’ employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with IDA Ireland provided under any Call-off Contract and includes any Personal Data;
- “Data Controller”** has the meaning given under the Data Protection Laws; **“Data Processor”** has the meaning given under the Data Protection Laws;
- “Data Protection Laws”** means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the **“General Data Protection Regulation”**), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.
- “Data Subject”** has the meaning given under the Data Protection Laws;
- “Data Subject Access Request”** means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;
- “Personal Data”** has the meaning given under Data Protection Laws;
- “Processing”** has the meaning given under the Data Protection Laws;
- B. The Framework Member shall comply with all applicable requirements of the Data Protection Laws.

- C. The Parties acknowledge that for the purposes of the Data Protection Laws, IDA Ireland is the Data Controller and the Framework Member is the Data Processor in respect of Data which is Personal Data. Schedule 6 of the Framework Agreement sets out the scope, nature and purpose of Processing by the Framework Member, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of Clause 10B above, the Framework Member shall, in relation to any Personal Data processed in connection with the performance by the Framework Member of its obligations under any Call-off Contract:
1. process that Personal Data only on the written instructions of IDA Ireland;
 2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by IDA Ireland, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of IDA Ireland has been obtained and the following conditions are fulfilled;
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation); and
 - ii. the data subject has enforceable rights and effective legal remedies; and
 - iii. the Framework Member complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Framework Member complies with reasonable instructions notified to it in advance by IDA Ireland with respect to the processing of the Personal Data.
- E. The Framework Member shall promptly notify IDA Ireland (by email: dpo@ida.ie) if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to IDA Ireland's obligations under the Data Protection Laws and provide full co-operation and assistance to IDA Ireland in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

- F. The Framework Member shall without undue delay report in writing to IDA Ireland (by email: dpo@ida.ie) any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Framework Member shall assist IDA Ireland in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Framework Member shall at the written direction of IDA Ireland, amend, delete, or return Personal Data and copies thereof to IDA Ireland on termination of any Engagement and/or Call-off Contract unless the Framework Member is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Framework Member to store the Personal Data.
- I. The Framework Member shall permit IDA Ireland, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Framework Member's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Framework Member in any way for the provision of the Call-off Services under any Call-off Contract. The Framework Member shall comply with all reasonable directions of IDA Ireland arising out of any such inspection, audit, or review.
- J. The Framework Member shall fully comply with and implement policies which are communicated or notified to the Framework Member by IDA Ireland from time to time.
- K. The Framework Member shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 10 and allow for inspections and contribute to any audits by IDA Ireland or IDA Ireland's designated auditor.
- L. The Framework Member shall:
 - 1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - 2. ensure that a back-up copy of any and all such Personal Data is made in accordance with the Framework Member's data back-up policy and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - 3. in such an event and if attributable to any default by the Framework Member or any Sub-contractor, promptly restore the Personal Data at its own expense or, at IDA Ireland's option, reimburse IDA Ireland for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. IDA Ireland does not consent to the Framework Member appointing any third-party processor of Personal Data under any Call-off Contract.

- N. The Framework Member shall indemnify IDA Ireland against all claims and proceedings and all liability, loss, costs, and expenses incurred by the IDA as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of the Framework Member's breach of any Data Protection Laws or any unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Framework Member, its employees, or agents.
- O. Save for Clauses 10B, 10C, 10D(4) and 10E, all the obligations on the Framework Member in this Clause 10 relating to the processing of Personal Data shall apply to the processing of all Data.
- P. The provisions of this Clause 10 shall survive termination and or expiry of any Call-off Contract.

11. Conflicts of Interest and Registrable Interests

- A. The Framework Member confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts or potential conflicts in relation to the Call-off Services and its obligations undertaken under the Call-off Contract.

The Framework Member hereby undertakes to notify IDA Ireland immediately should any conflict or potential conflict of interest come to its attention during the currency of the Engagement and to comply with IDA Ireland's directions in respect thereof. In the event of such notification, IDA Ireland shall have the right (in addition to any other rights which it has at law) to terminate the Call-off Contract immediately and without liability for compensation or damages.

- B. The Framework Member agrees to indemnify IDA Ireland for any additional costs and any other losses, damages, expenses (including legal expenses) reasonably incurred by IDA Ireland to include any third party claim and/or if IDA Ireland terminates the Engagement due to an actual or potential conflict of interest on the part of the Framework Member which was not, but should have been, declared to IDA Ireland.
- C. Any registrable interest involving the Framework Member (and any Subcontractor or agent as the case may be) and IDA Ireland, 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 IDA immediately upon such information becoming known to the Framework Member (Subcontractor or agent as the case may be) and the Framework Member shall comply with IDA Ireland's directions in respect thereof, to the satisfaction of IDA Ireland. In the event of such disclosure, IDA Ireland shall have the right (in addition to any other rights which it has at law) to terminate the Call-off Contract immediately and without liability for compensation or damages. The terms "**registrable interest**" and "**relative**" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.

12. Contract Management

- A. IDA Ireland's Contact and the Framework Member's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of the Call-off Contract and to agree or amend milestones, compliance schedules and operational protocols as required by IDA Ireland from time to time.

If requested in writing by IDA Ireland, the Framework Member shall meet formally with the IDA to report on progress and shall comply with all written directions of IDA Ireland.

B. The Framework Member agrees to:

1. liaise with and keep IDA Ireland's Contact fully informed of any matter which might affect the observance and performance of the Framework Member's obligations under the Call-off Contract;
2. maintain such records and comply with such reporting arrangements and protocols as required by the IDA from time to time;
3. comply with all reasonable directions of IDA Ireland; and
4. comply with any service levels and performance indicators set out in the Letter of Instruction.

C. IDA Ireland or its authorised representative may inspect the Framework Member's premises, lands, and facilities (or such part or parts thereof relating solely to the Call-off Contract) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of the Call-off Contract.

The Framework Member shall comply with all reasonable directions of IDA Ireland thereby arising. The cost of inspection shall be borne by IDA Ireland. The Framework Member shall also procure reasonable access for IDA Ireland to inspect its contractors' premises, when requested by IDA Ireland.

13. Termination

Notwithstanding the provisions of the Framework Agreement, IDA Ireland may terminate an Engagement for a reason not stated in the Call-off Contract documentation by notifying the Framework Member with immediate effect with no liability to make any further payment to the Framework Member (other than in respect of amounts accrued before the Termination Date). Reasons for termination may include the following:

- (a) commits any gross misconduct affecting the business of IDA Ireland; or
- (b) commits any serious or repeated breach or non-observance of any of the provisions of the terms and conditions or refuses or neglects to comply with any reasonable and lawful directions of IDA Ireland; or
- (c) is convicted of any criminal offence (other than an offence under any road traffic legislation for which a fine or non-custodial penalty is imposed); or
- (d) is in the reasonable opinion of IDA Ireland negligent or incompetent in the performance of the Call-off Services; or
- (e) is declared bankrupt or makes any arrangement with or for the benefit of his creditors; or
- (f) commits any fraud or dishonesty or acts in any manner which in the opinion of IDA Ireland brings or is likely to bring the Framework Member or IDA Ireland into disrepute or is materially adverse to the interests of IDA Ireland; or
- (g) failure of a team member to hold a relevant current licence/membership as set out in the CfT.

14. Notices

- A. Any notice or other written communication to be given under a Call-off Contract shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this Clause 14.
- B. All notices shall be deemed to have been served as follows:
 - 1. if personally delivered, at the time of delivery;
 - 2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 - 3. if communicated by email, on the next calendar day following transmission.

15. General

1. Access to Premises

- A. Any of IDA Ireland's premises made available from time to time to the Framework Member by IDA Ireland in connection with a Call-off Contract, shall be made available to the Framework Member on a non-exclusive licence basis and shall be used by the Framework Member solely for the purpose of performing its obligations under a Call-off Contract. The Framework Member shall have use of such premises as licensee and shall vacate the same on completion, termination, or abandonment of the Engagement.
- B. The Framework Member shall upon reasonable notice by IDA Ireland and subject to IDA Ireland signing the relevant documents accepting that it will comply with the Framework Member's health and safety policies pertaining to the premises (provided such policies are reasonable), allow IDA Ireland access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for IDA Ireland under a Call-off Contract.

2. Equipment

- A. The Framework Member shall provide all equipment and materials necessary for the provision of the Call-off Services ("**Equipment**").
- B. All Equipment brought onto IDA Ireland's premises shall be at the Framework Member's own risk and IDA Ireland shall have no liability for any loss of, caused by or damage to any Equipment. The Framework Member shall provide for the haulage or carriage thereof to IDA Ireland's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Framework Member.
- C. The Framework Member shall maintain and store all items of Equipment within IDA Ireland's premises in a safe, serviceable, and clean condition.
- D. The Framework Member shall, at IDA Ireland's written request, at its own expense and as soon as reasonably practicable:
 - i. remove from IDA Ireland's premises, any Equipment which in the reasonable opinion of IDA Ireland is either hazardous, noxious, or not in accordance with this Call-off Contract; and
 - ii. replace such item with a suitable substitute item of Equipment.

- E. On completion of the Engagement the Framework Member shall remove the Equipment used by the Framework Member to provide the Call-off Services and shall leave IDA Ireland's premises in a clean, safe, and tidy condition. The Framework Member is solely responsible for making good any damage to the IDA's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Framework Member or any of its employees or Subcontractors.

3. Assignment, Novation and Transfer

- A. IDA Ireland may, at any time, assign, or otherwise transfer the whole or any part of a Call-off Contract to any Minister or public sector body, entity, or office. Any such assignment, novation or transfer will be done at no additional cost to IDA Ireland.
- B. Any assignment, novation, or transfer to a third party of the Framework Member's rights or obligations under a Call-off Contract (the "**Transfer**") requires the prior written consent of IDA Ireland. Prior to any such Transfer, the transferee will be obliged to sign an undertaking to comply with all obligations under the Call-off Contract. Any attempted Transfer not complied with in the manner prescribed herein shall be null and void.
- C. Subject to a party's obligations at law, any sub-contract of the Framework Member's rights or obligations under a Call-off Contract requires the prior written consent of IDA Ireland, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void.

4. Entire Agreement

The Call-off Contract constitutes the entire agreement and understanding of the parties, and any and all other previous agreements, contracts, arrangements, and understandings (whether written or oral) between the Parties with regard to the subject matter of a Call-off Contract are hereby excluded. For the avoidance of doubt, no Framework Member, contractor or third-party terms and conditions shall apply to the provision of the Call-off Services and any click through terms and conditions shall be disabled.

5. Severability

If any term or provision herein is found to be illegal or unenforceable for any reason, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

6. 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.

7. Non-Exclusivity

Nothing in a Call-off Contract shall preclude IDA Ireland from purchasing services (or Call-off Services) from a third party at any time during a Call-off Contract.

8. Media

No media releases, public announcements or public disclosures relating to a Call-off Contract or its subject matter, including but not limited to promotional or marketing material, shall be made by the Framework Member without the prior written consent of IDA Ireland.

9. Non-Solicitation

For the duration of the Engagement and for a period of twelve (12) months thereafter (and save in respect of publicly advertised posts) neither IDA Ireland nor the Framework Member shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

10. Change Control Procedure

- A. At any time during the Engagement, either Party may propose a change or changes to any part or parts of the Call-off Contract.
- B. The change control procedures set out in Schedule 8 of the Framework Agreement will apply to all changes irrespective of whether the Framework Member or IDA Ireland proposes the change.

11. Jurisdiction

The Framework Member accepts the exclusive jurisdiction of the Irish courts, subject to the provisions of Clause 16 of the Framework Agreement and agree that any Call-off Contract is to be governed by and construed according to the laws of Ireland.

SCHEDULE 2 – THE REQUEST FOR TENDERS

[To be inserted when completing Framework Agreement]

SCHEDULE 3 – THE TENDER SUBMISSION

[To be inserted when completing Framework Agreement]

SCHEDULE 4 – THE CHARGES

[To be inserted when completing Framework Agreement]

CONFIDENTIALITY AGREEMENT AND UNDERTAKING

----- (the “**Framework Member**”)

This Agreement and Undertaking sets out the Framework Member’s confidentiality obligations in respect of information and material disclosed to the Framework Member by or on behalf of IDA Ireland for the Legitimate Purpose (as defined below), and is entered into by the Framework Member in consideration of IDA Ireland engaging the Framework Member to carry out the Legitimate Purpose and for other good and valuable consideration the receipt and sufficiency of which is hereby acknowledged by the Framework Member.

1. Confidential Information

Certain business, commercial, technical, financial, operational, administrative, marketing, economic and other information, and material in connection with various enterprises may be disclosed (whether in writing, orally or in any other manner) by or on behalf of IDA Ireland to the Framework Member in the provision of **Building Surveyor Services for IDA Buildings Reinstatement Values for Insurance Valuations 2026-2030** to IDA Ireland (hereinafter called the “**Legitimate Purpose**”). This information and material, the Framework Member’s involvement in the matter, this agreement, any discussions with IDA Ireland in relation to the said information and material (including the status and existence thereof), including any memorandum, report and evaluation prepared by the Framework Member or by parties other than the Framework Member, is referred to in this agreement as “**Confidential Information**”.

The Confidential Information will be kept secret and confidential by the Framework Member and will not, without the prior written consent of IDA Ireland (which may be given on such terms as it considers appropriate), be disclosed (whether in writing or orally), in whole or in part, to any other person nor used for any purpose (including any competitive or commercial purpose) other than to the extent necessary to carry out the Legitimate Purpose.

2. Exceptions

The restrictions in paragraph 1 of this agreement do not apply to:

- i. Confidential Information which, at the time of disclosure to the Framework Member can be shown by the Framework Member to be in the public domain; or
- ii. Confidential Information which, after disclosure to the Framework Member can be shown by the Framework Member to have become publicly available by publication or otherwise through no breach of this agreement or of any other agreement by the Framework Member; or
- iii. Confidential Information which was lawfully in the Framework Member’s possession prior to disclosure, as evidenced by the Framework Member’s records, and which was not acquired directly or indirectly from IDA Ireland, or any of the advisers to IDA Ireland; or
- iv. The disclosure of Confidential Information to a third party which is required by law or by the rules of any applicable regulatory organisation, in which event the Framework Member must nevertheless comply with paragraph 6 (Disclosure) of this agreement; or

- v. The disclosure of Confidential information to the Framework Member's employees, agents, and professional advisers (the "**Framework Member's Agents**") who need to know the relevant Confidential Information for the Legitimate Purpose.

3. Copies

The Framework Member will not make any copies in any form of any documents containing Confidential Information or authorise any other person to do so, except (i) for the purpose of supplying Confidential Information to persons to whom disclosure of Confidential Information is expressly permitted by this agreement or (ii) with the prior written consent of IDA Ireland or (iii) for the purpose of making one paper copy of documents sent to the Framework Member in electronic format.

4. Records

The Framework Member will keep a record (which shall be made available to IDA Ireland on request) of the Confidential Information provided in writing to the Framework Member and of the location of that Confidential Information. The Framework Member will ensure that all Confidential Information (save for Confidential Information which was disclosed orally and has not been reduced into writing or stored on any disc, tape, or other device) is kept in a secure place at all times and is properly protected against theft, damage, loss, or unauthorised access.

5. Return of Confidential Information

The Framework Member will, upon demand by IDA Ireland made in writing at any time either return to IDA Ireland or destroy (and the Framework Member will confirm such destruction in writing to IDA Ireland) any document (including any notes, analyses, records, or memoranda prepared by the Framework Member) containing, or derived from, any Confidential Information and all copies which have been made by the Framework Member or on the Framework Member's behalf. In addition, the Framework Member will, in these circumstances, erase (and the Framework Member will confirm such erasure in writing to IDA Ireland) all Confidential Information from any computer, word processor or other device containing such information. Notwithstanding the return or destruction of the Confidential Information, the Framework Member will continue to be bound by the obligations of confidentiality and other obligations hereunder.

6. Disclosure

In the event that the Framework Member becomes aware that the Framework Member may become compelled by law or by the rules of any applicable regulatory organisation to disclose any Confidential Information, prompt notice of that fact will be given to IDA Ireland so that IDA Ireland may seek an appropriate remedy to prevent that disclosure and the Framework Member will take such steps as IDA Ireland may reasonably require for that purpose and will keep IDA Ireland promptly and fully informed of all developments relating to any such potential disclosure.

In the event that the Framework Member become compelled by law or by the rules of any applicable regulatory organisation to disclose any Confidential Information, full details of any proposed disclosure will be given to IDA Ireland in advance and any such disclosure will be limited to the minimum amount of Confidential Information required to satisfy that disclosure obligation, and the Framework Member will exercise the Framework Member's best efforts to obtain an appropriate protective order or other reliable assurance that confidential treatment will be accorded to the Confidential Information.

7. Agents

The Framework Member will be responsible for any breach of the terms of this Agreement by the Framework Member or any of the Framework Member's Agents (which shall include each of the Framework Member's employees, agents, and professional advisers). The Framework Member will ensure that the Framework Member's Agents comply with the Framework Member's obligations under this Agreement and any action by them will be treated as an action by the Framework Member for the purposes of this Agreement.

8. Statutory Obligation

The Framework Member's attention is brought to paragraph 4, Schedule 2 of the Industrial Development (IDA Ireland) Act 1993 (as amended by the section 47 of the Industrial Development (Enterprise Ireland) Act 1998)) which makes it an offence for the Framework Member or any of the Framework Member's employees to disclose any information obtained by the Framework Member while performing (or as a result of having performed) duties as an adviser or consultant to IDA Ireland.

4. (1) Save as otherwise provided by law and paragraph 3, a person shall not without the consent of the Board, other than in respect of clause (f) of this subparagraph, disclose any information obtained by him or her while performing (or as a result of having performed) duties as—

(e) an adviser or consultant to IDA Ireland or an employee of such person whilst performing duties relating to such advice or consultation,

(2) A person who contravenes subparagraph (1) shall be guilty of an offence and shall be liable on summary conviction to a fine not exceeding £1,500.¹

(3) Nothing in this section shall prevent disclosure of information in a report made to IDA Ireland or on behalf of IDA to the Minister.

9. Equitable Remedies

The Framework Member acknowledges and agrees that damages would not be an adequate remedy for any breach by the Framework Member or the Framework Member's Agents of the provisions of this Agreement, and that IDA Ireland will be entitled to the remedies of injunction, specific performance, and other equitable relief for any threatened or actual breach of the provisions of this Agreement by the Framework Member or the Framework Member's Agents and that no proof of special damages shall be necessary for the enforcement of this Agreement. Such remedies shall not be deemed to be the exclusive remedies for a breach of this Agreement but shall be in addition to all other remedies available at law or equity. In the event that IDA Ireland enforces the Framework Member's obligations hereunder, the Framework Member shall reimburse IDA Ireland for all costs and expenses, including legal expenses, incurred by IDA Ireland in this regard.

¹ The penalty set out in the legislation is IR£1500, however, applying the euro conversion and the Fines Act 2010 bring the penalty for an offence committed today to a class B fine, which is a maximum of EUR€4,000.

10. Remedies

No failure or delay in exercising any right, power or privilege under this Agreement will operate as a waiver of it, nor will any single or partial exercise of it preclude any further exercise or the exercise of any right, power, or privilege under this Agreement or otherwise.

11. Indemnity

The Framework Member agrees to indemnify and save IDA Ireland harmless from and against any loss or liability resulting from, or arising in connection with, the unauthorised use or disclosure of the Confidential Information by the Framework Member or the Framework Member's Agents.

12. General

The undertakings, indemnities, confirmations, and acknowledgements on the Framework Member's part referred to in this Agreement are given by the Framework Member on behalf of the Framework Member itself and each of the Framework Member's Agents who are at any time in receipt of Confidential Information.

This Agreement will inure to the benefit of and may be enforced by IDA Ireland and its successors or assigns and will be binding upon the Framework Member and the Framework Member's Agents and the Framework Member's respective successors in interest; provided, however that any assignment by the Framework Member of the Framework Member's rights and obligations hereunder without IDA Ireland's prior written consent will be void.

Each of the provisions of this Agreement is separate and severable and enforceable accordingly. If at any time any of the provisions is held to be void or unenforceable, the validity or enforceability of the remaining provisions shall not be affected. If any provision is held to be void or unenforceable, the parties agree to substitute any such provision with a valid enforceable provision which achieves to the greatest extent possible the economic, legal, and commercial objectives of the invalid or unenforceable provision.

13. Governing Law

This Agreement and Undertaking will be governed by and constructed in accordance with Irish Law and shall be subject to the exclusive jurisdiction of the Irish Courts.

(Please sign here to confirm the Framework Member's acceptance of the above conditions).

I agree to the above conditions on behalf of the Framework Member

Signed:	_____	_____
Authorised Person		Position
Name:	_____	Date: _____
(Block Capitals)		

[To be completed when completing Framework Agreement]

Processing, Personal Data and Data Subjects

1. Processing by the Framework Member

1.1 Subject matter of processing: all information, whether in oral or written (including electronic) form, created by or in any way originating with IDA Ireland (including but not limited to its' employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with IDA Ireland provided under the Framework Agreement which relates to an identified or identifiable natural person as may be provided in connection with the provision of the Services.

1.2 Nature of processing: [to be inserted on completion of Framework Agreement]

1.3 Purpose of processing: to allow the Framework Member to provide the Services under the Framework Agreement;

1.4 Duration of the processing: [to be inserted on completion of Framework Agreement]

2. Types of personal data: [to be inserted on completion of Framework Agreement].

3. Categories of data subject: [to be inserted on completion of Framework Agreement].

SCHEDULE 7 – CALL-OFF MECHANISMS

Call-off Contracts pursuant to the Framework Agreement shall be awarded as and when requirements arise, at IDA Ireland's sole discretion, in accordance with the Framework Agreement and the terms and conditions set out in Schedule 1 herein. The mechanisms by which IDA Ireland may call off services are as follows:

Call-off Mechanism – Direct Drawdown

The IDA shall use this Mechanism for the provision of Services.

In this Mechanism IDA Ireland will issue a Letter of Instruction to the framework member. Subject to receipt of the Letter of Instruction the Framework member will provide the Services in accordance with the Call-Off Contract Terms and Conditions set out in Schedule 1 of this Framework Agreement.

SCHEDULE 8 – CHANGE CONTROL PROCEDURE

1. Where either Party (the “**Requesting Party**”) wishes to make a material change to the terms of this Framework Agreement or a Call-off Contract including, without limitation, any change to:
 - (c) the Services;
 - (d) the duration of the provision of the Services;
 - (e) the duration for which certain Key Personnel are made available to IDA Ireland,the procedure in this Schedule shall apply. The Change Control Procedure shall also apply in respect of any matters which are specifically identified in the Framework Agreement as being subject to the Change Control Procedure.
2. All change requests must be documented in a request form (a “**Change Request Form**”) which shall include, as a minimum, the following details:
 - (a) description of the requirements for the change;
 - (b) comparison of the new requirements with the existing requirements;
 - (c) reasons for the change, including a high level description of the proposed business impact; and
 - (d) timeframe for completion of the change.
3. The Change Request Form shall be signed by the representative of the Requesting Party as set out in Clause 17 of the Framework Agreement and submitted to the representative of the other Party as set out in Clause 17 of the Framework Agreement.
4. The Framework Member shall provide the IDA Ireland representative with an impact statement (an “**Impact Statement**”) within ten (10) Business Days of receipt or submission of a Change Request Form (or such longer period as the Parties may agree). The Impact Statement shall include, as a minimum, the following details:
 - (a) the estimated number of Business Days and Personnel (including levels of qualification) and details of the work categories required to deliver the change within the timeframe specified in the Change Request Form;
 - (b) the overall impact on the charges payable under the Call-off Contract (i.e. reduction or increase) which shall include a breakdown of how such fees relate to the details in (a) above so as to facilitate, where relevant, any reduction being offset against any increase in Cost; and
 - (c) the impact on the Services to be provided under the Framework Agreement.
5. After consideration, the IDA Ireland representative may elect by giving written notice to the Framework Member either to:
 - (a) accept the Impact Statement in which case the Framework Agreement and/or Call-off Contract shall be amended accordingly;
 - (b) reject the Impact Statement in which case the Framework Agreement and Call-off Contract shall remain unchanged; or
 - (c) require the Framework Member to produce a revised Impact Statement by repeating (up to a maximum of 2 times) the procedure set out in paragraphs 4 and 5 of this Schedule.

6. Following completion of the procedure in paragraph 5 above, where the Parties fail to reach agreement on a request for change, the dispute resolution procedure set out in Clause 16 of the Framework Agreement may be invoked.

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