



NATIONAL TRANSPORT AUTHORITY

AND

[•]

[SHORTER FORM *SERVICES AGREEMENT*]

THIS AGREEMENT is made on [•] 20

BETWEEN:

- (1) [•], a statutory corporation established under the laws of Ireland pursuant to an Act of the Oireachtas, and having its principal office at [•], Ireland (**the “Authority”**); and
- (2) [•], a company incorporated under the laws of [•] with registration number [•] and having its registered office at [•] (**the “Supplier”**).

1. FORM OF CONTRACT

The form of contract between the Supplier and the Authority will be this agreement (including its Schedules), together with the original National Transport Authority Request for Tenders – [insert name of tender] (the **“Tender Brief”**), the written submission received from [•] in respect of [insert name of tender] (the **“Submission”**) and the agreed project costing outlined in the Submission (collectively referred to as the **“Agreement”**).

2. WHEREAS:

- a) The Authority requires the supply of the services set out in Schedule 1 and any services ancillary, incidental or necessary thereto (**the “Services”**);
- b) The Supplier is in the business of providing services of the type contemplated by the Agreement and has the necessary skill, knowledge, expertise and experience in the supply of the Services.
- c) The Authority desires to engage the Supplier to provide the Services and the Supplier has agreed to provide the Services subject to the terms and conditions hereinafter provided.

3. CONTINUANCE OF AGREEMENT:

This Agreement shall commence on the date hereof and, subject to earlier termination in accordance with its terms, the Agreement shall continue in full force and effect from the date hereof/until successful completion of the Services.

4. OBLIGATIONS OF THE PARTIES:

- a) In consideration of the award of this Agreement, and the payment by the Authority of the charges to the Supplier in accordance with Clause 5 and Schedule 2, the Supplier agrees to supply the Services to the Authority in accordance with the terms of this Agreement.
- b) While this Agreement is in force the Supplier shall give the Authority such time and attention as may be necessary for the proper exercise of its duties under the Agreement.
- c) The Supplier will abide by and conform to such directions as are given by the Authority from time to time in relation to the provision of the Services to the Authority.

- d) The Supplier may (without the consent of the Authority) engage in any other business or act as a service provider or in any other capacity whatsoever for any company, firm or business, except where the Authority considers such activity may create a conflict of interest, in which case the Supplier may not undertake the activity without first obtaining the prior written consent of the Authority, not to be unreasonably withheld.
- e) The Supplier agrees to provide the Services in a timely manner, in accordance with the timeframes set out in Schedule 1 (if any). The Supplier shall co-operate with all the Authority personnel and any third parties involved in the provision of services to the Authority to the extent reasonably required to ensure that the Services are provided in accordance with the timeframes set out in the Schedule 1 (if any).

5. STATUS, TERMS AND PAYMENT:

- a) The Authority shall pay the Supplier in accordance with Schedule 2. The Supplier acknowledges that payments may be subject to retention provisions as set out in Schedule 2.
- b) Payment will be on foot of invoices submitted in accordance with Schedule 2 for work which has been completed by the Supplier and approved by the Authority and payment of any sums due will be on a net monthly account basis such that payment is made on the last business day of the month following the month of the invoice date provided the invoices are valid VAT invoices, undisputed by the Authority, and are correctly addressed.
- c) The Authority will be entitled to make deductions from the payments specified in this Agreement where it is required by law or the Authority is otherwise entitled to make such deductions. In particular, Professional Services Withholding Tax (PSWT) will be deducted at source as directed by the Revenue Commissioner from the Supplier's payment and remitted to the Revenue, if the Supplier is providing professional services.
- d) The Supplier will be responsible for any VAT due in respect of fees received under this Agreement.
- e) The Authority may set off any payment due to it from the Supplier against any fees due by the Authority to the Supplier on this or any other contract between the parties.
- f) The fees set out in Schedule 2:
 - i. are fixed for the period up to the second anniversary of the Commencement Date and shall not before that date be subject to any price adjustment or escalation formula to reflect variations in currency, exchange rates, taxation, the cost of labour, materials, overheads or any other expense; and
 - ii. following the second anniversary of the Commencement Date and on each subsequent anniversary of the Commencement Date (a "**Readjustment Date**"), shall be adjusted by the percentage increase or decrease (if any) of the Index figure current at the Readjustment Date compared with the Index figure current on the previous Readjustment Date, or, in the case of the first readjustment, compared with the Index figure current on the Commencement Date. (For the purpose of this clause "**Index**" means the Consumer Price Index published by the Central Statistics Office (or any

successor or replacement thereto from time to time)). Between Readjustment Dates, the fees as adjusted will be fixed for the year following the Readjustment Date and shall not be subject to any further price adjustment or escalation formula to reflect variations in currency, exchange rates, taxation, the cost of labour, materials, overheads or any other expense until the next Readjustment Date.

6. TAX CLEARANCE:

The Supplier shall not be entitled to any payment if at any time in response to a request from the Authority the Supplier does not produce a current tax clearance certificate or statement from the Revenue Commissioners of Ireland confirming suitability on tax grounds.

7. ASSIGNMENT, SUB-CONTRACTING AND NOVATION

- a) The Supplier:
 - i. shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatsoever, any of its rights and/or obligations under this Agreement; and
 - ii. shall not otherwise subcontract out any element of the Services ;without the prior written consent of the Authority, which consent may be withheld at the Authority's absolute discretion.
- b) Where the Supplier wishes to appoint a sub-contractor, it shall submit to the Authority details of the proposed sub-contractor (such details to include relevant experience of the proposed sub-contractor, scope of Services to be sub-contracted and intended commencement date of the sub-contracting) and, subject to the Authority's consent, may appoint the sub-contractor.
- c) The Supplier shall manage, monitor and co-ordinate the performance by any sub-contractor of its respective obligations and shall procure the compliance with the terms of this Agreement by each such sub-contractor, servant or agent appointed by the Supplier, provided that the Supplier shall remain primarily liable to the Authority for the performance of the Supplier's obligations under this Agreement.
- d) The Authority may transfer, assign or novate all or any part of the terms and conditions of this Agreement to any public sector body and shall give prompt notice to the Supplier of such transfer, assignment or novation. The Supplier agrees to do all acts, and execute all documents, necessary to give effect to such transfer, assignment or novation.

8. CONFIDENTIALITY:

The Supplier shall not (except in the proper performance of his/her duties hereunder) during the course of this Agreement or at any time afterwards divulge to any person whomsoever and shall use his/her best endeavours to prevent the publication or disclosure of any trade secret or other confidential information concerning the business, finances, dealings, transactions or affairs of the Authority or its staff coming to his/her knowledge in the course of his/her activities as a contractor.

9. CONFLICT OF INTEREST:

- a) The Supplier shall ensure that no conflict of interest arises in respect of the performance of the Services under the Agreement, irrespective of whether the Services are provided by the Supplier, its agents or servants, or any sub-contractor appointed in accordance with Clause 7 of this Agreement. The Supplier shall disclose to the Authority within forty-eight hours of it coming to its attention, any conflict of interest or potential conflict of interest which it, any of its employees, affiliates, agents, servants or any of its sub-contractors (the “**Personnel**”) may have in performing the Services. In the event of any conflict or potential conflict of interest arising, the Authority shall, in its absolute discretion, decide on the appropriate course of action, which may involve termination of the Agreement, pursuant to Clause 15.
- b) The Supplier hereby expressly agrees and warrants that for the duration of this Agreement neither the Supplier nor any of the Personnel shall, unless otherwise agreed in advance with the Authority, provide any advice to any person other than in accordance with this Agreement in connection with the Services (or any part of them) or relating to any project connected with the Services.
- c) The Supplier shall ensure that the Personnel comply with this Clause 9 and shall be responsible for the observance of this Clause 9 by the Personnel.

10. INTELLECTUAL PROPERTY AND RIGHT TO USE MATERIALS:

- a) The Supplier agrees that all intellectual and/or industrial property rights, including copyright, patents, design rights, trade secrets, rights in confidential information, trade marks, trade names, domain names, service marks, utility models, moral rights, topography rights, rights in databases and know-how in all cases whether or not registered or registerable and including registrations and applications for registration of any of these rights to apply for the same, and all rights and forms of protection of a similar nature or having equivalent or similar effect to any of these anywhere in the world (“**Intellectual Property Rights**”), arising out of or relating to any works or material originated, conceived, written or created specifically for the Authority by the Supplier or any of the Personnel as part of the Services (including without limitation, all records documents, data, financial models, methodologies or such other materials) (the “**Materials**”) will vest in and be the absolute property of the Authority. The Authority recognises that the Intellectual Property Rights in respect of any works or material supplied in connection with the Services which are not part of the Materials will vest solely in the Supplier and Supplier grants to the Authority a worldwide, non-exclusive, perpetual, sub-licensable, transferable and royalty-free licence to use such works and material.
- b) The Supplier shall, at the request of the Authority, do all such things as the Authority may reasonably require for the purpose of vesting in the Authority the rights granted to it under this Clause 10.
- c) The Supplier hereby waives, and shall procure that the Personnel waive, all current or future moral or similar rights arising in connection with the Materials insofar as they may lawfully do so in favour of the Authority and for the avoidance of doubt this waiver shall extend to the licensees and successors in title to the Intellectual Property Rights in such Materials.

- d) The Supplier acknowledges that all rights in any materials (including without limitation any and all computer programs, data, diagrams, charts, reports, specifications, studies, and development tools) provided by the Authority to the Supplier shall at all times vest in and be the absolute property of the Authority.
- e) On completion of the Services or upon expiry or termination of this Agreement for any reason, or at any other time as may be reasonably requested by the Authority, the Supplier shall upon written request deliver to the Authority all documents (in such a manner as to be “unlocked”, readily accessible and useable for any reasonable purpose) and all materials whatsoever purchased or created by the Supplier and/or the Personnel for the purpose of the Services (or any part thereof).

11. RIGHTS OF THIRD PARTIES:

Nothing in this Agreement confers or purports to confer on any third party any benefit or any right to enforce any term of this Agreement.

12. WARRANTIES:

- a) The Supplier warrants that any deliverables to be provided to the Authority under this Agreement shall be fit for purpose and free from material defects in normal use.
- b) The Supplier warrants that the Services shall be provided by appropriately experienced, qualified and trained personnel and that the Services shall be rendered with all due skill, care and diligence.
- c) The Supplier warrants that the provision of the Services and any deliverables to be supplied under this Agreement will not infringe the Intellectual Property Rights of any third parties.
- d) The Supplier warrants that it will observe and comply with all laws applicable in Ireland or any other applicable jurisdiction (“**Applicable Laws**”) to the extent that such laws are relevant to the performance of its obligations under this Agreement.
- e) The Supplier warrants that it has the authority to enter into this Agreement and to perform its obligations under this Agreement and that no material conflict of interest shall arise for the Supplier by virtue of the Supplier entering this Agreement.
- f) The Supplier warrants that it will obtain at its own risk and expense from the appropriate authorities, or any third parties all permits and licences necessary for the proper performance of its obligations under this Agreement.

13. LIABILITY

- a) Save in respect of death or personal injury caused by the negligence of either party, breach of this Agreement by virtue of fraud or wilful default, or breach of any Intellectual Property Rights by the Supplier (including, for the avoidance of doubt, any liability under the indemnity at Clause 16), each party's liability for any claim whether in contract, tort (including negligence) or otherwise, for any loss or damage, arising out of or in connection with this Agreement or otherwise shall in no case exceed 200% of sums paid and payable by the Authority under this Agreement in respect of any event or series of connected events.

- b) In no event shall either party be liable for special, incidental, indirect or consequential damages.

14. FORCE MAJEURE:

- a) “**Force Majeure**” shall in relation to either party include any event beyond the reasonable control of that party including act of God, war, riot, civil commotion, malicious damage, national official strike or lock-out, accident, fire, flood or storm which could not have been avoided by taking reasonable precautions.
- b) If a party is affected by a Force Majeure, then the party so affected (the “**Affected Party**”) shall promptly notify the other party in writing of the nature and extent of the circumstances in question and both parties shall consult each other and make every reasonable effort to mitigate the effect of such Force Majeure on the Affected Party’s ability to perform its obligations under this Agreement.
- c) The Affected Party shall be deemed not to be in breach of this Agreement or otherwise be liable to the other party for any delay in performance or non-performance of its obligations under this Agreement arising from the operation of a Force Majeure which it has notified to the other party. The time for the performance of obligations affected by a Force Majeure which has been duly notified to the other party shall, subject to Clause 14d), be extended until such time as the Force Majeure ceases to exist.
- d) If any circumstances of Force Majeure exist for a continuous period of six months then the Authority shall be entitled to terminate the Supplier’s appointment under this Agreement forthwith by giving notice in writing to the Supplier.

15. TERMINATION:

- a) The Agreement may be terminated by the Authority immediately in writing:
 - i. if in the reasonable opinion of the Authority, there has been any material breach, default or negligence or repeated or continued (after warning) breach by the Supplier of its obligations under this Agreement and the Supplier fails to remedy any such breach, default or negligence within ten (10) working days of receipt of a written request to do so;
 - ii. if the Supplier becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (where the Supplier is a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or has a receiver or manager appointed to the whole or substantially the whole of its undertakings or if security is enforced against any asset of the Supplier or any distress or execution shall be threatened or levied upon any asset of the Supplier or if the Supplier is unable to pay its debts in accordance with the law relating to the Agreement;
 - iii. if the Supplier has been guilty of conduct tending to bring itself or the Authority into disrepute;
 - iv. if any funding of the Authority shall cease;

- v. if the performance of the Supplier's duties hereunder is not satisfactory in the reasonable opinion of the Authority;
- b) The Agreement may be terminated by the Authority immediately in writing where:
 - i. in the reasonable opinion of the Authority, the Agreement has been subject to substantial modification, which would require a new procurement procedure pursuant to Article 72 of Directive 2014/24/EU and/or Regulation 72 of the European Union (Award of Public Authority Contracts) Regulations 2016.
 - ii. the Supplier has, at the time of the award of the Agreement, been in one of the situations referred to in Article 57 (1) of Directive 2014/24/EU of the European Parliament and of the Council, and/or Regulation 57(1) or (2) of the European Union (Award of Public Authority Contracts) Regulations 2016 and should therefore have been excluded from the procurement procedure for this Agreement; or
 - iii. the Agreement should not have been awarded to the Supplier in view of a serious infringement of the obligations under the Treaties governing the European Union and/or Directive 2014/24/EU and/or the European Union (Award of Public Authority Contracts) Regulations 2016, that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union.
- c) On termination or expiry of this Agreement, howsoever arising, the Supplier shall immediately return all records, papers, materials, media and other property in its possession that is the property of, or that was provided to it by, the Authority. For the avoidance of doubt, the Supplier shall have no lien on documents in its possession or under its control for payment due to it by the Authority.

16. INTELLECTUAL PROPERTY INDEMNITY:

The Supplier shall indemnify and keep indemnified the Authority, its servants and agents, against all damages, costs, charges and expenses arising from or incurred by reason of any infringement or alleged infringement of any third party Intellectual Property Rights in consequence of the use of any deliverables provided under this Agreement by the Authority and the supply of the Services (or any part thereof) by the Supplier under this Agreement, subject to the Authority promptly notifying the Supplier in writing of any alleged infringement of which the Authority has notice.

17. INSURANCE:

The Supplier shall ensure that at all times during the term of this Agreement it has in place such levels of insurance (based on normal and customary terms) with a reputable insurer as may be required to cover any potential liability of the Supplier under this Agreement. In particular, the Supplier shall ensure that such insurance includes, without limitation, public liability insurance with an adequate limit having regard to the nature and extent of the Services. The Supplier undertakes to furnish the Authority upon request with copies of all such insurance policies together with evidence that all associated premia have been duly paid up to date.

The Insurance minimum requirements required are as follows:

Professional Indemnity, €1,500,000
Employers Liability, €13,000,000
Public Liability, €6,500,000

18. DISPUTE RESOLUTION:

- a) The parties shall use all reasonable endeavours to settle any dispute that may arise in connection with this Agreement.
- b) If any dispute cannot be settled amicably by the Authority and the Supplier within 10 working days, the dispute shall be referred to the Authority's [●] and the Supplier's [●]. The Authority's [●] and the Supplier's [●] will use all reasonable endeavours to resolve the dispute. If the dispute is not resolved by the Authority's [●] and the Supplier's [●] within 10 working days of the matter being referred to them, the parties will refer the dispute to mediation in accordance with the Centre for Effective Dispute Resolution (“CEDR”) procedures then in force before resorting to litigation. The mediation process will be commenced by service by one party on the other of a written notice that the issue is to be referred to mediation (the "**Mediation Notice**"). The parties shall agree on a choice of mediator. In the event that the parties are unable to agree on a choice of mediator within 10 working days of the date of service of the Mediation Notice, the parties shall accept a mediator nominated by CEDR. The costs of the mediation shall be shared equally between the parties.
- c) Nothing contained in this clause 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.

19. SEVERANCE:

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions become invalid, illegal or unenforceable then the validity and legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

20. DATA PROTECTION:

- a) To the extent that the provision of the Services under this Agreement involves the processing of personal data within the meaning of the Data Protection Acts (the “**DPA**”) by the Supplier on behalf of the Authority then:
 - i. the Supplier will only process personal data in accordance with the instructions of the Authority and solely as strictly necessary for the performance of its obligations under this Agreement;
 - ii. the Supplier shall implement such technical and organisational security measures as are required to comply with the data security obligations under the DPA;

- iii. the Authority (or its authorised representative(s)) shall be entitled, at reasonable times and on reasonable notice, to audit the technical and organisational security measures adopted by the Supplier to ensure that such measures comply with the data security obligations in the DPA;
 - iv. no personal data shall be transferred outside of the European Economic Area by the Supplier or any of its agents, sub-contractors or business partners without the prior written consent of the Authority which consent may be subject to terms and conditions;
 - v. the Supplier shall notify the Authority immediately in the event of any data security breach, actual or suspected, and provide the Authority with such co-operation and assistance as may be required to mitigate against the effects of any such breach;
 - vi. the Supplier shall inform the Authority immediately in the event of receiving a data subject access request and provide such co-operation and assistance as may be required to enable the Authority to deal with any subject access request in accordance with the provisions of the DPA; and
 - vii. subject to the provisions of Clause 7, where any sub-contractor of the Supplier will be processing personal data on behalf of the Authority, the Supplier shall ensure that a written contract exists between the Supplier and the sub-contractor containing clauses equivalent to those imposed on the Supplier in this clause and the Supplier shall enter such contract on behalf of itself and as agent for the Authority.
- b) For the purposes of this Clause 20, but not for any other purpose under this Agreement, the Authority appoints the Supplier as its agent.

21. NON-EXCLUSIVITY:

The Authority shall at all times be entitled to enter into separate contracts for the provision of any or all services that are the same as or similar to the Services, with persons other than the Supplier. Nothing in this Agreement shall create an exclusive relationship between the Authority and the Supplier for the provision of Services.

22. ENTIRE UNDERSTANDING:

This Agreement contains the entire understanding and agreement between the parties in respect of its subject matter, supersedes all previous agreements and understandings between the parties with respect to its subject matter, and may not be modified except in accordance with Clause 23.

23. AMENDMENT OR VARIATION

An amendment or variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

24. WAIVER AND DELAY

No waiver by either party of a breach of the Agreement by the other will operate as a waiver of any subsequent breach. No failure or delay by either party in exercising any right or remedy provided under this Agreement or by law will operate as a waiver thereof, nor will any single or partial exercise or waiver of any right or remedy provided under this Agreement or by law prejudice its further exercise or the exercise of any other right or remedy.

25. NOTICES

- a) Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by fax or letter. The address and fax number (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is:

- i. in the case of the Authority:

National Transport Authority

Address:

Facsimile no:

Attention:

Haymarket House
Smithfield
Dublin
D07 CF98
Ireland

+353 (0)1 879 8333

Ollie Fallon

- ii. in the case of the Supplier:

[name of Supplier]

Address:

Facsimile no:

Attention:

[To be inserted]

[To be inserted]

[To be inserted]

or such other address or facsimile number as may be notified to the other party to this Agreement, such notice to take effect not less than five working days' after the service of the notice.

- b) Subject to Clause 25c), a communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:
- i. if by way of fax, when received in legible form; or
- ii. if by way of letter, when it has been left at the relevant address or five working days' after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 25a), if addressed to that department or officer.

- c) Any communication or document to be made or delivered to the Authority will be effective only when actually received by the Authority and then only if it is expressly marked for the attention of the department or officer identified with the Authority's signature below (or any substitute department or officer as the Authority shall specify for this purpose).
- d) Any notice given under or in connection with this Agreement must be in English. All other documents provided under or in connection with this Agreement must be:
 - i. in English, or
 - ii. if not in English, and if so, required by the Authority, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

26. STATUS OF THE SUPPLIER AND EMPLOYEE MATTERS

a) Status of the Supplier

Subject to clause 20, the parties agree that the Supplier is and shall be an independent supplier and not the servant, agent or employee of the Authority.

b) Provision of services to other persons

Subject to clause 9, nothing in this Agreement shall preclude the Supplier from providing similar or any other services to any other person or firm except where the Authority considers such provision may create a conflict of interest, in which case the Supplier may not provide the services without first obtaining the prior written consent of the Authority, not to be unreasonably withheld.

c) Responsibility for Employees

- i. It is agreed and acknowledged that:
 - a. the Supplier is fully responsible for, and the Authority has no responsibility for or to, the Supplier's employees, servants or agents;
 - b. the Supplier's employees, servants or agents shall not be entitled to any salary, wages, overtime payments, sick or holiday pay, pension, bonus or additional or fringe benefits of any kind from the Authority and such are the responsibility of the Supplier;
 - c. the Supplier shall be responsible for income tax liabilities, PRSI contributions, levies or other deductions required by law in respect of itself or its employees, servants or agents (including, for the avoidance of doubt, all PAYE deductions for tax and universal social charge contributions from the remuneration which it pays to Personnel);

- d. the Supplier shall be responsible for the day-to-day management and control of its employees, servants and agents and the Authority shall have no such responsibility or control; and
 - e. the Supplier is responsible for providing and maintaining any equipment or resources to be used by its employees, servants or agents and the Authority shall have no such responsibility (unless agreed otherwise).
 - ii. The Supplier shall indemnify and keep indemnified the Authority against any claim (including but not limited to a claim for income tax, PRSI, universal social charge, any other deductions required by law and any interest and penalties thereon) which may be made against the Authority by the Revenue Commissioners, the Department of Social Protection, the Supplier's employees or any third party, or any order or award made by any tribunal or court, relating to a determination or allegation that the Supplier's employees, servants or agents are employees of the Authority, together with all costs and expenses incurred by the Authority in connection with or arising out of any such claim, order or award (including reasonable legal costs in defending such claim if necessary).
 - iii. The Supplier shall indemnify and keep indemnified the Authority against Employee Liabilities arising from death or personal injury suffered by the Supplier's employees, servants or agents in providing the Services, except to the extent that such arises due to any negligent act of the Authority.
- d) No partnership
- Subject to clause 20, nothing in this Agreement shall constitute a partnership or joint venture nor establish a relationship of agency between the parties or a relationship of employment between the Authority and the Supplier's servants or agents.
- e) No authority
- The Supplier shall have no power or authority to enter into any agreement, contract or commitment for or on behalf or in the name of the Authority in connection with, or pursuant to, the provision of the Services or otherwise without the prior specific consent in writing of the Authority.
- f) Stand-Still Period
- During the 6 (six) month period preceding the date of expiry of this Agreement, or at any time after either party has given notice to terminate this Agreement, the Supplier shall not, and shall procure that its Associated Companies, contractors or sub-contractors (of any tier) shall not, without the prior written consent of the Authority:
- i. amend, or offer, promise or agree for the future to amend, terms and conditions of employment including, without limitation, the rates of remuneration (including pensions and bonuses), working hours, holidays and sick pay, of any employee employed by the Supplier or by any of its Associated Companies, contractors or sub-contractors (of any tier) whose work (or any part of it) is work undertaken for the purposes of this Agreement; or

- ii. increase or decrease the number of employees whose work (or any part of it) is work undertaken for the purposes of this contract, or make offers of employment that would have the effect of increasing the number of such employees or give notice of termination of employment that would have the effect of decreasing the number of such employees.

g) Employee Information

- i. At any time during the term of this Agreement where notified in writing by the Authority to do so, the Supplier shall provide Employee Information (as defined below) to the Authority within 10 (ten) business days of such notice.
- ii. It is agreed that the Authority may disclose Employee Information to any Prospective Tenderer, but that the Authority shall not disclose Employee Information (or any part of that information) to any other person without the Supplier's consent except where the Authority is required by law or under regulatory rules to disclose such information.
- iii. Where Employee Information has been provided by the Supplier to the Authority, the Supplier shall:
 - a. within 10 (ten) business days of any amendment to such information, or the discovery of new relevant information, inform the Authority of any change to the information provided and/or provide any new Employee Information not previously provided;
 - b. use its best endeavours to clarify within 10 (ten) business days any matter upon which clarification is requested by the Authority; and
 - c. use its best endeavours to co-operate with any other reasonable request made by the Authority concerning the Employee Information or concerning the Supplier's employees or the employees of its Associated Companies, contractors or sub-contractors (of any tier).

“Employee Information” means:

- i. An overview of how the Services is provided, including but not limited to setting out the total number of persons engaged by the Supplier to provide the Services and indicating in each case whether those persons are employed by the Supplier, its Associated Companies or by any of its contractors or sub-contractors of any tier; and
- ii. In relation to employees of the Supplier or its Associated Companies who are wholly or mainly assigned to the provision of the Services, a spreadsheet containing the following:
 - a. employee's job title and staff number
 - b. name and address of the applicable employer (i.e. whether employed by the Supplier or an Associated Company);

- c. date of birth;
 - d. details of remuneration (including salary and all benefits, perquisites, bonuses, commission, share plans, overtime or other such payments);
 - e. details of any pension scheme contributions or entitlement;
 - f. details of any other contractual entitlements (for example health insurance, permanent health insurance and company car);
 - g. normal working hours;
 - h. approximate percentage of the employee's working time spent on the Services (expressed as a percentage of the total work the employee carries out for his/her employer);
 - i. contractual annual leave entitlements and accrued annual leave;
 - j. details of whether employment is permanent, temporary, part-time or fixed-term;
 - k. length of service;
 - l. notice period;
 - m. any amendments to terms and conditions of employment covering future dates which has already been agreed; and
 - n. any contractual redundancy or severance entitlement whether express or implied; and
- iii. In relation to each person mentioned in clause 26(g)ii above, the following:
- a. terms and conditions of employment (copy contracts of employment) including details of terms incorporated from any collective agreement or arising out of any custom or practice;
 - b. employee handbook and/or policies and procedures forming part of the employees' contracts;
 - c. workforce structure and lines of responsibility;
 - d. details of any outstanding or reasonably anticipated liability for past breaches of such employment contracts;
 - e. details, including expected return dates, of any employee who is on sick leave, maternity leave or other statutory or contractual leave (other than normal holiday leave) whether paid or unpaid;

- f. details of any outstanding or potential liability under statute or otherwise (for example, any claim for unfair dismissal or discrimination or wrongful dismissal);
 - g. details of any employee grievances or current disciplinary action;
 - h. details of trade union recognition, any collective agreements, any areas of industrial dispute and any decisions or recommendations of a court or otherwise affecting the workforce that are still in effect;
 - i. details of any employees currently serving a notice period or garden leave period prior to termination of their contract; and
 - j. details of any other outstanding or potential contractual liability to be met by a new contractor were it to become employer of such persons;
- iv. In relation to any employees providing the Services, whether they be employees of the Supplier, an Associated Company or contractors or subcontractors of any tier, confirmation that any such employee would not reasonably be deemed to be an employee of another employer due to his working arrangement; and
- v. Such other information as the Authority may reasonably require in relation to the Supplier's employees or the employees of its Associated Companies, contractors or subcontractors (of any tier).
- vi. **"Associated Companies"** means the Supplier and any undertaking which from time to time is a subsidiary undertaking of the Supplier or is the parent undertaking of the Supplier or ultimate parent undertaking of the Supplier or a subsidiary undertaking of any such parent undertaking and for the purposes of this definition "subsidiary undertaking" and "parent undertaking" shall have the meanings given to them in the European Communities (Companies: Group Accounts) Regulations 1992 (and **"Associated Company"** shall be construed accordingly).
- vii. **"Employee Liabilities"** means costs (including the cost of wages, salaries and other remuneration or benefits), taxation or other deductions required by law, PRSI payments, redundancy payments, levies, losses, claims, demands, actions, fines, penalties, awards, liabilities, expenses (including legal expenses on an indemnity basis), in each case howsoever arising;
- viii. **"Prospective Tenderer"** means a person or company who has submitted, or has indicated an intention to submit, a tender or expression of interest in relation to the provision of works or services of a similar type to any of the Services under this Agreement;

27. KEY PERSONNEL

- a) Unless the Key Personnel are removed in accordance with clause 27(b), or cease to be employed by or contracted to the Supplier, are taken ill, are injured or are on maternity or paternity leave, the Supplier will use all reasonable endeavours to ensure that the Key Personnel shall continue to provide the Services to the Authority until successful completion of the Services. Subject to paragraph (b) below, with the exception of a member of the Key Personnel who ceases to be employed by or contracted to the Supplier, who is taken ill, is injured or is on maternity or paternity leave, the Key Personnel may only be removed by the Supplier in advance of the completion of the Services with the prior written consent of the Authority, such consent not to be unreasonably withheld. In all cases the Key Personnel (whether removed with consent or otherwise pursuant to the terms of this clause) must be replaced with an employee, servant or agent of equal or higher ability. Prior to the removal of any Key Personnel in accordance with this clause, the Supplier shall (where possible in advance of any such removal) furnish the Authority with a copy of the proposed replacement's curriculum vitae and all details required to enable the Authority to satisfy itself that the employee, servant or agent is appropriately qualified for the provision of the Services.
- b) If at any time during the term of this Agreement the Authority reasonably determines that any employees, servants or agents of the Supplier are not suitable for the provision of the Services, it shall notify the Supplier of its decision and the Supplier shall immediately remove the said person(s) from the Services and replace him/her in accordance with the procedures set out in clause 27(a). The Supplier shall indemnify and keep indemnified the Authority from any Employee Liabilities that may result from such action or that relate to the removal of that person from the Service(s).

28. TRANSFER OF UNDERTAKINGS

- a) In this clause 28

“Employee” means any employee of the Existing Contractor or of any third party whose terms and conditions of employment transfer to the Supplier under Regulation 4 of the Transfer Regulations;

“Existing Contractor” means [•], the contractor currently providing some or all of the services the subject of this Agreement;

“New Contractor” means the Authority or any third party that will provide some or all of the Services on the termination or expiry of this Agreement;

“Retransfer Date” means the date on which the relevant Retransferring Employee transfers to a New Contractor in accordance with the Transfer Regulations;

“Retransferring Employee” means any employee of the Supplier or of any third party whose terms and conditions of employment transfer to a New Contractor under Regulation 4 of the Transfer Regulations on the termination or otherwise of this Agreement;

“Transfer Date” means the date on which the Employees transfer to the Supplier in accordance with the Transfer Regulations; and

“Transfer Regulations” means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, including any statute or statutory provision which amends, extends, consolidates or replaces the same.

- b) The Parties acknowledge that the Transfer Regulations may apply on or following the commencement of this Agreement such that persons currently providing all or part of the Services would transfer to the Supplier and that, should the Transfer Regulations apply, the contracts of employment of the Employees (save insofar as excluded under Regulation 4 of the Transfer Regulations) will have effect from the Transfer Date as if originally made between the Supplier and the Employees. However, the Supplier acknowledges and agrees that it shall be liable for all Employee Liabilities resulting from the application or alleged application of the Transfer Regulations on, or following, commencement of this Agreement, that the Authority has made no representations regarding the Transfer Regulations and that the Authority has not provided any warranty or indemnity of any nature regarding the application of the Transfer Regulations or the identity of the persons who may transfer to the Supplier in accordance with the Transfer Regulations.
- c) If the Transfer Regulations apply on or following commencement of this Agreement, it is agreed that:
 - i. the Supplier shall comply with its obligations under the Transfer Regulations;
 - ii. the Authority shall provide information and assistance so far as it is reasonably able to do so in order to allow the Supplier to so comply with its obligations under the Transfer Regulations, including using reasonable endeavours to obtain from the Existing Contractor (or other applicable employer) details of the Employees’ existing contractual rights and obligations. However, the Authority neither warrants, represents nor takes responsibility for the accuracy of information so obtained from the Existing Contractor and provided to the Supplier; and
 - iii. the Supplier shall indemnify the Authority and keep the Authority indemnified on demand against any and all Employee Liabilities relating to Employees (or persons claiming to be Employees) arising from:
 - a. a refusal to employ such person;
 - b. the employment or termination of such person’s employment by the Supplier after the Transfer Date;
 - c. any changes in such person’s terms and conditions of employment after the Transfer Date;
 - d. any failure by the Supplier to comply with the Transfer Regulations, including the information and consultation requirements in Regulation 8; and
 - e. any failure by the Supplier to comply with its obligations under this clause 28(c).
- d) It is acknowledged and agreed that if, on the termination or expiry of all or part of this Agreement, the provision of some or all of the Services pursuant to it are transferred to a New Contractor and such transfer constitutes a transfer within the meaning of the Transfer Regulations, then the provisions of clauses 28(e) to 28(g) below shall apply.

- e) The Supplier shall comply with its obligations under the Transfer Regulations, including its information and consultation obligations under Regulation 8 of the Transfer Regulations, and it shall provide any reasonably necessary information and assistance to a New Contractor to allow that party to comply with its obligations (including providing a list of Retransferring Employees together with their terms and conditions of employment and allowing the New Contractor to address Retransferring Employees as is reasonably necessary in the lead up to the Retransfer Date).
- f) The Supplier shall indemnify the Authority and the New Contractor and keep the Authority and New Contractor indemnified on demand against any and all Employee Liabilities relating to Retransferring Employees (or a person claiming his employment should transfer to the New Contractor) arising from:
 - i. any claim which relates to such person's employment by the Supplier before the Retransfer Date;
 - ii. the employment or termination of such person's employment by the Supplier before the Retransfer Date;
 - iii. any changes in such person's terms and conditions of employment before the Retransfer Date;
 - iv. any failure by the Supplier to comply with the Transfer Regulations, including the information and consultation requirements in Regulation 8;
 - v. a failure by the Supplier to provide an accurate list of Retransferring Employees together with their terms and conditions of employment; and
 - vi. the non-disclosure or inaccurate disclosure of Employee Information.
- g) If it is alleged that the provisions of the Transfer Regulations operate so as to transfer to the New Contractor a person other than a Retransferring Employee whose identity was notified to the New Contractor in accordance with clause 28(e) above:
 - i. the New Contractor shall, upon becoming aware of the alleged application of the Transfer Regulations to such person, inform the Supplier, and the Supplier shall within 5 (five) business days:
 - a. provide all relevant information to the New Contractor relating to such person and his employment as reasonably requested by the New Contractor; and
 - b. consult with the New Contractor in good faith as to the appropriate steps to be taken in relation to that person;
 - ii. the Supplier shall, within 10 (ten) business days, offer such person employment on their same terms and conditions of employment; and
 - iii. the Supplier covenants to pay to the New Contractor on demand an amount equal to any and all Employee Liabilities arising out of such person's employment and/or the termination of such person's employment, so long as such termination takes place within 2 (two) months of the New Contractor becoming aware of such allegation.
- h) The Authority holds the benefit of any indemnities, covenants, agreements or warranties provided under this clause 28 (or any sub-clauses hereof) for itself and in

trust for any nominee or New Contractor, and the Supplier agrees that the Authority has the right at its sole discretion to assign the benefit of such indemnities to a New Contractor or that, when requested to do so by the Authority, the Supplier shall execute indemnities, covenants, agreements or warranties in similar terms as this clause 28 in favour of a New Contractor.

- i) Where the Supplier chooses to provide all or any part of the Services through an Associated Company, contractor or subcontractor:
 - i. the term “Supplier” shall be interpreted where necessary as including such Associated Company; and
 - ii. the Supplier shall ensure that any such Associated Company, and any contractors or subcontractors providing some or all of the Services, comply with the Transfer Regulations (if applicable) and any obligations to provide information or assistance to the Authority or a New Contractor in the same manner as such applies to the Supplier.

29. COUNTERPARTS

This Agreement may be executed in any number of counterparts and by different parties hereto on separate counterparts, each of which, when executed and delivered, shall constitute one and the same instrument.

30. GOVERNING LAW OF THE CONTRACT:

The laws of Ireland shall govern the construction, validity and performance of this Agreement.

Signed on behalf of

[•]

[INSERT NAME OF INDIVIDUAL]

Date

Signed on behalf of

[•]

[INSERT NAME OF INDIVIDUAL]

Date

SCHEDULE 1
THE SERVICES

SCHEDULE 2
TENDER FEE / RATE

SCHEDULE 3
QUALITY SUBMISSION