



Request for Tenders for the Provision of Thin Client Devices

Tenders to be uploaded by: Tuesday 22nd September at 3pm

Notice

Please note that all information relating to this tender, including tender documentation, clarifications and changes, will be published on the e-tenders website (www.etenders.gov.ie) only. Registration is free of charge and there is no charge for documents. The Revenue Commissioners will not accept responsibility for information relayed (or not relayed) via third parties. If the RFT is in any way altered or edited, the subsequent tender may be deemed inadmissible.

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1. Introduction

1. The Office of the Revenue Commissioners (“Revenue Commissioners”) invites responses (“Tenders”) to the Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the provision of Goods as described in Appendix 1 of this RFT, “Requirements and Specifications”, (“the Goods”). The Revenue Commissioners is the Contracting Authority for this public procurement competition (“the Contracting Authority”).
2. The title of this RFT is Request for Tender for the Provision of Thin Client Devices.
3. This public procurement competition relates to the supply of 200 Thin Client devices.
4. This public procurement competition (the “Competition”) will be conducted in accordance with the open procedure under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the “Regulations”).
5. Any Goods Contract that may result from this public procurement competition will be issued for a term of six months.
6. Not Used.
7. The Contracting Authority estimates that the expenditure on the Goods covered by the Goods Contract may amount to some €70,000 (excl. VAT) over the Term and any possible extensions. Tenderers must understand that this figure is an estimate only based on current and future expected usage.
8. Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises (“SME”s) in this Competition. SMEs that believe the scope of this Competition is beyond their technical or business capacity are encouraged, subject to paragraph 2.3, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Client Contracts that may result from this Competition and therefore increase their social and economic benefits. Larger enterprises are also encouraged, subject to paragraph 2.3, to consider the practical ways that SMEs can be included in their proposals to maximise the social and economic benefits of any Client Contracts that may result from this Competition.

2. Instructions to Tenderers

2.1 Important Notices

While every effort has been made to provide comprehensive and accurate information in all notices and documents prepared for the purposes of this Competition, the Contracting Authority does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers.

The Contracting Authority does not bind itself to accept the lowest priced or any Tender.

This RFT does not constitute an offer or commitment to enter into a Goods Contract.

No enforceable commitment of any kind will exist unless and until a formal written Goods Contract has been executed by or on behalf of the Contracting Authority.

Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer.

The award of a Goods Contract does not confer exclusivity on the successful Tenderer.

The Contracting Authority may cancel this Competition at any time prior to a formal written Goods Contract being executed by or on behalf of the Contracting Authority.

All costs and expenses incurred by Tenderers relating to their participation in this Competition including, but not being limited to, site visits, field trials, demonstrations and/or presentations shall be borne by and are a matter for discharge by the Tenderers exclusively.

No publicity regarding this public procurement competition, the award of a contract or the execution of the Contract is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

This RFT supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence.

In this clause, “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 Commission or other supervisory authority for data protection in Ireland from time to time. The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender, is required to confirm in the statement required under paragraph 2.2 below that all Data Subjects

(where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

The Contracting Authority would refer Tenderers in particular to the provisions of Regulation (EU) 2022/1031 on the access of third country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI), and to their obligation to comply therewith.

In particular, tenderers and candidates should note in Article 6 of Regulation (EU) 2022/1031, the obligations for a Contracting Authority in the context of a procurement procedure where the EU Commission has adopted an IPI measure.

2.2 Submission of Tenders

- Tenders must be submitted by Tuesday September 22nd at 3pm. Extensions to this date cannot be granted. Tenders that are received late **WILL NOT** be considered in the public procurement competition.
- Submission of tenders is via e-tenders electronic on-line tendering facility only. Failure to comply with this requirement will render the tender non-compliant and it will be rejected.
- Incomplete tenders or tenders not conforming to the requirements of this RFT will not be considered.
- Tenders must be submitted in English or Irish. Failure to comply with this requirement will render the tender non-compliant and it will be rejected
- Faxed, e-mailed or hard copies submitted to the Contracting Authority will not be considered - all tender submissions must be returned via E-tenders electronic post-box.
- Tenderers must ensure that they give themselves sufficient time to upload and submit all required RFT documentation before the Tender Deadline. Tenderers should take into account the fact that upload speeds vary. In order to submit a document to the electronic post box, please note that you must click 'Submit Response'. After submitting you can still modify and re-send your response up until the response deadline. Tenderers should be aware that the 'Submit Response' button will be disabled automatically upon the expiration of the response deadline.

- Tenderers must note that in the electronic tenderbox, there is a current file size limit of 250MB for each single file uploaded, with a maximum total limit of 2GB for all documentation (combined) in the Tender submitted.
- It is the responsibility of tenderers to use the tender-box correctly. Please refer all tenderbox submission queries directly to E-tenders (ph. +353 818001459 or irish-eprochelpdesk@eurodyn.com. The Contracting Authority will not be responsible if a supplier fails to properly dispatch all of their tender documents.
- Further information on use of the electronic post-box facility can be found here <https://www.etenders.gov.ie/epps/home.do>
- All Tenders Submitted must be compiled such that they can be read immediately using standard PDF software, including Adobe Acrobat Reader or standard word processor software, including Microsoft Word.
- Tenders must be organised according to the Tender Response Format outlined in **Appendix 1. ALL TENDERERS MUST RETURN**, with their Tender, a completed Tender Response Document provided as a separate attachment to this RFT. Failure to comply with this requirement will render the tender non-compliant and it will be rejected.
- All requests for information in all sections of this document must be answered as concisely as possible while providing all information necessary to understand the solution being proposed.
- It is the duty of the tenderer to fully understand and correctly interpret this RFT. At all times, the tenderer has the responsibility to notify Revenue, in writing, of any ambiguity, divergence, error, omission, oversight, or contradiction contained in this RFT, as it is discovered, or to request any instruction, decision, or direction that tenderers may require to prepare a tender proposal.
- Tenderers are required to comply with any and all requirements as specified in the RFT. Any stipulation or qualification made by tenderers contrary to the RFT requirements or set out in tenders as a condition for the acceptance of the contract by the tenderer will not be considered in the award of the contract and may cause the rejection of the entire tender.
- Tenderers are required Not to alter or edit this RFT in any way.
- Tenderers are required to accept the terms and conditions of this RFT. **ALL TENDERERS MUST RETURN**, with their Tender, a scanned signed copy of the Tenderers' Statement, as set out in **Appendix 3**, printed on the Tenderer's headed notepaper. The Contracting Authority must be able to read the scanned signature of the Tenderer. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderers' Statement.

- Tenderers should note the terms and conditions of the Goods Contract at **Appendix 5** to this RFT. Tenderers are required to confirm their acceptance of the terms and conditions of the Goods Contract by signing the Tenderers' Statement at **Appendix 3**. Tenderers may not amend the Goods Contract.
- The successful Tenderer will be required to provide the "The Declaration as to Personal Circumstances of Tenderer", as set out at **Appendix 4**, duly completed and signed by an authorised signatory.
- The successful Tenderer will also be required to provide "The Declaration as to Personal Circumstances of Tenderer" duly completed and signed by an authorised signatory for those entities on whose capacity they may rely on for the purposes of fulfilling any of the Selection Criteria and/or any subcontractors (if applicable).
- Tenderers should note that economic operators relying on the capacity of other entities to fulfil any of the Selection Criteria must submit an undertaking with their tender, duly evidenced, from those entities that they will place the necessary resources at the disposal of the Tenderer. The Undertaking must demonstrate that the combined resources of the Candidate and that other entity or entities satisfy the specified capacity or ability.
- Tenderers may, submit more than one tender conforming to the requirements specified in this RFT. However, any second or subsequent Tender must be prepared and presented under separate cover in a separate Tender.

If a Tenderer fails to comply in any respect with the requirements in relation to the submission of tenders, the Contracting Authority reserves the right to reject the Tenderer's Tender as noncompliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- seeking written clarification from the Tenderer;
- seeking further information from the Tenderer; or
- waiving a requirement, which in Contracting Authority's view, is non-material or procedural.

2.3 Consortia /Subcontractors

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit a Tender in response to this RFT, the Contracting Authority will deal with all matters relating to this Competition through a single nominated entity authorised to represent all members of the group of undertakings. The Tenderer must provide details of all members of the group of undertakings and their role in the Tender and clearly and comprehensively set out the contact details including name, title, telephone number, postal address, facsimile number and email address of the nominated entity authorised to represent the Tenderer and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person will NOT be accepted, acknowledged or responded to.

Prior to and as a condition of award of any Goods Contract, the successful Tenderer shall be required to designate a single entity who will carry overall responsibility for the Goods Contract (the “Prime Contractor”), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the “Subcontractor”).

2.4 Queries and Clarifications

Queries or requests for clarification relating to this public procurement competition will be accepted no later than Tuesday 15th September at 5pm.

All queries **MUST** be directed to the messaging facility on www.etenders.gov.ie.

For the avoidance of doubt, Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.

All clarifications and responses to queries/requests for clarification will be made via the messaging facility on www.etenders.gov.ie.

Where appropriate, queries or replies may be combined in the course of responding. Tenderers should note that the Contracting Authority will not respond to individual Tenderers privately.

The Contracting Authority reserves the right at any time before the Tender Deadline, to update or amend the information contained in this document and/or to extend the Tender Deadline. Participating Tenderers will be informed of any such amendment or extension through the eTenders website.

Tenderers should ensure that they register their interest in this Competition, by clicking on the “Accept” button on www.etenders.gov.ie, in order to receive all responses to queries and other updates in relation to this Competition.

The Contracting Authority reserves the right to issue or seek written clarifications at any stage of the tender process. To assist in the examination and comparison of tenders, Revenue may ask tenderers for clarification of their tenders, including breakdowns of unit prices. No change in the price or substance of the tender shall be sought, offered or permitted, except as required to confirm the correction of manifest arithmetic errors discovered by Revenue during evaluation of the tenders. As part of the final selection process and prior to final contract award tenderers may be invited to attend a verification /clarification meeting with Revenue.

2.5 Confidentiality

All documentation, drawings, data, statistics, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this Competition:

- (a) are furnished for the sole purpose of replying to this RFT only;
- (b) may not be used, communicated, reproduced or published for any other purpose

- without the prior written permission of the Contracting Authority;
- (c) shall be treated as confidential by the Tenderer and by any third parties (including subcontractors) engaged or consulted by the Tenderer; and
- (d) must be returned immediately to the Contracting Authority upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.

2.6 Pricing

All Tenderers must complete the Pricing Schedule in the Tender Response Document.

All prices quoted must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.

Tenderers must confirm that all prices quoted in the Tender will remain valid for 6 months from the Tender Deadline.

Any currency variations occurring over the term of the Contract shall be borne by the Tenderer.

Payments for Goods provided under this RFT shall be made subject to and in accordance with the Goods Contract at **Appendix 5** to this RFT.

2.7 Publication of Purchase Orders

Tenderers should note that in accordance with Government policy, Purchase Orders for goods procured by Revenue with a value of €20,000 or greater will be published quarterly in arrears on www.revenue.ie. The details will include supplier name, product description and actual value.

2.8 Environmental, Social and Labour Law

In the performance of any Goods Contract awarded, the successful Tenderer their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the goods are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.

2.9 Registrable Interest

Any registrable interest involving any Tenderer or Subcontractor and the Contracting Authority, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority and their relatives, must be fully disclosed in the Tender or, in the event of this information only coming to the notice of the Tenderer or Subcontractor after the submission of a Tender, must be communicated to the Contracting Authority immediately upon such information becoming known to the Tenderer/Subcontractor. The terms “Registrable Interest” and “Relative” shall be interpreted as per Section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.gov.ie. The Contracting Authority will, in its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances

include eliminating a Tenderer from this Competition or terminating any Goods Contract entered into by a Tenderer.

2.10 Freedom of Information

Tenderers should be aware that, under the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, information provided by them during this public procurement competition may be liable to be disclosed.

Tenderers are asked to consider if any of the information supplied by them in their Tender should not be disclosed because of its confidentiality or commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Tenderers must, when providing such information, clearly identify the specific sections of their Tender containing such information and specify the reasons for its confidentiality or commercial sensitivity. Tenderers may not assert confidentiality or commercial sensitivity over the entire tender but must clearly identify the specific section containing such information. If Tenderers do not identify it as commercially sensitive, it is liable to be released in response to a Freedom of Information request without further consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about commercially sensitive information so identified before making a decision on a request received. The Contracting Authority 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.

2.11 Data Protection

“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 from time to time.

The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender, is required to confirm via the Tenderers’ Statement at Appendix 3 to the RFT that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

2.12 Tax Clearance

It will be a condition of any contract pursuant to this Competition that the successful Tenderer shall, for the term of such contract, comply with all EU and domestic tax laws. Tenderers are referred to www.revenue.ie for further information. Prior to the award of any contract arising out of this Competition, the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers, the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online.

Non-resident Tenderers

For non-resident tenderers with no Tax Registration Number in the state, a Tax Clearance Certificate must be provided prior to the award of any contract arising out of this Competition. This can be obtained from the Non-Resident Tax Clearance Unit, Office of the Collector General, Sarsfield House, Limerick, Ireland (phone +353 61 488000, Fax +353 61 488476 or email nonrestaxclearance@revenue.ie).

2.13 Conflicts of Interest

Any conflict of interest or potential conflict of interest on the part of a Tenderer, Subcontractor or individual employee(s) or agent(s) of a Tenderer or Subcontractors(s) must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict of interest might be removed. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Goods contract entered into by a Tenderer.

2.14 Anti-Competitive Conduct

Tenderer's attention is drawn to the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a criminal offence for Tenderers to collude on prices or terms in a public procurement competition.

2.15 Site Visit

NOT USED

2.16 Insurance

The successful Tenderer shall be required to hold for the term of the Contract the following insurances:

Type of Insurance	Indemnity Limit
Employer's Liability	€12.7 million Limit for any one claim or series of claims arising out of a single occurrence
Public Liability	€6.5 million Limit for any one claim or series of claims arising out of a single occurrence
Product Liability	€6.5 million Limit on any one occurrence and in the aggregate per insurance year

By signing the Tenderers' Statement at **Appendix 3**, Tenderers confirm that if awarded a Goods Contract under this Competition, (i) they will, from the Commencement Date of the contract, obtain and hold the types and levels of insurance specified in the above table (ii) the territorial limits and jurisdiction of its insurance policies include the Republic of Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above.

A formal confirmation from the Tenderer's insurance company or broker to this effect will be requested from the successful Tenderer prior to the award of (and shall be a condition of) any Goods Contract.

The successful Tenderer will, during the term of the Contract, be required to:

- (a) immediately advise the Contracting Authority of any material change to its insured status;
 - (b) produce proof of current premiums paid upon request; and (c)
- produce valid certificates of insurance upon request.

3. Selection and Award Criteria

3.1 Compliant Tenders

Only those Tenderers who have submitted compliant tenders in accordance with the "Submission of Tenders" section of the RFT will be evaluated in accordance with the published Selection and Award Criteria.

Tenderers should note

- Tenderers must declare that no mandatory grounds for exclusion of the Tenderer as set out at **Appendix 4** to this RFT apply to them or where any mandatory grounds for exclusion apply (and where the Tenderer is not precluded from doing so under Article 57(17) of the Regulations), it can provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability despite the existence of any such relevant exclusion ground;
- the Contracting Authority reserves the right to exclude a Tenderer to whom a discretionary ground for exclusion as set out at **Appendix 4** to this RFT applies from the evaluation;
- where a Tenderer is relying on the capacity of other entities for the purposes of fulfilling any of the Selection Criteria it must ensure that each such entity submits proof, to the satisfaction of the Contracting Authority, that each such entity will place the necessary resources at the disposal of the Tenderer;
- in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, the Contracting Authority reserves the right to ask Tenderers to submit all or any of the supporting documents specified at paragraph 3.2 below;
- the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit information concerning the Tenderer, and any proposed subcontractors, for the purposes of Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the legal person is established; and
- the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit information concerning the origin of goods, if any, for the purposes of assessing compliance with Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
- if a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion ground and (iii) that it does not come 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) and (iv) that the origin of goods, if any, are not subject to the prohibitions set

out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) then it shall be excluded from further participation in the Competition;

- if a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies, of the Selection Criteria (or any one of them) in accordance with this RFT and the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion ground and (iii) that any proposed Subcontractor on whose capacity the Tenderer relies (where the value of that subcontract exceeds 10% of the value of the Goods Contract) does not come 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) then it shall be excluded from further participation in this Competition unless it replaces the Subcontractor with one which meets all the relevant requirements of this RFT.

3.2 Selection Criteria

Tenderers will either Pass or Fail each of the Selection Criteria. In the event of one or more of the Selection Criteria achieving a fail, the Tenderer will be excluded from further participation in this competition. **Economic and Financial Standing**

Tenderers must declare via the Tenderers' Statement at **Appendix 3** that they satisfy the financial and economic standing requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority. Tenderers will either **PASS OR FAIL** this Selection Criterion.

Requirement as to Minimum Financial Turnover:

Tenderers must have an annual turnover which equals or exceeds an amount specified by the Contracting Authority as the minimum acceptable annual turnover. Tenderers must demonstrate an annual turnover equal to or in excess of **€140,000** (Ex VAT) for each of the last three financial years or pro-rata if more recently established.

The highest ranked tenderer will be required to furnish evidence to demonstrate that they meet the minimum levels of turnover requested by way of an external auditor's statement or audited accounts for the corresponding years. They may also be asked to provide a letter from their principal bankers which states that all accounts held by them are currently in good standing.

Tenderers must provide the specified documentation when requested by the Contracting Authority within 5 days. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation, the Tenderer must inform the Contracting Authority of that valid reason as to why the documentation cannot be supplied and provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

The documentation required as specified above will be requested by the Contracting Authority prior to (and shall be a condition of) the award of any contract.

Technical and Professional Ability

Tenderers must demonstrate that they satisfy the technical and professional requirements set out below and must provide the supporting documentation specified below to the Contracting Authority in each case.

Previous Experience

Tenderers must demonstrate satisfactory experience with contracts of a similar scale and complexity.

Tenderers should provide details of 3 contracts within the last 3 years of a similar scale and complexity to Revenue's current requirements. **At least one of the contracts must be for the supply of Thin Client devices from the same manufacturer as the device proposed in your Tender.** Tenderers should include customer contact details in each case as Revenue may wish to speak with to verify the information provided.

Tenderers must provide the following information:

- Name of Client Organisation
- The nature and scope of the contract, demonstrating a similar scale and complexity to Revenue's current requirements
- The start and completion date of the contract
- The (approximate) value of the contract
- A named client reference (stating their position within the Client organisation and their contact details) who can verify the information provided

Revenue may contact named client references without prior notice being given to the Tenderer.

Tenderers should note that economic operators relying on the capacity of other entities from a Technical and Professional Ability perspective must submit an undertaking with their tender, duly evidenced, from those entities that they will place the necessary resources at the disposal of the Tenderer. The Undertaking must demonstrate that the combined resources of the Candidate and that other entity or entities satisfy the specified capacity or ability.

Tenderers must provide the specified documentation when requested by the Contracting Authority without delay. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation, the Tenderer must inform the Contracting Authority of that valid reason as to why

the documentation cannot be supplied and provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

The documentation required as specified above will be requested by the Contracting Authority prior to (and shall be a condition of) the award of any contract.

Where tenderers intend to use sub-contractors or third parties to support the solution (note the Tax Clearance obligations), they should provide a schematic of how the support model works, including clearly the role and responsibilities of any third parties or subcontractors and how the Contracting Authority can interact with each party.

3.3 Award Criteria

Only those compliant tenders that have qualified in accordance with all of the Selection Criteria and Mandatory Requirements will be evaluated on the basis of the Most Economically Advantageous Tender, in terms of cost, that fully complies with the requirements in accordance with the following criteria:

Award Criteria A – 1,000 Marks

Cost is the sole Award Criterion as per the table below:

	Award Criteria	Weighting %	Marks Available
Table A	Cost	100%	1000

The Contract will be awarded on the basis of the lowest valid tendered cost submitted.

Costs will only be considered if the tender has met all of the Mandatory Requirements per Appendix 1.

Costs will be evaluated using the following standard formula:

$$\text{Score for Tender "X"} = \frac{\text{Maximum marks available} \times \text{Lowest Valid Tendered Cost}}{\text{Cost of Tender "X"}}$$

Tenders will be scored in inverse proportion to the maximum score which is awarded to the lowest cost tender assuming the tender meets the Mandatory Requirements per Appendix 1.

Tie Break Provisions

In the event that more than one Tenderer proposes an identical cost and this is deemed to be the lowest proposed cost, then the preferred Tenderer will be selected on the basis of random selection. In such a circumstance, representatives of each Tenderer that submitted the same lowest cost would be invited to attend at the Contracting Authorities premises to observe the random selection. Tenderers involved would be notified in advance of the time/date and location of the random selection procedure.

Award of a Contract

Subject to (2.1 Important Notices) of this RFT, award of the Contract to the highest ranked Tenderer will be conditional upon:

- (a) the Tenderer submitting the documentation, to the extent not already provided, within five days of notification by the Contracting Authority; and
- (b) the documentation submitted demonstrating that such Tenderer has the economic and financial capacity required.

3.4 Notification of Tender Evaluation Results

All Tenderers concerned will be notified in writing of the outcome of their tender and of any decisions reached concerning the award of contract.

Tenderers should note that the Contracting Authority may, when notifying Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the highest ranked tenderer in respect of each award criterion assessed by the Contracting Authority.

3.5 Return of Signed Contracts

The successful Tenderer must sign and return the Goods Contract and the Confidentiality Agreement within 5 days of being requested to do so by the Contracting Authority. A signed Goods Contract returned by the successful Tenderer is not binding on the Contracting Authority until it has been signed by the Contracting Authority.

Where the signed Goods Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period specified in the paragraph above then the Contracting Authority may proceed to award the Goods Contract to the next highest-ranked Tenderer in accordance with the paragraph above.

Appendix 1 – Requirements and Specifications

Tenderers must address each of the issues and requirements in this part of the RFT and submit a detailed description in each case which demonstrates how these issues and requirements will be dealt with / met and their approach to the proposed delivery of the Goods. A mere affirmative statement by the Tenderer that it can / will do so or a reiteration of the tender requirements is NOT sufficient in this regard.

Background

The Office of the Revenue Commissioners is responsible for the administration; assessment and collection of taxes and duties, and for implementing import and export controls. It also performs agency work on behalf of other Government Departments.

This work is carried out by staff in Revenue’s disparate network of approximately 90 offices in locations throughout the country.

A wide range of information and facts about Revenue is available at the official website, www.revenue.ie.

Summary of Requirements

This RFT relates to the supply of 200 Thin Client devices.

Mandatory Requirements (PASS/FAIL)

All of the specified mandatory requirements below must be met for the tender to proceed to the Award Criteria Evaluation Stage. **Failure to do so will result in elimination from the competition.**

The proposed solution must:

1. Minimum Specifications

Device Type:	Standard device specifications & upgrades
Operating System	Compatible with eLux version 7.0 and above. Elux 7 2501 or Elux 7 2505 recovery image must be pre-installed Device must be on Unicons Hardware Compatibility List (HCL)
Citrix Compatible	Optimized for Citrix desktop virtualization, able to support a 1080p desktop resolution.

HDX Offloading	Must be compatible for offloading / optimization of the following media platforms • Microsoft Teams • Amazon Connect • Cisco Webex • Zoom
Graphics	Graphics card capable of processing minimum 1080p resolution.
Processor	Quad Core CPU
RAM	RAM 8GB+
On-board storage	Flash 4GB+
Network Connectivity	Integrated Gigabit Ethernet LAN Wake on Lan (enabled by default) Elux 7 2501 recovery image UEFI devices Inbuilt wireless card (external antenna not accepted)
Physical Device	Minimum of 4 USB 2.0 ports 2 x USB on the back 2 x USB on the front Multiple monitor support 2 x Display Ports Serial number to be visible or easily accessible VESA Mountable Stand for upright on desk UK power plug

- Each device must contain at least 5 years warranty next business day onsite, full parts and labour. Dead on Arrival devices must be replaced. Online support portal must be supplied. Details of a dedicated account manager contact must be provided.
- The following must be included in the price and shipped with each unit
 - USB QWERTY wired keyboard with Euro symbol supporting English and Irish (including Irish Language) localisation features of the operating system.
 - USB wired Optical Mouse, 2 button/scroll wheel.

4. The maximum delivery time must not exceed 20 business days from receipt of a purchase order.
5. Tenderers should note that their proposed devices must pass a Verification Trial prior to contract award. In the event of an unsuccessful trial, the tenderer concerned will be eliminated from the competition. Revenue will then proceed to trial the solution proposed by the next highest ranked tenderer under the same terms and conditions.

Verification Trial

Revenue will require all tenderers to provide an evaluation device which exactly matches the specification submitted. The evaluation process will include but is not limited to the below:

- Verification of minimum specifications
- Performant HDX offloading through Citrix
 - o Microsoft Teams
 - o Zoom
 - o Cisco Webex
 - o Amazon Connect
- Multi Monitor
- Citrix performance \ logins etc.
- USB Peripherals
- Wifi compatibility with dominant ISP routers in the marketplace

The sample unit must be delivered **within 7 days** after the submission deadline. All costs for the evaluation device and shipping must be borne on the bidder.

Sample devices received before the deadline will be treated in the same manner as the E-tenders electronic tender-box and will only be opened following the opening of the tender-box, by two Revenue Officers. The sample device should be clearly labelled “Thin Client Devices Tender”.

Delivery Address for the sample units:

Consumables,
Revenue Data Centre,
St. John’s Road West,
Kilmainham,
Dublin 8,
D08 NF88,
Ireland

6. The successful Tenderer will be required to ship directly to the specified Revenue Building outlined above and, in some instances, directly to other Revenue locations nationwide. A list of serial numbers of each thin client must be provided to a dedicated Revenue contact for each order.
7. The energy efficiency performance of devices shall meet the energy efficiency requirements of the latest version of the Energy Star standard or equivalent – Tenderers should provide proof of same.
8. Tenderers must provide evidence that the producer(s) of all products included in their tender, which are subject to the regulations on waste electrical and electronic equipment (WEEE), are registered with the national registration body (Producer Register Ltd).

Tenderers should note: During the Term of the contract, where the Successful Tenderer becomes aware that their proposed device is to become End of Life, or the Successful Tenderer is no longer in a position to supply their proposed device, the Successful Tenderer shall use all reasonable endeavours to give the Contracting Authority three (3) months' notice; in any event, the Successful Tenderer shall notify Revenue when the proposed device is End of Life.

Following such an event, the Successful Tenderer must provide an alternative device of the same specification (or higher) of that proposed in response to this RFT for the same or lower price

Tender Response Format

It is a mandatory requirement of this competition for Tenderers to complete the **TENDER RESPONSE Document** provided as a separate attachment to this RFT. Tenderers must complete this Tender Response Document as instructed and include it with their tender submission. The purpose of the Tender Response Document is to simplify and streamline the tender response process for all Tenderers and to simplify the evaluation process for the Contracting Authority.

Tenderers should note that no other format of response is acceptable.

Tenderers who fail to return a completed Tender Response document will not be considered for award of contract.

- All information requested in relation to the Selection Criteria should be provided.
- All information requested in relation to the qualitative Award Criteria should be provided.
- A fixed price should be quoted in accordance with the Pricing Schedule at Appendix 2. Each category of cost must be priced separately. Prices must be quoted in Euros, and VAT is to be excluded. The VAT rate, if applicable, should be stated separately.

- **The Tenderers' Statement at Appendix 3** should be signed, printed on the Tenderer's headed notepaper and submitted with the Tender Response Document.

Any supporting documentation should be clearly identified in the tender submission. Attachments should not be pasted into the response fields in the Tender Response document, however, the file name and document title should be quoted in the relevant response field and the document provided as a separate attachment to the Tender Response document.

Appendix 2: Pricing Schedule

The Pricing Schedule must be completed in the Tender Response Document. The prices quoted must be all-inclusive, fixed, expressed in Euro and exclusive of VAT. Revenue intends to purchase the Thin Clients within 30 days of contract signing.

The Cost Evaluation will be solely on the basis of the Total Cost of 200 units (ex VAT) provided.

All relevant tender costs must be included in the tender submission. Failure to do so will result in elimination from the competition.

While the Contracting Authority may look to clarify costs submitted any adjustment to price which could improve the competitive position of a tender is not permitted under any circumstances.

Prices tendered should be competitive but realistic and the Contracting Authority shall request supporting documentation and proof, or verification of prices tendered, if the pricing proposed appears to be abnormally low compared to the average prices offered by other tenderers. The Contracting Authority reserves the right to reject abnormally low tenders in the event that the tenderer cannot provide sufficient assurance as to the feasibility of the rates offered.

Tenderers should note:

- The Contracting Authority will use a standard formula to calculate the marks in respect of 'Cost', whereby maximum marks are awarded to the lowest priced proposal and costs of the remaining Tenders are expressed as a percentage of the lowest priced tender (Inverse Proportionality).

Appendix 3: Tenderers' Statement

Tenderers shall complete and return the following form of Tenderers' Statement printed on the Tenderers' headed notepaper and signed by the Tenderer.

The Statement must not be altered other than the signatory information.

TENDERERS' STATEMENT

TO: The Office of the Revenue Commissioners (the "Contracting Authority") **RE:**

Request for Tenders for provision of Thin Clients Devices.

Having examined your Request for Tenders (the "RFT") including the Instructions to Tenderers, the Selection and Award Criteria, the Requirements and Specifications, and the Terms and Conditions of the Goods Contract, we hereby agree and declare the following:

1. We understand the nature and extent of the Goods required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of the RFT; the Goods Contract and the Confidentiality Agreement and agree, if awarded a Goods Contract, to execute the Goods Contract at Appendix 5 to the RFT and the Confidentiality Agreement at Appendix 6 to the RFT.
3. We accept all the Selection and Award Criteria as set out in Part 3 of the RFT.
4. We agree to provide the Contracting Authority with the Goods in accordance with the RFT and our Tender.
5. We agree that, if awarded the Goods Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out in Part 2 of the RFT.
7. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the Tender Deadline specified in paragraph 2.6 of the RFT.
8. We satisfy the Selection Criteria set out in Part 3 of the RFT in respect of "Economic and Financial Standing" and, if requested by the Contracting Authority, shall immediately furnish such evidence as may demonstrate our economic and financial capacity in accordance with said Selection Criteria.
9. We shall, if awarded the Goods Contract under the RFT, have in place on the Effective Date of the Goods Contract all insurances (if any) as required by paragraph 2.16 of the RFT.

10. We confirm that all Data Subjects whose Personal Data is provided in our Tender have consented to the processing of such Personal Data by us, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.
11. We do not come 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).
12. The origin of goods connected to our Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
13. The subcontractor(s) on whose capacity we rely as part of our Tender (where the value of that subcontract exceeds 10% of the value of the goods Contract) does not come 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).

Signed: (Authorised Signatory)	
Print Name	Click here and insert details
Position:	Click here and insert details
Company:	Click here and insert details
Address	Click here and insert details
Date:	Click here and insert details

Appendix 4: Declaration as to Personal Circumstances of Tenderer

Name of Economic Operator			
<u>Mandatory Exclusion</u> Economic Operators will be excluded from the procurement process if, within the past five years, there is evidence of a conviction relating to a specific criminal offence listed below (see 1.1) or if they have been the subject of a binding legal decision which found a breach of legal obligations to pay tax or social security contributions (see 1.2) (except where this is disproportionate e.g. where only minor amounts are involved).			
1.1 Has the Economic Operator, Director, or Partner or any other person who has powers of representation, decision or control, been convicted of any of the following offences?		Yes	No
		Please indicate your answer by marking X in the relevant box	
1.1. a	participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA;		
1.1. b	corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in Irish law or the jurisdiction in which the economic operator is established;		
1.1.c	fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests;		
1.1. d	the subject of a conviction for terrorist offences or offences linked to terrorist activities or for inciting or aiding or abetting or attempting to commit an offence;		
1.1. e	the subject of a conviction for money laundering or terrorist financing;		
1.1. f	the subject of a conviction for child labour and other forms of trafficking in human beings;		

<u>Non-payment of taxes or social security obligations</u>			
1.2 Has it been established by a judicial or administrative decision having final and binding effect in accordance with Irish law or the legal provisions of the			
country in which the Economic Operator is established (if outside Ireland), that the Economic Operator is in breach of obligations related to the payment of tax and social security contributions?			
Note: If the response to 1.2 above is in the affirmative, please provide further information on the decision and the amounts involved.			
<u>Discretionary exclusion</u>			
The Contracting Authority reserves the right to exclude an Economic Operator, who answers 'Yes' in any of the situations set out below, from the procurement process.			
		Yes	No
2.1 Please indicate if any of the following situations have applied, within the past three years, or currently apply, to your organisation		Please indicate your answer by marking X in the relevant box	
2.1. a	has, in the performance of all public contracts, failed to comply with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the services provided that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU;		
2.1. b	is bankrupt or the subject of insolvency or winding-up proceedings, its assets are being administered by a liquidator or by the court, or has entered into an arrangement with creditors, suspended its business activities or is in any analogous situation arising from a similar procedure under national laws and regulations;		
2.1.c	is guilty of grave professional misconduct;		
2.1. d	has entered into agreements with other economic operators aimed at distorting competition;		
2.1. e	has a conflict of interest due to its participation in the competition;		

2.1. f	has had prior involvement in the preparation of the competition;		
2.1. g	has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions;		
2.1. h	- is guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the selection criteria; or - has withheld such information or is not able to submit supporting documents required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016);		
2.1. i	has undertaken to: - unduly influence the decision-making process of the contracting entity; or - obtain confidential information that may confer upon the Tenderer undue advantages in the procurement procedure; or - negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award.		
THIS FORM MUST BE COMPLETED AND SIGNED BY A DULY AUTHORISED OFFICER OF THE CANDIDATE'S ORGANISATION I certify that the information provided above is accurate and complete to the best of my knowledge and belief. I understand that the provision of inaccurate or misleading information in this declaration may lead to my organisation being excluded from participation in this and future tenders.			
Signature		Date	
Name		Position	

Appendix 5: Goods Contract

The Office of the Revenue Commissioners

and

[Insert successful Tenderer's full legal name]

Relating to the provision of Goods pursuant to
Request for Tenders for the provision of Thin Clients Devices

THIS AGREEMENT is made on the [date e.g. 2nd] day of [month] [year] BETWEEN

The Office of the Revenue Commissioners, of Dublin Castle, Dublin 2, Ireland (“the Client”); and
[Contractor’s full legal name] (“the Contractor”) of [Contractor’s address]

(each a “Party” and together “the Parties”).

WHEREAS:

- A. By Request for Tender entitled “[Title of RFT]” and dated [insert date of RFT] (“the RFT”), the Contracting Authority invited tenders from economic operators (“Tenderers”) for the provision of the goods described in Appendix 1 to the RFT (the “Goods”). References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie between [insert date] and [insert date] (the “RFT Clarifications”). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date] (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the “Submission Clarifications”). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Agreement and Schedules A to E attached hereto;
 - ii. The RFT;
 - iii. The Submission.
2. The Contractor agrees to provide the Goods described in Schedule B to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quantity, quality, time of delivery, and functional specifications of the Goods in accordance with the RFT and the Submission (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
4. For the purposes of this Agreement, the Client’s contact is [insert contact name] of [insert contact address]; the Contractor’s contact is [Contractor contact name] of [Contractor contact address].

5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

Delete and replace with “Not Used” if not applicable:

The Client reserves the right to extend the Term for a period or periods of up to [insert number] months with a maximum of [insert number] such extensions permitted subject to the Contracting Authority’s obligations at law.

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. 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.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

SIGNED for and on behalf of the Client _____ (being a duly authorised officer) Witness	SIGNED for and on behalf of the Contractor _____ Witness
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SCHEDULE A: TERMS AND CONDITIONS

1. CONTRACTOR'S OBLIGATIONS

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Goods and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Goods and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
 - 1. provide the Goods in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
 - 2. comply with and implement any policies, guidelines and any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 - 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
 - 4. provide the Goods in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Goods are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor 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 this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B (4) above, to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor,

the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the subcontract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. 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 fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Contractor shall comply with the following obligations:
 - i not to subcontract more than 50% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure; ii for 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 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 contract, irrespective of whether such goods or services are supplied or provided directly by the successful tenderer or by a subcontractor;
 - iii to provide to the Client, 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 contract.

2. KEY PERSONNEL

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission (“Key Personnel”), assigned by it to provide the Goods shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Goods to the Client. In the event that any of the Key Personnel assigned by the Contractor to provide the Goods under this Agreement becomes unable to provide the Goods for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise (“Replacement Personnel”). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3. PAYMENT

A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties. B. Discharge of the Charges is subject to:

1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and operational protocols in place pursuant to clause 10A from time to time;
 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 3. Invoices being submitted to the Client’s Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and the Goods for any billing period (including whether or not Goods have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client’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 the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and
 4. The Client being in possession of the Contractor’s Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status. The Contractor shall comply with all EU and domestic taxation law and requirements.
- C. 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.

- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. 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.
- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Goods will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

4. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- A. The Contractor 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 this Agreement and to provide the Goods hereunder;
 - 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 - 3. it is entering into this Agreement 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 Goods as they apply to the Contractor;
 - 5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 - 6. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated [insert date], which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
 - 7. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client 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 Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.7;

8. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Goods for its business purposes;

9. Not Used

10. B. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements,

representations and undertakings as set out at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

5. REMEDIES

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client 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, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 5A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6(G), 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 the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Goods of approved quality, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement 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.
- E. Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6(D) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising

shall not under any circumstances exceed 120 per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims.

F. Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods and Services within the time period promised or specified in the Specification, the Client may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Goods and Services and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.

G. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows: ("the Retention Amount") which Retention Amount shall not at any given time exceed 20 per cent of the Charges. In such event the Client shall identify the particular issue with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said issues as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5E shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

6. 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 date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor'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 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 this Agreement (collectively "the Materials") (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor 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 the Client absolutely.

- D. The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client's Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing Goods similar to the Goods to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Goods 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 Goods.

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- G. The Contractor shall ensure that all and any necessary consents and licences for any software, Instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Goods for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client 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 this Agreement.

At the request of the Client for and in respect of any such breach, the Contractor shall at its expense and option:

- (i) procure the necessary rights for the Client 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 Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client'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 Client as a result of the breach.

H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

7. CONFIDENTIALITY

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement (“Confidential Information”) and shall not disclose same to any third party except to: -
1. its professional advisers subject to the provisions of this clause 7; or
 2. as may be required by law; or
 3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or
 4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and the Executive and the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement at Appendix 6 to the RFT between the Contractor and the Client (“the Confidentiality Agreement”).

The obligations in this clause 7 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; 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 Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly, the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of

Subcontractors) who are assigned to provide the Goods (or any part thereof) under this

Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.

- D. In circumstances where the Client 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 the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority 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 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

8. FORCE MAJEURE

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
 - 1. the nature of the Force Majeure Event;
 - 2. the anticipated delay in the performance of obligations;
 - 3. the action proposed to minimise the impact of the Force Majeure Event; and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

- C. If the Force Majeure Event continues for 10 calendar days either Party may terminate at 14 days notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

9. TERMINATION

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving 1 months written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving 1 months written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 9(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
 - 1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
 - 2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
 - 3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
 - 4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware:
 - i. that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
 - ii. that the Contractor (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)
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement

which is expressly or by implication intended to come into or continue in force on or after such termination.

- E. If requested by the Client, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the goods as may be required by the Client (“Employment Information”). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the goods upon expiry of the Term or earlier termination of this Agreement for whatever cause.

10. CONTRACT MANAGEMENT

- A. The Client’s Contact and the Contractor’s Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client, the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
1. liaise with and keep the Client’s Contact fully informed of any matter which might affect the observance and performance of the Contractor’s obligations under this Agreement;
 2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
 3. comply with all reasonable directions of the Client; and
 4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client or its authorised representative may inspect the Contractor’s premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

11. DISPUTES

- A. In the event of any dispute arising out of or relating to this Agreement (the “Dispute”), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.

- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

12. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

- A. This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
- B. This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

13. NOTICES

- A. Any notice or other written communication to be given under this Agreement 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 13.

- 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.

14. ASSIGNMENT AND SUBCONTRACT

- A. Subject to a Party's obligations at law, any assignment to a third party or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.
- B. Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, 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. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Client may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the Parties, and any and all other previous agreements, arrangements and understandings (whether written or oral) between the Parties with regard to the subject matter of this Agreement (save where fraudulently made) are hereby excluded.

16. 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.

17. 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.

18. NON-EXCLUSIVITY

Nothing in this Agreement shall preclude the Client from purchasing goods from a third party at any time during the currency of the Agreement.

19. MEDIA

No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or marketing material, shall be made by the Contractor without the prior written consent of the Client.

20. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- A. The Contractor 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 in relation to the Goods and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, 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 Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement 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.
- C. The Contractor shall not offer or agree to give any public servant or civil servant 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 or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or

damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

21. ACCESS TO PREMISES

- A. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.
- B. The Contractor shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Goods are being provided for the Client under this Agreement.

22. EQUIPMENT

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Goods ("Equipment").
- B. All Equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client'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 Contractor.
- C. The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.
- D. The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
 - i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
 - ii. replace such item with a suitable substitute item of Equipment.
- E. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Goods and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

23. NON SOLICITATION

- A. For the Term and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither the Client nor the Contractor shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

24. CHANGE CONTROL PROCEDURE

- A. At any time during the Term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Goods (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of an Impact Assessment, this Agreement and the Schedules should be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client's request for any variation is subsequently withdrawn but results in a delay in the performance of the Goods contract, then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

25. DATA PROTECTION AND SECURITY

- A. In this Agreement 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 the Client (including but not limited to his 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 the Client provided under this Agreement 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 Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement: -
 - (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 the Client 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); ii. the data subject has enforceable rights and effective legal remedies;
 - iii. the Contractor 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 Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- E. The Contractor shall promptly notify the Client 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 the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client 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 Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, 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 Contractor'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 Contractor in any way for the provision of the goods. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.

- J. The Contractor shall fully comply with and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L The Contractor 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 on a regular basis 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 Contractor or any Subcontractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M **(IF YOU ARE NOT CONSENTING TO A THIRD-PARTY PROCESSOR – DELETE IF NOT IN USE)** The Client does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement

(OR IF USING A THIRD-PARTY PROCESSOR – DELETE IF NOT IN USE) the Client consents to the Contractor appointing [insert third-party processor] as a thirdparty processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 25 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any thirdparty processor appointed by it pursuant to this clause 25.
- N Save for clauses 25B, 25C, 25D (4) and 25E, all the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.
- O The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

26. ADDITIONAL CONDITIONS

Not Used.

SCHEDULE B: GOODS: THE SPECIFICATION

[Insert when completing contract]

SCHEDULE C: CHARGES

[Insert when completing contract]

SCHEDULE D: SERVICE LEVELS

[Insert when completing contract]

SCHEDULE E: DATA PROTECTION

[complete when completing the contract]

Processing, Personal Data and Data Subjects

- 1. Processing by the Contractor**
 - 1.1 Subject matter of processing**
 - 1.2 Nature of processing**
 - 1.3 Purpose of processing**
 - 1.4 Duration of the processing**
- 2. Types of personal data**
- 3. Categories of data subject**

Appendix 6: Confidentiality Agreement

THIS AGREEMENT is made on the [date] day of [month] 20 [year] BETWEEN:

The [insert name of Contracting Authority], of [insert address] (hereinafter “the Contracting Authority”) of the one part; and

[Contractor’s legal name: to be completed on signing.], of [address: to be completed on signing.] (hereinafter called “the Contractor”) of the other part.

WHEREAS

- A. By Request for Tenders dated [insert date] entitled [insert title] (the “RFT”) the Contracting Authority invited tenders (“Tenders”) for the provision of the Goods described in Appendix 1 to the RFT (the “Goods”) (“the Competition”). The Contractor submitted a response to the RFT dated the [insert date of Tender].

The Contractor has been identified as the preferred bidder in the Competition.

- B. For the purposes of the Competition and any subsequent contract awarded thereunder (if any) (“the Contract”), certain confidential information as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to the Contracting Authority.

NOW IT IS HEREBY AGREED in consideration of the sum of €2.00 (the receipt of which is hereby acknowledged by the Contractor) as follows:

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
 - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and
 - 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.

3. For the purposes of this Agreement “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 from time to time.
4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
 - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
 - 4.2 not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to any person except:
 - i to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or
 - ii to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.
5. The obligations in this Agreement will not apply to any Confidential Information:
 - i in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority; or
 - ii which is or becomes public knowledge other than by breach of this clause; or iii is independently developed by the Contractor without access to or use of the Confidential Information; or
 - iv is lawfully received from a third party (with full right to disclose).
6. The Contractor undertakes:
 - 6.1 to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);

- 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;
- 6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority)
 - Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not.
7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees

that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:

“Data Controller” has the meaning given under the Data Protection Laws;

“Data Processor” has the meaning given under the Data Protection Laws;

“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 Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller and the Contractor is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 11(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
 - (1) process that Personal Data only on the written instructions of the Contracting Authority;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Contracting Authority, 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 the Contracting Authority 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); ii. the data subject has enforceable rights and effective legal remedies;
 - iii. The Contractor 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 Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

- E. The Contractor shall promptly notify the Contracting Authority 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 the Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Contracting Authority any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Contracting Authority 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 Contractor shall at the written direction of the Contracting Authority, amend, delete or return Personal Data and copies thereof to the Contracting Authority on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Contracting Authority, 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 Contractor'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 Contractor in any way for the provision of the Goods. The Contractor shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with and implement policies which are communicated or notified to the Contractor by the Contracting Authority from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for inspections and contribute to any audits by the Contracting Authority or the Contracting Authority's designated auditor.
- L. The Contractor 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 [insert frequency] 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 Contractor or any Subcontractor, promptly restore the Personal Data at its own expense or, at the Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.

M.

(IF YOU ARE NOT CONSENTING TO A THIRD-PARTY PROCESSOR - DELETE IF NOT IN USE)

The Contracting Authority does not consent to the Contractor appointing any third-party processor of Personal Data under this agreement

(OR IF USING A THIRD-PARTY PROCESSOR - DELETE IF NOT IN USE)

the Contracting Authority consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 11 as between the Contracting Authority and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

N. Save for clauses 11B, 11C, 11D (4) and 11E, all the obligations on the Contractor in this clause 11 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

SIGNED for and on behalf of the Contracting Authority _____ (being a duly authorised officer)	SIGNED for and on behalf of the Contractor _____
Witness	Witness

Schedule A to the Confidentiality Agreement: Data Protection

[complete when completing the contract]

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1 Subject matter of processing

1.2 Nature of processing

1.3 Purpose of processing

1.4 Duration of the processing

2. Types of personal data

3. Categories of data subject