



INVITATION TO TENDER DOCUMENT

BEAUMONT HOSPITAL

CONTRACT

For

THE PROVISION OF VIRTUALISATION SOFTWARE AND ASSOCIATED RESELLER SERVICES

DURATION OF CONTRACT: In the first instance, a contract of three years' duration will be entered into with the successful tenderer for the provision of ICT consultancy and support services in respect of the Hospital's virtual infrastructure. Thereafter, and solely at the discretion of the Contracting Authority, the contract may be extended for two further periods, each of twelve months in duration, giving a maximum potential duration of five years.

DEADLINE DATE FOR RECEIPT OF TENDERS: 25/09/2026 AT 12.00 NOON (LOCAL TIME)

Please note that all information relating to this competition, including clarifications and addenda, will be published on the Irish Government Procurement Opportunities Portal (www.etenders.gov.ie). Registration is free of charge and there is no charge for documents. The Contracting Authority accepts no responsibility for information relayed (or not relayed) via third parties.

DISCLAIMERS

All information contained in this Invitation to Tender document is provided in the strictest confidence and has been made available solely for the purpose of facilitating the production and submission of tenders. No party may disclose the contents of this document without the express permission of Beaumont Hospital (hereinafter 'the Contracting Authority') or any other party to this contract.

Tenderers are recommended to read this Invitation to Tender document thoroughly. While all reasonable steps have been taken to ensure that the information set out in this document is factually correct, no representation or warranty, express or implied, is or will be made or given in relation to the accuracy or the completeness of any information contained in this document or otherwise provided by or on behalf of the Contracting Authority, in writing or otherwise, to any interested party or its advisers. No responsibility or liability for any loss or damage arising as a result of reliance on this document, or for the information contained in this document, or for any omission, is or will be accepted by the Contracting Authority or by any of its officers, employees, agents or professional advisers. No officer, employee, agent, or professional adviser of the Contracting Authority has any authority to give or make any representation or warranty, express or implied, in relation to such information. The Contracting Authority's officers, employees, agents and professional advisers expressly disclaim any and all liability arising out of such documentation or information and any errors or omissions in or from the documents and information.

The Contracting Authority reserves the right to discontinue the procurement process at any time.

Without prejudice to the principle of equal treatment, the Contracting Authority is not obliged to engage in a clarification process in respect of tender submissions with missing or incomplete information. Therefore, tenderers are advised to ensure that they return comprehensive tender submissions in order to avoid the risk of elimination from the competition.

CHECKLIST FOR TENDER SUBMISSIONS

In order to allow the Contracting Authority to fully evaluate completed tender submissions, tenderers are advised to ensure that their responses include all of the following information:

All information required by the Award Criteria (Section 6)	
The completed version of Appendix 1 (Accreditation)	
The completed version of Appendix 2 (Resource Allocation Schedule)	
The completed version of Appendix 3 (Form of Tender)	
The completed version of Appendix 4 (European Single Procurement Document)	
All other information required by this Invitation to Tender document	

This checklist has been provided for guidance purposes only and the Contracting Authority accepts no responsibility for omissions of any description. Tenderers are advised to read this Request for Tender document and its appendices in full in order to provide a comprehensive and compliant response.

TABLE OF CONTENTS

DISCLAIMERS.....	2
CHECKLIST FOR TENDER SUBMISSIONS	3
TABLE OF CONTENTS.....	4
1. INTRODUCTION.....	5
2. SPECIFICATION OF REQUIREMENTS.....	6
3. INSTRUCTIONS TO TENDERERS	10
4. GROUNDS FOR EXCLUSION	16
5. ELIGIBILITY CRITERIA	20
6. AWARD CRITERIA	24
APPENDIX 1 – VMWARE ACCREDITATION	29
APPENDIX 2 – RESOURCE ALLOCATION SCHEDULE	30
APPENDIX 3 – FORM OF TENDER	35
APPENDIX 4 – EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD)	37
APPENDIX 5 – DRAFT TERMS AND CONDITIONS OF CONTRACT.....	49

1. INTRODUCTION

1.1 About the Contracting Authority

Beaumont Hospital (incorporating St. Joseph's Hospital Raheny) employs approximately 4,000 whole-time equivalent staff and has a total In-patient and Day-case capacity of 913 beds, with an additional treatment capacity of 40 places. It is the principal teaching hospital for the Royal College of Surgeons in Ireland and enjoys close links with Dublin City University, especially in the area of nurse training, and with other academic institutions in respect of training and research.

1.2 About the Competition

The Contracting Authority is employing the open procedure to award this contract. In accordance with the provisions governing the conduct of the open procedure, any interested economic operator may tender for appointment as the successful tenderer. In the first instance, tenders received will be assessed against the grounds for exclusion and eligibility criteria and rules contained in Sections 4 and 5 of this document, respectively. Tenders that are not eliminated under the grounds for exclusion and that comply with the requirements of the eligibility criteria will then be evaluated against the award criteria, rules and weightings contained in Section 6 of this document, in order to identify the most economically advantageous tender.

1.3 Shortened Timescales

In accordance with Article 27.3 of Directive 2014/24/EU, the Contracting Authority is availing of shortened timescales in respect of this competition. The urgency associated with this requirement arises from the fact that the required services shall be deployed in an acute hospital setting. On grounds of patient care, time is of the essence in respect of this competition.

1.4 Award to Runner-up

In the event that, following the award of this contract, the successful tenderer cannot, for whatever reason, execute the contract to the satisfaction of the Contracting Authority; the Contracting Authority reserves the right to award the contract to the next highest-ranked tenderer emerging from this competitive process. This right shall only be availed of during the tender validity period. The reservation of this right is without prejudice to the right of the Contracting Authority to terminate the contract and to commence a new competitive process.

1.5 Terms and Conditions

The successful tenderer's appointment shall be governed by the terms and conditions of contract contained in Appendix 5 of this Invitation to Tender document. Tenderers are not required to sign and return these terms with their tender submissions, but should review them carefully and raise any comments in accordance with the protocol for submitting queries detailed in Section 3 of this Invitation to Tender document.

2. SPECIFICATION OF REQUIREMENTS

2.1 General Statement of Requirements

The Contracting Authority intends to award a contract to a suitably qualified and experienced economic operator for the provision of ICT consultancy services in respect of the Hospital's virtual infrastructure, which serves over 4,000 staff and over 400,000 patients per annum.

The Contracting Authority anticipates that it will procure approximately 200 days' support per annum under this contract. For the avoidance of doubt, related requirements such as the procurement of software licenses and any supplementary related services may also be procured under this framework agreement.

No guarantee is offered, nor should any such guarantee be inferred, regarding the volume of support to be procured by the Contracting Authority under this contract. While the estimate of 200 days constitutes a reasonable indication of demand based upon historical usage, it is emphasised that support shall be procured strictly and solely on an 'as-needed' basis.

As an additional option under this contract, the Contracting Authority may avail of the right to procure VMware-related hardware including, but not limited to, Hosts, Fabric, additional Storage Expansion, Disks for current SANs, Fabric SFPs and DAC cabling. No guarantee is offered, nor should any such guarantee be inferred, regarding the purchase of VMware related hardware by the Contracting Authority under this contract. Should the Contracting Authority elect to purchase VMware-related hardware from the successful tenderer, the Contracting Authority shall negotiate the purchase price of such hardware by reference to market pricing prevailing at the time of purchase.

2.2 Areas of Support Required

The precise applications, systems and platforms that the successful tenderer will be required to support are detailed hereunder. It is emphasised that the successful tenderer may also be required to support and maintain any additional applications, systems and platforms that are brought on stream during the currency of this contract.

- (a) Installation and maintenance and support of vSphere 7 and above;
- (b) Omnisia Horizon 7 and above - Virtual Desktops;
- (c) Omnisia Horizon 7 and above - RDSH Published Apps (including support for the national Epilepsy EPR hosted in Beaumont Hospital);
- (d) Imprivata OneSign Management and Support;
- (e) Support and Management of 2 factor authentication (Remote Access to Desktops and Applications);

- (f) Veeam Backup and Replication and Veeam Data Cloud, IBM tapes;
- (g) SAN Fabric Hardware, Configuration and Maintenance;
- (h) SAN Configuration and Maintenance; IBM, Pure Storage, QNAP
- (i) NAS Configuration and Maintenance;
- (j) Cloud Storage for Backup including support and Procurement;
- (k) Cloud Storage for Production;
- (l) VMware SD-WAN Installation and Management;
- (m) VMware Licensing Advice and Procurement;
- (n) SSL Certificate Procurement / Management;
- (o) Charon Licensing, Management and Support;

In addition to providing support and advice in connection with the foregoing applications, systems and platforms, the successful tenderer shall be required to provide consultancy regarding the latest trends and uses of digital technologies across the healthcare sector.

2.3 Levels of Support Required

The Contracting Authority may procure support and advice from each of the following grades of resource over the term of the contract:

Resource	Definition
Senior Level 3 Solution Architect / Technology Specialist	A relevant third-level qualification and greater than five years' post-qualification experience.
Junior Level 3 Solution Architect / Technology Specialist	A relevant third-level qualification and greater than two years' post-qualification experience.

It is emphasised that the Contracting Authority may require support and advice at both staff levels over the duration of this contract. On this basis, in the event that a tenderer's standard staff categories differ from those listed here, it will be necessary for the tenderer, for the purposes of entering into this contract, to reclassify its staff categories accordingly.

2.4 *Response Times*

The response times outlined below will apply to all work performed under this contract. Tenderers are advised, however, that the Contracting Authority reserves the right to stipulate shorter deadlines in respect of particularly urgent requirements. Moreover, as a general obligation, the successful tenderer will be required to provide a responsive and timely service at all times.

TASK	RESPONSE TIME
Acknowledge communication from the Contracting Authority,	Within 2 hours.
Ensure the on-site attendance of any required resources.	Within 4 hours.
Facilitate a meeting request / request for participation in conference call.	Next working day.

Where possible, the successful tenderer will submit any report or documentation required for discussion at least 24 hours in advance of any scheduled call or meeting, or as soon as is practical in the event of an unscheduled call or meeting.

2.5 *Operational Considerations*

The consultancy support and advice required by the Contracting Authority may be performed onsite (i.e., at the Contracting Authority's premises) or remotely (i.e., at the successful tenderer's premises). As detailed in the Form of Tender contained in Appendix 3 of this Invitation to Tender document, tendered daily rates shall apply equally to work performed at the Contracting Authority's premises or the premises of the successful tenderer and shall be deemed to include all travel costs, administrative charges, disbursements and expenses of every description.

2.6 *Confidentiality*

The successful tenderer will be required to uphold the highest standards of confidentiality with regard to all information retained on behalf of the Contracting Authority. Unless an explicit indication is received to the contrary, the successful tenderer will assume that all information of which it is made aware over the currency of this contract is strictly confidential. The successful tenderer will be required to take all steps necessary to ensure that its employees fully respect the confidentiality of all information to which they may become privy over the currency of this contract.

2.7 *Continuity of Resources*

Insofar as is practical, the successful tenderer must ensure the availability of all nominated individuals

listed in the Resource Allocation Schedule contained at Appendix 2 of this document for the currency of the contract. In the event that a particular nominated individual is unavailable to the Contracting Authority, any alternative individual must be approved in advance of service delivery by the Contracting Authority. The Contracting Authority will not be held liable for any costs, time or resources incurred in connection with handover, familiarisation or review activities undertaken by substitute or replacement individuals.

2.8 Invoicing Arrangements

For general or ad-hoc work performed under this contract, invoices shall be submitted monthly in arrears by the successful tenderer. However, the Contracting Authority intends to rely upon the daily rates submitted to arrive at fixed fee arrangements for defined 'blocks' of work. In such cases, these fixed fees will be paid at intervals agreed between the Contracting Authority and the successful tenderer.

2.9 Account Management Protocols

- (a) The successful tenderer shall be required to nominate a sufficiently senior Account Manager to act as a formal liaison between the Contracting Authority and the successful tenderer's organisation for the duration of this contract. The Account Manager shall be responsible for responding to any issues impacting upon service delivery, for pro-actively monitoring the relationship between the Contracting Authority and the successful tenderer's organisation and for attending any account management meetings reasonably required by the Contracting Authority.
- (b) The successful tenderer shall have in place a sufficiently rigorous complaints management policy, whereby any lapses in service delivery reported by the Contracting Authority will be readily reported, logged, escalated and promptly resolved.

3. INSTRUCTIONS TO TENDERERS

3.1 Compliance with Instructions to Tenderers

Tenderers are required to comply with these Instructions to Tenderers when preparing their tender submissions. By submitting a tender, each tenderer acknowledges and agrees to be bound fully by these Instructions to Tenderers. Non-compliance with these instructions may, and in stated circumstances shall, invalidate the submitted tender, subject always to the discretion of the Contracting Authority. The decision of the Contracting Authority in relation to compliance with these Instructions to Tenderers is final and binding.

3.2 Ambiguities, Discrepancies, Errors or Omissions in this Document

If you consider that you are missing any documents or information, the absence of which would preclude you from submitting a comprehensive tender, or should you become aware of any ambiguity, discrepancy, error or omission in this Request for Tender document, please raise the matter via the questions and answers function of the Irish Government's Procurement Opportunities Portal (www.etenders.gov.ie) as soon as possible.

3.3 Queries

All queries regarding this competition should be submitted via the questions and answers function of the Irish Government's Procurement Opportunities Portal (www.etenders.gov.ie). The closing date for receipt of such queries is 17:00 p.m. on 15/09/2026. The following additional conditions govern the submission of queries:

- (a) No approach of any kind should be made to any other person within, or associated with, the Contracting Authority in connection with this competition. Any such approach may, at the absolute discretion of the Contracting Authority, result in the elimination of the tenderer in question from this process.
- (b) The Contracting Authority will endeavour to respond to all reasonable queries received but does not undertake to respond to all queries indiscriminately. In particular, queries seeking interpretation of this Request for Tender document may not result in a response.
- (c) In the event that a tenderer considers a query confidential or commercially sensitive, it must mark the query accordingly. If the Contracting Authority considers, at its absolute discretion, that the query or related response should be properly regarded as confidential or commercially sensitive, the nature of the query and its response will be held as confidential, subject to the Contracting Authority's obligations under law.

If the Contracting Authority is of the opinion that it would be inappropriate to answer the query on a confidential basis, it will notify the tenderer accordingly and require the tenderer to either withdraw the query or agree to its release, accompanied by a response, to all tenderers.

3.4 Qualification of Tenders

Please note that qualifications to a tender submission may render the tender submission invalid.

3.5 Tender Submission

The deadline date and time for receipt of tenders is **25/09/2026** at 12.00 noon (local time). Tenders must be submitted through the eTenders web portal (www.etenders.gov.ie) **only**. The completed tender submission, which is to include all information identified in the Checklist for Tender Submissions contained in this Invitation to Tender document, must be compiled in such a manner such that it can be read immediately upon opening of the post-box. Tenderers must ensure electronic documents are not corrupt. The Contracting Authority is not responsible for corruption in electronic documents.

Each tenderer is fully responsible for the uploading of the tender document to the post-box. Please note that all documents contained in the tender submission must be uploaded together in one zipped file. The post-box will close automatically at 12.00 noon exactly on the closing date; in this regard, tenderers are advised to commence the uploading process substantially in advance of this time to avoid missing the deadline. E-mailed, faxed, hard copy, posted or late tenders will not be considered under any circumstances.

3.6 Extension of Tender Period

The Contracting Authority reserves the right, at its sole discretion, to revise the deadline date for receipt of tender submissions by giving notice in writing to tenderers at any point up to the deadline date contained in this Invitation to Tender document.

3.7 Notice of Addenda

The Contracting Authority reserves the right to update or alter the information contained in this document at any time, but not later than seven (7) days before the deadline date for the receipt of tender submissions. Any such notification will automatically become part of this Request for Tender document.

3.8 Modifications to Tenders (Prior to Deadline Date for Receipt of Tenders)

Modifications to tender submissions will be accepted in the form of supplementary information and/or addenda, provided they are submitted via the eTenders web portal before the deadline date for the receipt of tender submissions.

3.9 Cost of Preparation of Tender Submissions

The Contracting Authority will not be liable for any costs incurred by tenderers in the preparation and submission of tenders and/or any associated work effort or costs (legal or otherwise) arising as a result of participation in this competition, regardless of the outcome or conduct of the competitive process.

3.10 Clarification of Abnormally Low Tenders

In the event that the Contracting Authority considers a tender submission to be commercially unsustainable or otherwise problematic in light of the tendered price or any other financial matter, the tenderer shall be invited to provide clarification to the Contracting Authority in respect of all elements of the tender submission that the Contracting Authority deems relevant. Any failure to satisfactorily comply with such a request, or to satisfactorily address the Contracting Authority's concerns, may, at the discretion of the Contracting Authority, result in the elimination of the tender in question.

3.11 Tender Validity Period

To allow sufficient time for tender assessment, a tender validity period of twelve months is required, commencing on the deadline date for receipt of tender submissions.

3.12 Currency and Invoicing

Prices and any other financial information must be submitted in Euro (€) only. All invoices and payments will be in Euro (€) only and must be issued on a monthly basis.

3.13 Confidentiality

The distribution of this Invitation to Tender document is for the sole purpose of obtaining tender submissions as referred to therein. The distribution of this document does not grant permission or licence to use the documents for any other purpose. Tenderers are required to treat the details of all documentation provided in connection with this competition as private and confidential. Similarly, the Contracting Authority undertakes to use all reasonable endeavours to ensure that any confidential information received from tenderers is not disclosed to third parties, subject always to its obligations under law and the applicable provisions of the Freedom of Information Act.

In this regard, tenderers are asked to consider if any of the information supplied by them in response to this Request for Tender document should not be disclosed because of its sensitivity. Tenderers must specify the precise information that is sensitive and the reasons for its sensitivity. Tenderers are advised that it is not sufficient to merely include a statement of confidentiality encompassing all information contained in a tender submission.

The Contracting Authority cannot guarantee that any information provided by tenderers, either in response to this Request for Tender document or in the course of any contract awarded as a result thereof, will not be released pursuant to the Contracting Authority's obligations under law, including the Freedom of Information Act 2014, European Procurement Directives and all Irish procurement legislation and guidance. The Contracting Authority accepts no liability whatsoever in respect of any information provided that is subsequently released or in respect of any consequential damage suffered as a result of such obligations.

3.14 Conflict of Interest

Any conflict of interest involving a tenderer must be fully disclosed to the Contracting Authority. Any registrable interest involving the tenderer and the Contracting Authority, or employees of the Contracting Authority or their relatives, must be fully disclosed in the tender submission. In the event that the tenderer becomes aware of the conflict of interest only after a tender submission has been made, the conflict of interest must be immediately disclosed to the Contracting Authority. The terms 'registrable interest' and 'relative' will be interpreted in accordance with Section 2 of the Ethics in Public Office Act, 1995. Failure to disclose a conflict of interest may disqualify a tenderer or invalidate the award of any contract, depending upon when the conflict of interest is made known to the Contracting Authority.

3.15 National Legislation

Tenderers are advised that national legislation applies in respect of matters such as employment, working hours, official secrets, data protection and health and safety. Tenderers must have regard to statutory terms relating to minimum pay and to legally binding industrial or sectorial agreements in preparing tender submissions. Moreover, tenderers are advised that the laws of Ireland will govern this competitive process. Both this competitive process and any resulting contract will be subject to the exclusive jurisdiction of the Irish courts.

3.16 Determination of Responsiveness

After opening tender submissions, the Contracting Authority will determine whether each tender submission is substantially responsive to the requirements of this Invitation to Tender document. If a material deviation exists that limits in any substantial way the Contracting Authority's rights or the tenderer's obligations under any contract to be awarded, the tender shall be rejected.

3.17 Clarification of Tenders

To assist in the evaluation and associated comparison of tender submissions, the Contracting Authority may ask tenderers to clarify and supplement certain aspects of their tender submissions, including financial proposals. A request for such clarifications should not be construed as an indication of success in the competition.

3.18 Interference

Any effort by a tenderer to unduly influence the Contracting Authority, its personnel or any other relevant persons or bodies regarding the process of examination, clarification, evaluation and comparison of tenders and any decisions concerning the award of any contract shall result in the elimination of said tenderer's tender submission. In accordance with Section 38 of the Ethics in Public Office Act 1995, any money, gift or other consideration from a person seeking success in a public tendering competition will be deemed to have been paid or given corruptly unless the contrary is proved.

3.19 Prohibition on Canvassing

Any tenderer who, in connection with this competition:

- (a) offers any inducement, fee or reward to any member, officer or employee of the Contracting Authority or any person acting as an advisor to the Contracting Authority in connection with the competition; or
- (b) takes any step constituting a breach of the Prevention of Corruption Acts 1989 to 2010; or
- (c) canvasses any of the persons referred to in paragraph (a) above in connection with the competition; or
- (d) contacts any officer or employee of the Contracting Authority prior to the contract being awarded about any aspect of the competition in manner not permitted by this Request for Tender document

may be eliminated from the competition, without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability such conduct by a tenderer may attract.

3.20 Prohibition on Collusion

Any tenderer who, in connection with this competition:

- (a) fixes or adjusts the amount or terms of his/her tender submission by or in accordance with any agreement or arrangement with any other tenderer (other than a member of his own grouping or consortium); or
- (b) enters into any agreement or arrangement with any other tenderer that he/she shall refrain from tendering or as to the amount or terms of any tender to be submitted; or
- (c) causes or induces any person to enter into such an agreement or arrangement as referred to in paragraphs (a) or (b) above; or
- (d) informs any tenderer of the amount, approximate amount or terms of any rival tender; or
- (e) canvasses any other tenderer in connection with this competition; or
- (f) offers or agrees to pay or give, or does pay or give, any sum of money, inducement or valuable consideration directly or indirectly to any person for any information in connection with any rival tender submission; or
- (g) communicates to any person other than the Contracting Authority the amount or approximate amount or terms of his proposed tender submission (except in the event that

such disclosure is made in confidence and is necessary for the preparation of the tender submission); or

- (h) contacts any officer or employee of the Contracting Authority prior to the contract being awarded about any aspect of the competition in manner not permitted by this Invitation to Tender document

may be eliminated from the competition, without prejudice to any other civil remedies available to the Contracting Authority and without prejudice to any criminal liability such conduct by a tenderer may attract.

3.21 *Notification of Tender Evaluations*

All tenderers will be informed in writing of the outcome of this competition following the completion of the evaluation of tender submissions.

4. GROUNDS FOR EXCLUSION

4.1 Grounds for Exclusion

This Section of the Invitation to Tender document details the grounds for exclusion that apply to this competition in accordance with Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016.

A tenderer's position under each of these grounds will be assessed by reference to the completed European Single Procurement Document (ESPD) contained in Appendix 4 of this document. The completed ESPD will comprise a 'self declaration' by the tenderer that the grounds for exclusion detailed hereunder do not apply. The information contained in this Section of the Invitation to Tender document informs tenderers of how the completed ESPD will be interpreted by the Contracting Authority.

For the avoidance of doubt, the Contracting Authority reserves the right to request any tenderer to provide all supporting documentation necessary to demonstrate the inapplicability of any ground for exclusion detailed hereunder. Such a request may be made at any point during the competitive process. **In particular, before reaching an award decision, the Contracting Authority may require the successful tenderer to provide all supporting documentation necessary to demonstrate the inapplicability of any ground for exclusion detailed hereunder.** In the event that the supporting documentation demonstrates that a ground for exclusion does, in fact, apply, the tenderer will be eliminated from this competition.

(Grounds detailed overleaf)

EXCLUSION GROUND		REG.
(i)	An economic operator will be excluded from this competition if the economic operator, or a member of its administrative, management or supervisory body, has been convicted of participation in a criminal organisation, within the meaning of Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime.	57.1(a)
(ii)	An economic operator will be excluded from this competition if the economic operator, or a member of its administrative, management or supervisory body, has been convicted of corruption, as defined by Regulation 57.1(b) of the European Union (Award of Public Authority Contracts) Regulations 2016.	57.1(b)
(iii)	An economic operator will be excluded from this competition if the economic operator, or a member of its administrative, management or supervisory body, has been convicted of fraud, within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests drawn up under the Council Act of 16 July 1995.	57.1(c)
(iv)	An economic operator will be excluded from this competition if the economic operator, or a member of its administrative, management or supervisory body, has been convicted of terrorist offences or offences linked to terrorist activities, within the meaning of Articles 1 and 3 respectively of Council Framework Decision 2002/475/JHA of 13 June 2002 on combating terrorism or inciting or aiding or abetting or attempting to commit an offence referred to in Article 4 of that Council Framework Decision.	57.1(d)
(v)	An economic operator will be excluded from this competition if the economic operator, or a member of its administrative, management or supervisory body, has been convicted of money laundering or terrorist financing, within the meaning of Article 1 of Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing.	57.1(e)
(vi)	An economic operator will be excluded from this competition if the economic operator, or a member of its administrative, management or supervisory body, has been convicted of child labour and other forms of trafficking in human beings, within the meaning of Article 2 of Directive 2011/36/EU41 of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA.	57.1(f)
<i>NOTE #1: In respect of each of the exclusion grounds detailed under points (i) to (vi) above, an economic operator may provide evidence to the effect that it has undertaken sufficient measures to demonstrate its reliability, despite the existence of the ground for exclusion. Where, in the opinion of the Contracting Authority, such evidence is sufficient, the economic operator shall not be excluded from the competition. Appropriate evidence is detailed in Regulation 57.14 of the European Union (Award of Public Authority Contracts) Regulations 2016.</i> <i>NOTE #2: In the event that a conviction listed under points (i) to (vi) above occurred more than five years prior to the date of advertisement of this competition, the relevant ground for exclusion shall not apply.</i>		

(vii)	An economic operator will be excluded from this competition if the economic operator is in breach of its obligations relating to the payment of taxes or social security contributions and said breach has been established by a judicial or administrative decision having final and binding effect in accordance with the law of the country in which the operator is established or the Member State of the Contracting Authority. <i>NOTE #1: This provision will not apply when the economic operator has fulfilled its obligations by paying, or entering into a binding arrangement with a view to paying, the taxes or social security contributions due, including, where applicable, any interest accrued or fines.</i> <i>NOTE #2: At the discretion of the Contracting Authority, this provision may not apply when only minor amounts of taxes or social security contributions are in question or when the economic operator did not have time, between being made aware of the breach of obligations and the commencement of this competition, to pay, or to enter into an arrangement to pay, the amounts in question.</i> <i>NOTE #3: In the event that the breach of obligations referred to above occurred more than five years prior to the date of advertisement of this competition, this ground for exclusion shall not apply.</i>	57.3(a), 57.3(b)
(viii)	An economic operator will be excluded from this competition if the economic operator, in performance of a public contract, has not complied with all applicable obligations in the fields of environmental, social and labour law that apply at the place where the works are carried out or the services provided and that have been established by European Union law, national law, collective agreements or by international, environmental, social and labour law.	57.8(a)
(ix)	An economic operator will be excluded from this competition if the economic operator is bankrupt or is the subject of insolvency or winding-up proceedings, where its assets are being administered by a liquidator or by the court, where it is in an arrangement with creditors, where its business activities are suspended or it is in any analogous situation arising from a similar procedure under the law of the State. <i>NOTE: The Contracting Authority may, at its discretion, decide not to exclude an economic operator on this ground for exclusion if it is possible for the Contracting Authority to establish that the economic operator would be able to perform the contract, taking into account national rules, measures and laws relating to the continuation of business.</i>	57.8(b)
(x)	An economic operator will be excluded from this competition where the Contracting Authority can demonstrate, by appropriate means, that the economic operator is guilty of grave professional misconduct, which renders its integrity questionable.	57.8(c)
(xi)	An economic operator will be excluded from this competition where the Contracting Authority has sufficiently plausible indications to conclude that the economic operator has entered into arrangements with other economic operators aimed at distorting competition.	57.8(d)

(xii)	An economic operator will be excluded from this competition where a conflict of interest, as defined by Regulation 34 of the European Union (Award of Public Authority Contracts) Regulations 2016, cannot be effectively remedied by other, less intrusive, measures.	57.8(e)
(xiii)	An economic operator will be excluded from this competition where a distortion of competition from the prior involvement of the economic operator in the preparation of the procurement procedure cannot be remedied by other, less intrusive, measures.	57.8(f)
(xiv)	An economic operator will be excluded from this competition where the economic operator 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.	57.8(g)
(xv)	An economic operator will be excluded from this competition where the economic operator has been 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, 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	57.8(h)
(xvi)	An economic operator will be excluded from this competition where the economic operator has undertaken to unduly influence the decision-making process of the Contracting Authority, or obtain confidential information that may confer upon it undue advantages in the procurement procedure or where the economic operator has negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.	57.8(i)
<i>NOTE #1: In respect of each of the grounds for exclusion detailed under points (viii) to (xvi) above, an economic operator may provide evidence to the effect that it has undertaken sufficient measures to demonstrate its reliability, despite the existence of the ground for exclusion. Where, in the opinion of the Contracting Authority, such evidence is sufficient, the economic operator shall not be excluded from the competition. Appropriate evidence is detailed in Regulation 57.14 of the European Union (Award of Public Authority Contracts) Regulations 2016.</i> <i>NOTE #2: In respect of each of the exclusion grounds detailed under points (viii) to (xvi) above, in the event that the situation referred to occurred more than three years prior to the date of advertisement of this competition, the relevant ground for exclusion will not apply.</i>		

5. ELIGIBILITY CRITERIA

5.1 Eligibility Criteria and Associated Rules

The Contracting Authority is using the open procedure for the award of this contract. While any interested party may submit a tender, only those tenderers meeting the stated levels of financial and technical capacity will be considered for appointment as the successful tenderer.

In order to enable the Contracting Authority to ascertain tenderers' financial and technical capacity, all tenderers must complete the ESPD contained in Appendix 4 of this document. In particular, Part IV of the ESPD constitutes a 'self declaration' to the effect that the tenderer complies with each of the eligibility criteria and rules detailed hereunder. Once the ESPD has been completed, no additional response to these eligibility criteria is required.

For the avoidance of doubt, the Contracting Authority reserves the right to request any tenderer to provide all supporting documentation necessary to demonstrate compliance with all eligibility criteria detailed hereunder. Such a request may be made at any point during the competitive process. **In particular, before reaching an award decision, the Contracting Authority may require the successful tenderer to provide all supporting documentation necessary to demonstrate compliance with all eligibility criteria detailed hereunder.** In the event that the supporting documentation demonstrates that any eligibility criterion is not complied with, the tenderer will be eliminated from this competition.

(Criteria detailed overleaf)

(a) INSURANCES

REQUIREMENT
It is a requirement that tenderers either possess the following forms and levels of insurance, or are in a position to implement the following forms and levels of insurance if successful in the competition: (a) Employer's Liability Insurance - €12.7m (b) Public Liability Insurance - €6.5m (c) Product Liability Insurance - €6.5m (d) Professional Indemnity Insurance - €2.6m
ESPD REFERENCE AND MEANS OF PROOF
By completing the ESPD contained in Appendix 4, tenderers are confirming that they either possess the forms and levels of insurance indicated or, alternatively, that they are in a position to obtain the forms and levels of insurance indicated if successful in this competition. Should the Contracting Authority elect to seek supporting evidence from tenderers confirming the assertions made in the ESPD in respect of this eligibility criterion, the following means of proof will be acceptable to the Contracting Authority to confirm that this criterion is complied with: (a) Evidence of the possession of the required forms and levels of insurance (i.e., certificates of insurance provided by brokers or underwriters); (b) A signed letter from the tenderer's insurance broker to the effect that the required forms and levels of insurance can be implemented should the tenderer prove successful in this competition.
ELIMINATION
Should a tenderer fail to provide appropriate supporting evidence within five working days of a request to do so, the tenderer in question will be eliminated from further consideration.

(b) FINANCIAL CAPACITY

REQUIREMENT
It is a requirement that tenderers have attained a turnover of at least €1,000,000 in any one of the three previous financial years.
ESPD REFERENCE AND MEANS OF PROOF
By completing the ESPD contained in Appendix 4, tenderers are confirming that they have attained a turnover of at least €1,500,000 in any one of the three previous financial years. Should the Contracting Authority elect to seek supporting evidence from tenderers confirming the assertions made in the ESPD in respect of this eligibility criterion, the following means of proof will be acceptable to the Contracting Authority to confirm that this criterion is complied with: (a) Financial statements or extracts from financial statements; (b) An objectively verifiable statement of the tenderer's overall turnover (e.g, an auditor's statement).
ELIMINATION
Should a tenderer fail to provide appropriate supporting evidence and means of proof within five working days of a request to do so, the tenderer in question will be eliminated from further consideration.

(c) TAX CLEARANCE

REQUIREMENT
It is a requirement that tenderers either possess a Tax Clearance Certificate issued by the Irish Revenue Commissioners, or can provide alternative proof of Irish tax compliance prior to the award of this contract. For the avoidance of doubt, it is emphasised that the Contracting Authority is precluded from processing invoices submitted by economic operators not in possession of an Irish Tax Clearance Certificate.
ESPD REFERENCE AND MEANS OF PROOF
By completing the ESPD contained in Appendix 4, tenderers are confirming that they either possess a Tax Clearance Certificate issued by the Irish Revenue Commissioners or can provide alternative means of confirming their tax clearance status is up to date. Should the Contracting Authority elect to seek supporting evidence from tenderers confirming the assertions made in the ESPD in respect of this eligibility criterion, the following means of proof will be acceptable to the Contracting Authority to confirm that this criterion is complied with: (a) A reference to electronic evidence of tax clearance status issued by the Irish Revenue Commissioners (i.e., a screenshot, a hyperlink or any other appropriate material); (b) Copies of correspondence between the tenderer and the Irish Revenue Commissioners.
ELIMINATION
Should a tenderer fail to provide appropriate supporting evidence and means of proof within five working days of a request to do so, the tenderer in question will be eliminated from further consideration.

6. AWARD CRITERIA

NOTE: Tenderers are required to provide a full narrative response to Criteria B, C and D. A failure to provide a suitable narrative response to these criteria may, depending upon the materiality of the omission, result in the elimination of the tender submission in question.

6.1 Award Criteria and Weightings

This contract will be awarded to the tenderer submitting the most economically advantageous tender, identified following application of the award criteria and weightings detailed hereunder. It is emphasised that the Contracting Authority is not bound to accept the most economically advantageous tender or any tender received, and reserves the right to accept or reject in whole or in part any or all tenders received.

6.1 – AWARD CRITERIA AND WEIGHTINGS				
CRITERION		%	MAXIMUM SCORE ACHIEVABLE	MINIMUM SCORE REQUIRED
A	Certification	PASS / FAIL	PASS	PASS
B	Technical Merit of Resources Proposed	40	4,000	2,700
C	Proposed Contract Management Methodology	15	1,500	900
D	Reliability and Continuity of Service	5	500	300
E	Ultimate Cost	40	4,000	N/A
TOTAL		100	10,000	N/A

6.2 Financial Award Criterion Explained

In respect of Award Criterion E (Ultimate Cost), tenderers are required to complete the Form of Tender contained in Appendix 3 of this document. The Form of Tender details the manner in which a single cost figure will be arrived at for evaluation purposes. Scores will be awarded under Award Criterion E – ‘Ultimate Cost’ in accordance with the following formula:

Points awarded = (the maximum score achievable) multiplied by (the cost of the lowest-cost Valid Tender) divided by (the cost of the Valid Tender* in question).*

**NOTE: For the purposes of this formula, the phrase ‘Valid Tender’ refers to any Tender Submission not eliminated by virtue of a failure to attain a minimum required score associated with a qualitative award criterion.*

6.3 Qualitative Award Criteria Explained

(A) VMWARE CERTIFICATION (PASS / FAIL)

Tenderers must complete Appendix 1 (Certification) in full, providing the requisite evidence to demonstrate that the tendering organisation is accredited to the levels specified. In order to attain a 'PASS' score under this criterion, sufficient and appropriate evidence must be provided to demonstrate accreditation to the requisite level in each instance. For the avoidance of doubt, failure to prove sufficient and appropriate evidence of accreditation will result in a failure to attain a 'PASS' score and the subsequent elimination of the tender submission as a whole from further consideration.

(B) TECHNICAL MERIT OF RESOURCES PROPOSED (40%)

Tenderers must complete the Resource Allocation Schedule contained in Appendix 2 in full, proposing the specific team of resources that will be responsible for service delivery under this contract. A stipulated level of resource is associated with each platform, application or system in question. **In order to attain the minimum required score associated with this criterion, tenderers must propose a project team comprising at least one individual of the stipulated level with suitable expertise in respect of each platform, application or system listed.** Comprehensive curricula vitae must be provided for each resource proposed. In the event that the requisite number of suitably qualified and experienced individuals is not proposed, a tender submission will fail to attain the minimum required score associated with this criterion and will be eliminated from further consideration. Scores in excess of the minimum required score shall be apportioned by reference to the breadth and range of expertise apparent on the part of the proposed project team.

(C) PROPOSED CONTRACT MANAGEMENT METHODOLOGY (15%)

By reference to Section 2 of this Invitation to Tender document, tenderers are required to describe their proposed contract management methodologies. In order to attain the minimum required score associated with this criterion, responses must address at least the following matters:

- The name and curriculum vitae of a senior Account Manager (as per Section 2.9[a]);
- A copy of a sufficiently rigorous and project-specific complaint management policy (as per Section 2.9[b]);
- A statement of the response times that will govern the delivery of services under this contract, which must be no greater than the response times set out in Section 2.4 of this Invitation to Tender document;
- A description of all standard protocols, procedures and work practices that will be implemented in order to ensure that all information to which the successful tenderer has access over the course of this contract is treated with appropriate confidentiality (as per Section 2.6);
- An explicit commitment to ensure that all nominated resources are appropriately available

to the Contracting Authority for the purposes of service delivery over the currency of this contract (as per Section 2.7).

For the avoidance of doubt, a failure to address any of the foregoing points, either at all or in sufficient detail, will result in a failure to attain the minimum required score associated with this criterion and the consequent elimination of the tender submission in question. Scores in excess of the minimum required score shall be apportioned by reference to the overall relative merit of contract management mechanisms proposed.

(D) RELIABILITY AND CONTINUITY OF SERVICE (5%)

The purpose of this criterion is to enable the Contracting Authority to assess the extent to which due confidence may be placed in a tenderer's ability to provide a reliable and continuous service. In order to attain the minimum required score associated with this criterion, tenderers must provide the contact details of two referees who can attest to the successful delivery of two contracts of a comparable nature and scale to the Contracting Authority's current requirements within the preceding five years. In this regard, the following information must be provided:

- The name, position, telephone number and e-mail address of a referee in each client organisation;
- The name and address of each client organisation;
- A precise description of the range of services delivered under each contract.

A failure to provide the requisite information, or the provision of unsatisfactory references, will result in a failure to attain the minimum required score associated with this criterion and the consequent elimination of the tender submission in question. Scores in excess of the minimum required score shall be apportioned by reference to the merit of references received and the comparability of projects nominated to the Contracting Authority's current requirements.

6.4 Evaluation of Qualitative Criteria

The evaluation team shall rely upon the following scoring bands when apportioning scores under Criteria B, C and D:

ELIMINATED	0% of marks available	No response
	20% of marks available	Poor
	40% of marks available	Mediocre
ELIGIBLE	60% of marks available	Acceptable
	70% of marks available	Good
	80% of marks available	Very Good

	90% of marks available	Excellent
	100% of marks available	Outstanding

Should a tender submission fail to attain a minimum required score (or, in respect of Criterion A, should a tender submission attain a 'FAIL' score), the attention of tenderers is drawn to the fact that the following provisions shall apply:

- The evaluation process shall be halted and the tender submission in question shall not be subject to further comparative assessment against competing tender submissions.
- The financial proposal contained in the tender submission in question shall not be subject to evaluation under Award Criterion E (Ultimate Cost).
- The tenderer in question will be notified of the reasons for the failure to attain the minimum required score under the relevant award criterion. Additionally, the tenderer in question shall be informed of the name of the successful tenderer and shall be informed of the duration of the standstill period.
- On the basis that no comparative assessment will have been completed and the financial proposal of the tenderer in question will not have been assessed, the characteristics and relative advantages of the successful tenderer under any qualitative or financial criterion **will not be provided**, by virtue of the fact that the Contracting Authority will not have access to such information.

6.5 Post-competition Correspondence

The Contracting Authority will issue notification letters to successful and unsuccessful tenderers in full conformity with the applicable provisions of S.I. 130 of 2010. Following the issue of notification letters, the Contracting Authority will consider any requests for further information and, as appropriate, will respond promptly. Tenderers are advised that, in the Contracting Authority's experience, verbal debriefing meetings are not conducive to the provision of meaningful and accurate feedback regarding the outcome of a competitive tendering procedure. On this basis, tenderers are advised that face-to-face debriefing meetings will not be facilitated in connection with this competition and that all communication with unsuccessful tenderers will be in writing only.

6.6 Acceptance of Assessment Methodology

By submitting a tender, each tenderer acknowledges that the evaluation of tender submissions will be conducted in accordance with the procedures laid down in this Invitation to Tender document. Any queries, reservations or observations should properly be raised by tenderers via the communications protocol contained in Section 4 of this document prior to the submission of a tender.

6.7 Verification/Clarification Meetings

Meetings for the purpose of verification/clarification may be carried out with appropriate tenderers as an element of the evaluation process in order to identify the most economically advantageous tender. Such meetings may be required in order to verify the scores achieved by tenderers in respect of their written tender submissions. For the avoidance of doubt, tenderers should note that mere performance at interview will not of itself be evaluated. In the event that such meetings are required, information regarding location and times will be communicated to the chosen tenderers. In order to ensure the optimum effectiveness of such meetings, it is strongly recommended that key personnel of the tenderer's organisation should attend.

APPENDIX 1 – ACCREDITATION

Tenderers must provide a copy of their accreditation certificates with their tender submissions. Such submissions must confirm that the tendering organisation is accredited as a reseller / supplier of VMware Licensing Solutions and support services. Tenderers, as an element of their accreditation, must be authorised to sell VMware products under any Volume Licensing Agreements available from VMware.

<i>Mandatory Required Accreditation</i>	Confirmation (Please tick)	Is Evidence of Accreditation Attached?
VMware: • Pinnacle partner • Expert Advantage Plus programme • PSO Programme		
IBM Platinum Business Partner		
Omnissa Platinum Partner		
Veeam – Minimum Silver Partner		
Pure Storage Preferred Partner		
Redhat Advanced		
Armis Select Partner Programme		
VMware Knight Programme – 1 knight		

To confirm the foregoing, tenderers must complete and return this Appendix with their tender submissions. Evidence of accreditation must be provided with tender submissions.

SIGNATURE	<i>(Insert)</i>	Date	<i>(Insert)</i>
Name	<i>(Insert)</i>	Position	<i>(Insert)</i>
Telephone	<i>(Insert)</i>	Email	<i>(Insert)</i>

A tenderer's failure to sign and date this Form of Tender and to complete all sections will invalidate the tender submission.

APPENDIX 2 – RESOURCE ALLOCATION SCHEDULE

In order to attain the minimum required score associated with this Award Criterion B tenderers must propose a project team comprising at least one individual of the stipulated level with suitable expertise in respect of each platform, application or system listed. To confirm the foregoing, tenderers must complete and return this Appendix with their tender submissions. Comprehensive curricula vitae must be provided for each resource listed.

In completing this Resource Allocation Schedule, tenderers are advised that the various grades of staff are defined as follows:

Senior Level 3 Solution Architect / Technology Specialist	A relevant third-level qualification and greater than five years’ post-qualification experience.
Junior Level 3 Solution Architect / Technology Specialist	A relevant third-level qualification and greater than two years’ post-qualification experience.

In the event that a tenderer’s standard staff categories differ from those listed here, it will be necessary for the tenderer, for the purposes of entering into a contract, to reclassify its staff categories accordingly. Failure to do so may invalidate a submitted tender.

Requirement	Resource Requirement*	Name(s) of Proposed Resource	Resource Level (i.e., Director, Senior Consultant, etc.)	Confirmation that detailed CV is attached? Please tick.
Installation and maintenance of vSphere 7 and above	At least one Senior Level 3 Solution Architect / Technology Specialist.			
	At least one certified knight (knight programme) who resides in Ireland with relevant experience in this field.			
	<i>NOTE: For the purposes of this tender competition, a certified knight will be billed as a Senior Level 3 resource.</i>			

Omnissa Horizon 7 and above Virtual Desktops	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			

Omnissa Horizon 7 and above RDSH Published Apps (including support for the national Epilepsy EPR hosted in Beaumont)	At least one Junior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
Imprivata OneSign Management and Support	At least one Junior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			

VMware SDWan installation & Management	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
Vmware licensing advice and procurement	At least one Senior Level 3 Solution Architect / Technology			

	Specialist with relevant experience in this field.			
Veeam Backup and Replication Configuration / Management. (including Disk Targets and Tape Library)	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
SAN Fabric Hardware, Configuration and Maintenance	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
NAS Configuration and Maintenance	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
Cloud Storage Management for Backup	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
Cloud Storage Management for Production	At least one Senior Level 3 Solution Architect / Technology			

	Specialist with relevant experience in this field.			
VMware Workspace One Install and Management	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
Management of 2 factor authentication. (Remote Access to Desktops / Applications)	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
SAN install and management, IBM Pure Storage, Qnap	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			
SSL Certification Procurement / Management	At least one Senior Level 3 Solution Architect / Technology			

	Specialist with relevant experience in this field.			
Charon Licensing, management and support	At least one Senior Level 3 Solution Architect / Technology Specialist with relevant experience in this field.			

APPENDIX 3 – FORM OF TENDER

This Form of Tender must be completed, signed and returned by tenderers. Any amendment to the structure of this document, or any qualification of financial offers, may, at the sole discretion of the Contracting Authority, result in the elimination of the tender in question.

NOTE: In completing this Form of Tender, tenderers are advised that the various grades of staff are defined as follows:

Senior Level 3 Solution Architect / Technology Specialist	A relevant third-level qualification and greater than five years' post-qualification experience.
Junior Level 3 Solution Architect / Technology Specialist	A relevant third-level qualification and greater than two years' post-qualification experience.

In the event that a tenderer's standard staff categories differ from those listed here, it will be necessary for the tenderer, for the purposes of submitting a financial proposal and entering into any contract, to reclassify its staff categories accordingly. Failure to do so may invalidate submitted tenders.

I/We, having read the full Tender Documents and associated Appendices, do hereby offer to provide the whole of the services described all to the entire satisfaction of the Client, for the following daily rates, and will enter into a contract accordingly:

STAFF CATEGORY	DAILY RATE (€, Exc. VAT, based upon 7.5 hour day)	NOTIONAL NO. OF DAYS FOR EVALUATION PURPOSES	SUBTOTAL
Senior Level 3 Solution Architect / Technology Specialist	<i>Insert</i>	80	<i>Insert</i>
Junior Level 3 Solution Architect / Technology Specialist	<i>Insert</i>	120	<i>Insert</i>
ULTIMATE COST			

EXPLANATORY COMMENTS:

- The tendered daily rates will be deemed to include all charges, costs and expenses of every description, including travel, subsistence and administrative expenses, and will be common to work performed at the successful tenderer's premises and the Contracting Authority's premises.**
- The Contracting Authority reserves the right to utilise the daily rates tendered to calculate fixed fees for particular requirements. In the event that smaller blocks of time are required, the Contracting Authority will calculate an hourly rate for each grade of resource listed by dividing the tendered daily rate by 7.5.**

I/We confirm that I/we:

- Will keep this offer open for acceptance by the Contracting Authority for a period of twelve months from the date of deadline for submission of tenders;
- Agree that you are not bound to accept the most economically advantageous tender or any tender you may receive;
- Have read and thoroughly examined the tender document;
- Fully understand the tender document and the Contracting Authority's requirements;
- Undertake to treat the details of this invitation to tender document, the resulting tender submission and any subsequent clarifications as private and confidential;
- Acknowledge that acceptance by the Contracting Authority of a tender will not constitute a binding and enforceable agreement and that a legally enforceable agreement will not exist until and unless the contract has been formally established by the Contracting Authority;
- Have availed of all offers for additional information or have otherwise satisfied myself/ourselves as to conditions that may in any manner affect the performance of the contract;
- Have included everything necessary for the performance of this contract, including all elements that are either expressly stated in the tender document or contained in any supplementary information or which could reasonably be inferred therefrom;
- Have found no errors, omissions, conflicts or ambiguities in the tender document, except those which I/We have brought to the attention of the Contracting Authority before the latest date for submitting queries;
- Have included for compliance with all statutory requirements applicable in Ireland and those applicable in any country where parts of the framework agreement may be performed that are in force seven days prior to the deadline for receipt of tenders;
- Will not, if awarded this contract, employ labour in a manner that is discriminatory in relation to gender, race, religious beliefs, age, etc.;
- Will not, if awarded this contract, source any goods or services in countries subject to official international trading sanctions.

SIGNATURE	<i>(Insert)</i>	Date	<i>(Insert)</i>
Name	<i>(Insert)</i>	Position	<i>(Insert)</i>
Telephone	<i>(Insert)</i>	Email	<i>(Insert)</i>

A tenderer's failure to sign and date this Form of Tender and to complete all sections will invalidate the tender submission.

APPENDIX 4 – EUROPEAN SINGLE PROCUREMENT DOCUMENT (ESPD)

- a) This document must be completed and returned by tenderers. The completed version of this document will constitute a 'self-declaration' that the grounds for exclusion detailed in Section 4 of the Invitation to Tender document do not apply to the tenderer and that the tenderer is in a position to comply with each of the eligibility criteria detailed in Section 5 of the Invitation to Tender document.
- b) Failure to complete all sections of this document will result in the tenderer's elimination from this competition. Moreover, failure to provide sufficient detail in respect of any field may, at the discretion of the Contracting Authority, result in the elimination of the tenderer in question.
- c) Any misrepresentation in respect of the completed document will result in the tenderer's elimination from this and future procurement competitions.
- d) Tenderers may reuse a European Single Procurement Document previously submitted in respect of another competition. Alternatively, in the event that a tenderer has previously completed an electronic version of this document, the tenderer may provide the Contracting Authority with electronic access to the relevant document. In both instances, it is imperative that the completed version of the European Single Procurement Document contains all of the information sought by this document.
- e) For the avoidance of doubt, the Contracting Authority reserves the right to request any tenderer to provide all supporting documentation necessary to demonstrate the inapplicability of any ground for exclusion detailed in Section 4 of the Invitation to Tender document. Additionally, the Contracting Authority reserves the right to request any tenderer to provide all supporting documentation necessary to demonstrate compliance with the eligibility criteria detailed in Section 5 of the Invitation to Tender document. Such requests may be made at any point during the competitive process. **In particular, before reaching an award decision, the Contracting Authority may require the successful tenderer to provide all supporting documentation necessary to confirm the assertions made hereunder.**
- f) If a tenderer fails to provide supporting documentation necessary to confirm the assertions made hereunder within five working days of a request to do so from the Contracting Authority, the tenderer in question will be eliminated from the competition.

PART I – INFORMATION CONCERNING THE PROCUREMENT PROCEDURE AND THE CONTRACTING AUTHORITY

IDENTITY OF THE PROCURER:	ANSWER:
Name:	Beaumont Hospital
Which procurement is concerned?	THE PROVISION OF VMWARE VIRTUALISATION SOFTWARE AND ASSOCIATED RESELLER SERVICES
Title or short description of the procurement:	THE PROVISION OF VMWARE VIRTUALISATION SOFTWARE AND ASSOCIATED RESELLER SERVICES
File reference number attributed:	3089

PART II – INFORMATION CONCERNING THE ECONOMIC OPERATOR	
A: INFORMATION ABOUT THE ECONOMIC OPERATOR	
IDENTIFICATION:	ANSWER:
Name:	<i>Insert</i>
VAT-number, if applicable: <i>(If no VAT-number is applicable, please indicate another national identification number, if required and applicable)</i>	<i>Insert</i>
Postal Address:	<i>Insert</i>
Contact Person or Persons:	<i>Insert</i>
Telephone:	<i>Insert</i>
E-mail:	<i>Insert</i>
Internet address, if applicable:	<i>Insert</i>
GENERAL INFORMATION:	ANSWER:
Is the economic operator a Micro, a Small or a Medium-Sized Enterprise?	Yes ☐ No ☐ Define which: <i>Insert</i>
Only in the case the procurement is reserved, is the economic operator a sheltered workshop, a 'social business,' or will it provide for the performance of the contract in the context of sheltered employment programmes?	NOT APPLICABLE
If yes, what is the corresponding percentage of disabled or disadvantaged workers? If required, please specify which category or categories of disabled or disadvantaged workers the employees concerned belong to.	NOT APPLICABLE
If applicable, is the economic operator registered on an official list of approved economic operators or does it have an equivalent certificate (e.g., under a national [pre]qualification system)?	Yes ☐ No ☐ Not Applicable ☐
<i>If you have answered 'yes' to the above question, answer the remaining parts of this Section, Section B and, where relevant, Section C of Part II. Then complete and sign Part VI. (i.e., if you have answered 'yes' to the above question, there is no need to complete Parts III and IV of this Appendix).</i>	
Please provide the name of the list or certification and the relevant registration or certificate number, if applicable:	<i>Insert</i>
If the certificate of registration or certification is available electronically, please state:	<i>Insert web address, issuing authority or body, precise reference of the documentation.</i>
Please state the references on which the registration or certification is based and, where applicable, the classification obtained in the official list:	<i>Insert</i>

Does the registration or certification cover all of the required selection criteria? <i>(If 'no,' please complete and sign Appendix IV of this document.)</i>	Yes ☐ No ☐
Will the economic operator be able to provide a certificate with regard to the payment of social security contributions and taxes or provide information enabling the Contracting Authority or Contracting Entity to obtain it directly by accessing a national database in any Member State that is available free of charge?	Yes ☐ No ☐ <i>(If the relevant documentation is available electronically, please insert the web address, the issuing authority or body and the precise reference of the documentation).</i>
FORM OF PARTICIPATION	ANSWER:
Is the economic operator participating in the procurement procedure together with others?	Yes ☐ No ☐
<i>If you have answered 'yes' to the above question, please ensure that the others concerned provide a separate ESPD document and please answer the questions below:</i>	
If 'yes,' please indicate the role of the economic operator in the group (e.g., leader, responsible for specific tasks, etc.):	<i>Insert</i>
If 'yes,' please identify the other economic operators participating in the procurement procedure together:	<i>Insert</i>
Where applicable, please insert the name of the participating group:	<i>Insert</i>
LOTS:	ANSWER:
Where applicable, please indicate the lot(s) for which the economic operator wishes to tender:	NOT APPLICABLE
B: INFORMATION ABOUT REPRESENTATIVES OF THE ECONOMIC OPERATOR	
<i>Where applicable, please indicate the name(s) and address(es) of the person(s) empowered to represent the economic operator for the purposes of this procurement procedure:</i>	
REPRESENTATION, IF ANY:	ANSWER:
Full Name: <i>(Accompanied by the date and place of birth, if required)</i>	<i>Insert</i>
Position / Acting in the capacity of:	<i>Insert</i>
Postal Address:	<i>Insert</i>
Telephone:	<i>Insert</i>
E-mail:	<i>Insert</i>
If necessary, please provide detailed information regarding the representation (e.g., its form, extent, purpose, etc).	<i>Insert</i>

C: INFORMATION ABOUT RELIANCE ON THE CAPACITIES OF OTHER ENTITIES	
RELiance:	ANSWER:
Does the economic operator rely on the capacities of other entities in order to meet the eligibility criteria for this competition as set out in Section 5 of the associated Invitation to Tender document?	Yes ☐ No ☐
<i>If 'yes,' please provide a separate ESPD form setting out the information required under Sections A and B of this Part and Part III of this Appendix for each of the entities concerned, duly completed and signed by the entities concerned. Please note that this should also include any technicians or technical bodies, not belonging directly to the economic operator's undertaking, especially those responsible for quality control and, in the case of public works contracts, the technicians or technical bodies upon whom the economic operator can call in order to carry out the work.</i> <i>Insofar as it is relevant for the specific capacity or capacities on which the economic operator relies, it may also be necessary for some or all of the entities concerned to complete Part IV of this Appendix.</i>	
D: INFORMATION CONCERNING SUBSUCCESSFUL TENDERERS ON WHOSE CAPACITY THE ECONOMIC OPERATOR DOES NOT RELY	
SUBCONTRACTING	ANSWER:
Does the economic operator intend to subcontract any share of the contract to third parties?	Yes ☐ No ☐ If 'yes,' and so far as is known, please list the proposed subcontractors.
<i>If 'yes,' please provide the information required under Sections A and B of this part for each of the subcontractors concerned.</i>	

PART III – EXCLUSION GROUNDS	
A: GROUNDS RELATING TO CRIMINAL CONVICTIONS	
<i>Article 57.1 of Directive 2014/24/EU sets out the following reasons for exclusion:</i> <i>1. Participation in a criminal organisation;</i> <i>2. Corruption;</i> <i>3. Fraud;</i> <i>4. Terrorist offences or offences linked to terrorist activities;</i> <i>5. Money laundering or terrorist financing;</i> <i>6. Child labour and other forms of trafficking in human beings.</i>	
GROUND(S):	ANSWER:
Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction for one of the reasons listed above, by a conviction rendered at the most five years ago or in which an exclusion period set out directly in the conviction continues to be applicable?	Yes ☐ No ☐ <i>If the relevant documentation is available electronically, please insert the web address, the issuing authority or body and the precise reference of the documentation.</i>
<i>If 'yes,' please provide the following information:</i>	
Date of conviction, which of the grounds for conviction (points 1 to 6 above) is concerned and the reason(s) for the conviction:	<i>Insert dates, points and reasons.</i>
Identify who has been convicted:	<i>Insert</i>
Insofar as is established directly in the conviction:	<i>Insert the length of the period of exclusion and the point(s) concerned.</i> <i>If the relevant documentation is available electronically, please insert the web address, the issuing authority or body and the precise reference of the documentation.</i>
In cases of convictions, has the economic operator taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion (as per Article 57.6 of Directive 2014/24/EU)?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the measures taken.</i>
B: GROUNDS RELATING TO THE PAYMENT OF TAXES OR SOCIAL SECURITY CONTRIBUTIONS	
PAYMENT OF TAXES / SOCIAL SECURITY:	ANSWER:
Has the economic operator met all of its obligations relating to the payment of taxes or social security contributions, both in the country in which it is established and in the Member State of the Contracting Authority if other than the country of establishment?	Yes ☐ No ☐
If the relevant documentation concerning payment of taxes or social contributions is available electronically, please indicate:	<i>Please insert the web address, the issuing authority or body and the precise reference of the documentation.</i>

<i>If the economic operator has not met all of its obligations relating to the payment of taxes or social security contributions, please provide the following information:</i>		
Country or member state concerned:	Taxes	Social Contributions
	<i>Insert</i>	<i>Insert</i>
What is the amount concerned?	<i>Insert</i>	<i>Insert</i>
How has this breach of obligations been established?	<i>Insert</i>	<i>Insert</i>
If through a judicial or administrative decision, is this decision final and binding?	Yes ☐ No ☐	Yes ☐ No ☐
If through a judicial or administrative decision, please indicate the date of conviction or decision:	<i>Insert</i>	<i>Insert</i>
If through a judicial or administrative decision, and in the case of a conviction, please provide the length of the period of exclusion:	<i>Insert</i>	<i>Insert</i>
If this breach of obligations has been established by other means, please indicate the other means in question:	<i>Insert</i>	<i>Insert</i>
Has the economic operator fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest or accrued fines?	Yes ☐ No ☐	Yes ☐ No ☐
If the relevant documentation concerning payment of taxes or social contributions is available electronically, please indicate:	<i>Please insert the web address, the issuing authority or body and the precise reference of the documentation.</i>	
C: GROUNDS RELATING TO INSOLVENCY, CONFLICTS OF INTEREST OR PROFESSIONAL MISCONDUCT		
GROUND:	ANSWER:	
Has the economic operator, to its knowledge, breached its obligations in the fields of environmental, social and labour law?	Yes ☐ No ☐	
If the economic operator has breached its obligations in the fields of environmental, social and labour law, has the economic operator taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion (as per Article 57.6 of Directive 2014/24/EU)?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the measures taken.</i>	
Is the economic operator in any of the following situations: • Bankrupt; • The subject of insolvency or winding-up proceedings; • In an arrangement with creditors; • In any analogous situation arising from a similar procedure under national laws and regulations; • That its assets are being administered by a liquidator or the court;	Yes ☐ No ☐	

That its business activities are suspended?	
If the economic operator is in any of the situations mentioned in the immediately preceding question, please provide comprehensive details of the situation:	<i>Insert</i>
Please provide the reasons for nevertheless being able to perform the contract or framework agreement, taking into account the applicable national rules and measures on the continuation of business in those circumstances, as per Article 57.4 of Directive 2014/24/EU.	<i>Insert</i>
If the relevant documentation is available electronically, please indicate:	<i>Please insert the web address, the issuing authority or body and the precise reference of the documentation.</i>
Is the economic operator guilty of grave professional misconduct?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the matter.</i>
If the economic operator is guilty of grave professional misconduct, has the economic operator taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion (as per Article 57.6 of Directive 2014/24/EU)?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the measures taken.</i>
Has the economic operator entered into arrangements with other economic operators aimed at distorting competition?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the arrangements in question.</i>
If the economic operator has entered into arrangements with other economic operators aimed at distorting competition, has the economic operator taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion (as per Article 57.6 of Directive 2014/24/EU)?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the measures taken.</i>
Is the economic operator aware of any conflict of interest due to its participation in the procurement procedure?	Yes ☐ No ☐ <i>If 'yes' please provide a comprehensive description of the conflict(s) in question.</i>

Has the economic operator or an undertaking related to it advised the Contracting Authority or otherwise been involved in the preparation of the procurement procedure?	Yes ☐ No ☐ <i>If 'yes' please provide a comprehensive description of the matter.</i>
Has the economic operator experienced that a prior public contract, framework agreement or concession contract was terminated early, or that damages or other comparable sanctions were imposed in connection with a prior contract?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the matter.</i>
If the economic operator experienced that a prior public contract, framework agreement or concession contract was terminated early, or that damages or other comparable sanctions were imposed in connection with a prior contract, has the economic operator taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion (as per Article 57.6 of Directive 2014/24/EU)?	Yes ☐ No ☐ <i>If 'yes' please insert a comprehensive description of the measures taken.</i>
Can the economic operator confirm the following: • That it has not been 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? • That it has not withheld such information? • That it has been able, without delay, to submit the supporting documents required by a contracting authority or contracting entity? • That it has not undertaken to unduly influence the decision making process of a contracting authority or contracting entity, to obtain confidential information that may confer upon it undue advantages in a procurement procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award?	Yes ☐ No ☐

PART IV – ELIGIBILITY CRITERIA

α: GLOBAL INDICATION FOR ALL SELECTION CRITERIA

Concerning the eligibility criteria, the economic operator declares that it satisfies the required eligibility criteria for this competition as detailed in Section 5 of the Invitation to Tender document:

Yes ☐ No ☐

PART V – REDUCTION OF THE NUMBER OF QUALIFIED CANDIDATES

NOT APPLICABLE

PART VI – CONCLUDING STATEMENTS

The undersigned formally declare that the information stated under Parts II – III of this Appendix is accurate and that it has been set out in full awareness of the consequences of serious misrepresentation.

The undersigned formally declare to be able, upon request and without delay, to provide the certificates and other forms of documentary evidence referred to, except where:

- (a) The Contracting Authority has the possibility of obtaining the supporting documentation concerned directly by accessing a national database in any Member State that is available free of charge;
- (b) As of 30/06/2020 at the latest, the Contracting Authority already possesses the documentation concerned.

The undersigned formally consent to Beaumont Hospital gaining access to documents supporting all information provided in this European Single Procurement Document for the purposes of this competition.

Signed (Authorised Signatory):	<i>Insert</i>
Block Capitals:	<i>Insert</i>
Position:	<i>Insert</i>
Company:	<i>Insert</i>
Registered Office:	<i>Insert</i>
Date:	<i>Insert</i>

APPENDIX 5 – DRAFT TERMS AND CONDITIONS OF CONTRACT

NOTE: *Tenderers are not required to sign and return these terms and conditions with their tender submissions; however, tenderers are invited to read these terms and conditions carefully and to raise any comments regarding their content via the communications protocol described in Section 3 of this document. Tenderers are advised that no requests to materially amend the terms and conditions listed shall be entertained.*

CONTRACT FOR THE PROVISION OF VMWARE VIRTUALISATION SOFTWARE AND ASSOCIATED RESELLER SERVICES

PARTIES

Beaumont Hospital
(Hereinafter referred to as ‘the Contracting Authority’)

[TO BE INSERTED PRIOR TO SIGNATURE]
(Hereinafter referred to as ‘the Contractor’)

BACKGROUND

- The Contracting Authority has conducted a tender competition for the award of a contract for the provision of VMware virtualisation software and associated reseller services.
- The competition was advertised in the Official Journal of the European Union and via the Irish Government’s Procurement Opportunities Portal () on [TO BE INSERTED PRIOR TO SIGNATURE].
- The Contractor is hereby appointed to provide the items and related services specified in the issued Invitation to Tender document.

EFFECTIVE DATE, DURATION AND SCOPE OF CONTRACT

- The effective date of this contract is [TO BE INSERTED PRIOR TO SIGNATURE]. This Contract shall expire on [TO BE INSERTED PRIOR TO SIGNATURE], unless it is otherwise terminated in accordance with the provisions of this contract, extended in accordance with the provisions of this contract, otherwise lawfully terminated, or otherwise lawfully
- In the first instance, a contract of three years’ duration will be entered into with the Contractor for the provision of VMware virtualisation software and associated reseller services. Following the expiry of the initial three year duration, the Contract may be extended for two further one-year periods.
- For the avoidance of doubt, the maximum potential duration of this contractual agreement will be five years.
- Under each year of this Contract, no guarantee is offered, nor should any such guarantee be inferred, regarding the volume of support to be procured by the Contracting Authority. It is emphasised that support shall be procured strictly and solely on an ‘as-needed’ basis.

- Under each year of this Contract, no guarantee is offered, nor should any such guarantee be inferred, regarding the purchase of VMware related hardware by the Contracting Authority under this contract. The purchase price of such VMware-related hardware, shall be negotiated by reference to market pricing prevailing at the time of purchase.

1. Contractor's Obligations

- 1.1 The Contractor will provide the items and services set out in Schedule 1 of this Contract, which contains the Specification of Requirements issued with the invitation to tender document used to award this Contract.
- 1.2 The Contractor undertakes to develop and deliver the solution in conformity with both the Specification of Requirements and the Contractor's tender submission as evaluated by the Contracting Authority in order to award this Contract. In particular, the nature, quality and of operation of all items and services shall conform to the Specification of Requirements and the Contractor's tender submission.
- 1.3 In the event of any discrepancy or ambiguity between the Specification of Requirements and the Contractor's tender submission, the provisions of the Specification of Requirements shall prevail, save to the extent that the application of the provisions of the Contractor's tender submission would, in the opinion of the Contracting Authority (acting reasonably), give rise to a higher standard of service than that contemplated by this Contract, in which case the provisions of the Contractor's tender submission will apply.
- 1.4 The Contractor undertakes to perform its obligations arising from this Contract with due care, skill and diligence. The Contractor shall require its agents and subcontractors to exercise due care, skill and diligence in the carrying out of obligations allocated by the Contractor to its agents and subcontractors under this Contract.
- 1.5 The Contractor undertakes to comply with all policies, guidelines, project governance protocols and local security arrangements issued by the Contracting Authority from time-to-time.
- 1.6 The Contractor undertakes to comply with all applicable laws, including, but not limited to, the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the Data Protection Acts 1988 and 2003, Freedom of Information Act 2014 and all employment legislation. The Contractor will 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 performing its obligations arising from this Contract.

2. Payment

- 2.1 The Contracting Authority will remunerate the Contractor in accordance with Schedule 2 of this Contract, which contains the Pricing Schedules submitted by the Contractor in response to the invitation to tender document. The scheduling of payments arising under this Contract, unless specified in Schedule 2, shall be agreed between the Contracting Authority and the Contractor from time-to-time.

2.2 Remuneration is conditional upon compliance by the Contractor with the provisions of this Contract, the furnishing by the Contractor of valid invoices and any supporting documentation that may be required by the Contracting Authority and adherence by the Contractor to any invoicing arrangements agreed between the Contractor and the Contracting Authority.

2.3 Remuneration is conditional upon the Contractor maintaining a valid Tax Clearance Certificate for the duration of the Contract.

3. Personal Circumstances of the Contractor

3.1 The Contractor shall retain a copy its submitted European Single Procurement Document used during the evaluation of tender submissions prior to the award of this Contract. If at any point during the Contract the Contractor becomes aware of circumstances that may affect the validity of any of the statements in its submitted European Single Procurement Document, it shall notify the Contracting Authority in writing of such circumstances at the earliest possible opportunity.

4. Contractor's Insurance

4.1 The Contractor is required to maintain, as a minimum, the forms and levels of insurance set out in Schedule 3. These forms and levels may be subject to reasonable revision during the lifetime of the Contract, in which case the Contracting Authority shall notify the Contractor of the revised requirements and allow thirty (30) days for the provision of evidence that the required policies are in place.

5. Remedies

5.1 The Contractor shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which the Contracting Authority 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 as a result of the Contractor's failure to exercise care as outlined in Clause 1.4.

6. Confidentiality

6.1 The Contracting Authority and the Contractor agree to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Contract and shall not disclose same to any third party, except insofar as may be required under law.

6.2 In the event of the Contracting Authority receiving a request for information related to this Contract, the Contracting Authority 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 commercial sensitivity, and shall state the reasons for this sensitivity. The Contracting Authority will consult the Contractor about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the courts.

7. Force Majeure

- 7.1 If through no fault of either party to this Contract, its performance of any obligation under this Contract has been affected or delayed by force majeure, such party shall be at no liability to the other providing the performances are recommenced as soon as possible after such force majeure has ceased to operate.
- 7.2 If, however, force majeure causes a delay or failure in performance for a period longer than fourteen days, the Contracting Authority shall have the right to terminate this Contract at seven days' notice in writing.
- 7.3 Force majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected in which it is unable to prevent or provide against by the exercise of reasonable diligence matters including, but not limited to, acts of God or the public enemy, ex-procreation or confiscation of facilities, government intervention, war, hostilities, rebellion, terrorist activities, local or national emergency, sabotage or riots, floods, or unusually severe weather conditions which could not be reasonably anticipated, fires, explosions, or other catastrophe, national or district strikes or other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Contractor's workforce.

8. Termination of Contract

- 8.1 Without prejudice to any other rights or remedies to which it may be entitled, the Contracting Authority shall be entitled to terminate the appointment of the Contractor forthwith and without liability by giving notice at any time if:
- 8.1.1 The Contractor commits a material breach of any term or condition of this Contract;
- 8.1.2 The Contractor fails to perform any obligation or responsibility under this Contract either at all or to a standard that the Contracting Authority, acting reasonably, considers satisfactory and, if such breach is capable of being remedied, fails to remedy the breach within fourteen (14) days of notice given by the Contracting Authority requiring the Contractor to do so;
- 8.1.3 The products and/or services supplied under this Contract are found by the Contracting Authority not to conform to the provisions of Schedule 1 of this Contract with regard to their characteristics, functionality or quality;
- 8.1.4 The products and/or services supplied under this Contract are found by the Contracting Authority not to conform to the Contractor's tender submission with regard to their characteristics, functionality or quality;
- 8.1.5 The support and maintenance services provided by the Contractor under this Contract are found by the Contracting Authority not to conform to the provisions of Schedule 1 of this Contract;
- 8.1.6 The support and maintenance services provided by the Contractor under this Contract are

- 8.1.7 found by the Contracting Authority not to confirm to the Contractor's tender submission; The Contractor's performance of an obligation under this Contract is not in accordance with any agreed Service Level Agreement or operational protocol or fails to meet any standard prescribed by law;
- 8.1.8 Any person employed by the Contractor or acting on its behalf offers or appears to offer a corrupt gift or inducement, whether with or without the knowledge of the Contractor;
- 8.1.9 The Contractor convenes a meeting for the purposes of entering into any arrangement or composition for the benefit of its creditors;
- 8.1.10 The Contractor ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
- 8.1.11 The Contractor is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990) or any analogous provision of law;
- 8.1.12 An order is made or an effective resolution is passed for the winding up of the Contractor's company other than for the purpose of a restructuring, the terms of which have been agreed by the Contracting Authority;
- 8.1.13 A petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Contractor's company;
- 8.1.14 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Contractor;
- 8.1.15 The Contracting Authority reasonably believes that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor;
- 8.1.16 The Contractor has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Contract;
- 8.1.17 Any representation made by the Contractor in connection with this Contract shall in the opinion of the Contracting Authority prove to be untrue or incorrect in a material respect as of the date when made.
- 8.2 The Contractor shall have no claim for damages or otherwise against the Contracting Authority as a result of the termination of its appointment in accordance with clauses 8.1.1 to 8.1.17.

9. Contract Management

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

10. Dispute Resolution

- 10.1 Subject to Clause 11.1 and to the rights of the Contractor and the Contracting Authority to apply to the Courts upon any cause of action at any time, the Contractor and the Contracting Authority shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Contract, amicably.

11. Governing Law

- 11.1 This Contract shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor and the Contracting Authority hereby agree that the courts of Ireland shall have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Contract.

12. Assignment and Subcontracting

- 12.1 Subject to the obligations of the Contractor and the Contracting Authority at law, any assignment to a third party, subcontract or other transfer of rights or obligations under this Contract requires the prior written consent of the other party. Prior to any such assignments, the assignee will be obliged to sign an undertaking to comply with all obligations under this Contract. Any attempted assignment not complied with in the manner prescribed herein shall be null and void.

13. Non-exclusivity

- 13.1 Nothing in this Contract shall prevent the Contracting Authority from purchasing the required items or related services from a third party at any time during the currency of the Contract.

14. Media

- 14.1 No media releases, public announcements or public disclosures relating to this Contract or its subject-matter shall be made by the Contractor without the prior written consent of the Contracting Authority.

15. Conflicts of Interest and Corrupt Gifts

- 15.1 The Contractor undertakes to inform the Contracting Authority of any conflict of interest of which it becomes aware during the currency of the Contract. Any registrable interest involving the Contractor and the Contracting Authority or employees of the Contracting Authority or their relatives must be communicated to the Contracting Authority immediately. The terms 'registrable interest' and 'relative' shall be interpreted as per Section 2 and the Second Schedule of the Ethics in Public Office Act, 1995.
- 15.2 The Contractor shall not give, provide or offer to any staff or agent of the Contracting Authority a loan, fee, reward, gift, advantage, benefit or other payment during the Contract 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 Contract.

16. General Data Protection Regulations

- 16.1 As an economic operator engaged to provide products and related services to the Contracting Authority, the Contractor will be required to adhere to the following provisions in respect of the General Data Protection Regulation ('the GDPR'):
- 16.1.1 To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Contractor will make itself fully aware of all applicable obligations under the GDPR and will put in place sufficiently robust mechanisms to ensure adherence to the relevant provisions of the GDPR.
 - 16.1.2 To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Contractor will implement appropriate technical and organisational measures in such a manner that any processing activities undertaken will meet the requirements of the GDPR and ensure the protection of the rights of the data subject;
 - 16.1.3 To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Contractor will comply with the provisions of Article 28(3)(a) to 28(3)(h) of the GDPR;
 - 16.1.4 To the extent that it may be deemed a 'sub-processor' for the purposes of the GDPR, the Contractor will comply with the provisions of Article 28(4) of the GDPR.
- 16.2 In addition to the foregoing, the Contractor shall enter into the Confidentiality and Data Processing Agreement appended to this Contract at Schedule 4. The Contractor undertakes, without reservation, to be bound by the provisions of the Confidentiality and Data Processing Agreement and acknowledges that any breach of the provisions of the Confidentiality and Data Processing Agreement will be construed by the Contracting Authority as a breach of this Contract that, depending upon its materiality, may give rise to the Contract's termination.
- 16.3 For the avoidance of doubt, it is emphasised that the Confidentiality and Data Processing Agreement appended to these terms and conditions at Schedule 4 is to be governed and construed solely in accordance with the laws of Ireland. The Irish Courts shall have exclusive jurisdiction to hear any disputes relating to, or deriving from, the Confidentiality and Data Processing Agreement.

17. Notices

- 17.1 The names and e-mail addresses of the parties for the purpose of the giving of notices under this Contract are as follows:

For the Contracting Authority:

Edele Lambert
Deputy Head of Procurement
Beaumont Hospital
edelelambert@beaumont.ie

For the Contractor:

[TO BE INSERTED PRIOR TO SIGNATURE]

18. Signature

IN WITNESS whereof the parties hereto have executed this Contract the day and year first herein WRITTEN

SIGNED for and on behalf of the Contractor by:

Signed: _____

Date: _____

Witnessed by: _____

SIGNED for and on behalf of the Contracting Authority by:

Signed: _____

Date: _____

Witnessed by: _____

Schedules and Appendices

Schedule 1 – Specification of Requirements

Schedule 2 – Pricing Schedule

Schedule 3 – Forms and Levels of Insurance

Schedule 4 – Data Protection and Confidentiality Agreement

Schedule 1 – Specification of Requirements
[TO BE INSERTED PRIOR TO SIGNATURE]

Schedule 2 – Form of Tender / Pricing Schedules

[TO BE INSERTED PRIOR TO SIGNATURE]

Schedule 3 – Forms and Levels of Insurance
[TO BE INSERTED PRIOR TO SIGNATURE]

Schedule 4 – Data Protection and Confidentiality Agreement

THIS AGREEMENT shall take effect on the Commencement Date of the Contract or Framework Agreement (as appropriate) to which it is appended and is made between:

- (1) Beaumont Hospital
(the 'Contracting Authority')
- (2) [TO BE INSERTED PRIOR TO SIGNATURE]
(the 'Contractor')

GENERAL

- A. In connection with a current or proposed Service between the Contracting Authority and the Service Provider, whereby the Service Provider is supplying, or proposes to supply, goods or services (the Service) to the Contracting Authority, the Contracting Authority may directly make available to the Service Provider from time to time the Information (as defined below), or the Service Provider or its servants, employees, agents, subsidiaries or sub-contractors may indirectly acquire or have access to the Information by virtue of the Service. For the avoidance of doubt, the Service as referred to in this Schedule includes all services and/or supplies as defined in the Contract or Framework Agreement to which this Agreement is appended.
- B. This Agreement shall apply to the Service Provider's use of the Information (as defined below) and other related matters.
- C. In the event of any ambiguity or discrepancy between the provisions of this Agreement and the provisions of the Contract or Framework Agreement to which this Agreement is appended, the provisions of the Contract or Framework Agreement shall apply.
- D. Any standard terms proposed by the Service Provider pertaining to data protection or confidentiality are hereby expressly disclaimed.
- E. The term of this Agreement shall correspond to the term of the Contract or Framework Agreement to which this Agreement is appended.

1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

Data Breach(es) means any breach of security leading to (or which may lead to) the accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Personal Data or other Information transmitted, stored or otherwise Processed, and (for the avoidance of doubt) has the meaning afforded to "personal data breach" under Article 4(12) of the GDPR (when effective);

Data Controller or Controller has the meaning given to that term in Section 1(1) of the Data Protection Acts and (when effective) in Article 4 of the GDPR;

Data Processor or Processor has the meaning given to that term in Section 1(1) of the Data Protection Acts and (when effective) in Article 4 of the GDPR;

Data Protection Acts means the Data Protection Acts 1988 and 2003 (as amended) and the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336/2011) and every statutory modification, re-enactment, replacement and/or amendment thereof for the time being in force (or, where the context so admits or requires, any one or more of such Acts) and all orders and regulations/statutory instruments made thereunder;

Data Protection Directive means Directive 95/46/EC of the European Parliament and of the Council of 24th October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;

Data Subject has the meaning given to this term in Section 1(1) of the Data Protection Acts and (when effective) in Article 4 of the GDPR;

Delete for the purposes of this Agreement means removing all Information which is electronically held in such a way that it can never be retrieved from the device on which it is held;

FOIA 2014 means the Freedom of Information Act 2014 and any amendments to or replacements thereof, including by means of directly effective EU Regulation;

GDPR means the EU General Data Protection Regulation, Regulation (EU) 2016/679, the effective date of which is 25th May 2018;

Information means any and all Information, (irrespective of the format, to include paper, electronic or otherwise) belonging to the Contracting Authority, including but not limited to the following:

- 1.1. Personal Information concerning the Contracting Authority's clients, patients or staff, or others whose personal Information is in the control of the Contracting Authority, including confidential Information concerning the physical and mental health of the Contracting Authority's clients, patients, staff or others. For the avoidance of doubt, personal Information includes Personal Data and also includes patient data;
- 1.2. Information regarding the business affairs of the Contracting Authority generally, and as regards the Service;
- 1.3. Information regarding the policies, procedures and work practices of the Contracting Authority;
- 1.4. Goods and services (including, without limitation, audit, consultancy and related services);
- 1.5. Information regarding the existence, content, progress or conclusion of any negotiations between the Contracting Authority and the Service Provider relating to the Service; and
- 1.6. Confidential codes or other Information concerning access to the Contracting Authority's computer networks and / or Information systems;

Personal Data has the meaning given to that term in Section 1(1) of the Data Protection Acts and (when effective) in Article 4 of the GDPR, and relates only to personal data, or any part of such

personal data, of which the Contracting Authority is the Data Controller or joint Data Controller and in relation to which the Service Provider is providing the Service, and (for the purposes of this Agreement) also includes Sensitive Personal Data and Special Categories of Data;

Processing, Processed and Process (and like words) have the meaning given to those terms in Section 1(1) of the Data Protection Acts and (when effective) in Article 4 of the GDPR;

Pseudonymisation, Pseudonymised and like words, have the meaning given to those terms (when effective) in Article 4 of the GDPR;

Sensitive Personal Data has the meaning given to this term in Section 1(1) of the Data Protection Acts;

Special Categories of Data has the meaning given to this term and/or such Personal Data as referred to in Article 9(1) and/or Article 10 of the GDPR.

Any reference to a third party in this Agreement includes, for the avoidance of doubt, subcontractors.

2. OBLIGATIONS OF THE SERVICE PROVIDER:

In consideration of the Contracting Authority directly making the Information available to the Service Provider, or the Service Provider otherwise acquiring the Information, and in consideration of the award of the contract to provide the Service, the Service Provider shall:

- 2.1. Not take or remove any Information from the Contracting Authority's premises without having received the written authorisation of the Contracting Authority. Such written authorisation must be issued in advance of the first instance and will apply thereafter;
- 2.2. Manage and Process any Information which it acquires from the Contracting Authority in accordance with the documented instructions of the Contracting Authority and the obligations of the Data Protection Acts and the GDPR in so far as these obligations apply to the Service Provider as a Data Processor, including with regard to transfers of Personal Data to a third country or an international organisation, unless required to do so by European Union, EU Member State or Irish law to which the Service Provider is subject; in such a case, the Service Provider shall inform the Contracting Authority of that legal requirement before Processing, unless that law prohibits such information on important grounds of public interest;
- 2.3. Maintain secret and confidential all Information furnished to it or otherwise acquired by its servants, employees, agents, subsidiaries or sub-contractors save and to the extent that such Information has been made available to the public by the Contracting Authority or by any third party lawfully in possession thereof and entitled to make such disclosure without restriction;
- 2.4. Take appropriate measures to ensure the reliability of the Service Provider's servants, employees, agents, subsidiaries or sub-contractors who have access to the Information and ensure that they are required to maintain the confidentiality of the Information which they access and process (in this regard, the Service Provider must be in a position to provide the Contracting Authority with a named list of its servants, employees, agents, subsidiaries or sub-contractors authorised to have access to Information);

- 2.5. Not disclose Information to any of the Service Provider's servants, employees, agents, subsidiaries or sub-contractors unless and only to the extent that such persons need to know such Information for the purposes of providing services in connection with the Service, and provided that such person has been made aware of the restrictions in this Agreement on the disclosure of the Information and has agreed in writing to comply with such restrictions;
- 2.6. Not disclose any Information to any third party without the prior written consent of the Contracting Authority;
- 2.7. Not engage any third party to Process the Information or any part thereof on its behalf without the prior written consent of the Contracting Authority. Should such consent be given, then the obligations of the Service Provider as set out in Clause 2 of this Agreement shall be imposed on that third party by way of a separate written Agreement between the Service Provider and the third party, which Agreement will terminate automatically upon the termination of this Agreement for any reason. In the event that the third party fails to fulfil its obligations set out in Clause 2 of this Agreement, the Service Provider shall remain fully liable to the Contracting Authority for the performance by the third party of those obligations;
- 2.8. Not use the Information directly or indirectly for any purpose other than in connection with the provision of services to the Contracting Authority regarding the Service;
- 2.9. Not reverse engineer, de-compile or disassemble Information or attempt to use the Information in any form other than machine readable object code, or allow a third party to do any of the above;
- 2.10. Not make any press announcement or otherwise publicise the business relationship with the Contracting Authority in any way, including, without limitation, using the name of the Contracting Authority in any publicity material, unless authorised to do so by the Contracting Authority;
- 2.11. Only use the Information solely for the purposes of fulfilling the requirements of the Service.
- 2.12. Implement appropriate human, organisational and technological controls and measures in accordance with Section 2(c) of the Data Protection Acts and Article 32 of the GDPR, to keep the Information secure and to protect against accidental loss, destruction, damage, alteration, or disclosure of the Information.
- 2.13. Take the necessary precautions for the prevention of unauthorised access to, unauthorised disclosure of or other unauthorised processing of the Information and in particular:
 - 2.13.1. Keep all Information obtained from the Contracting Authority or otherwise relating to the Service separate from all documents and other records of the Service Provider;
 - 2.13.2. Only make such copies of the Information as are necessary for the provision of services to the Contracting Authority regarding the Service; and
 - 2.13.3. Mark all documentation containing the Information as being subject to the terms of this Agreement and indicate that it is contrary to the terms of this Agreement to

copy, disclose or use in any manner or fashion such documentation without the prior written consent of the Contracting Authority; and

- 2.13.4. Have all necessary access controls in place to include authentication and authorisation for access to Information to ensure its security and confidentiality; and
 - 2.13.5. Have all necessary systems in place to ensure the ongoing confidentiality, integrity, availability and resilience of Processing systems and services; and
 - 2.13.6. Have the ability to restore the availability and access to the Information in a timely manner in the event of a physical or technical incident; and
 - 2.13.7. Have a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the Processing of the Information;
- 2.14. Ensure, upon termination or the completion of this Agreement, that all documents, data, other records or tangible objects containing or representing Information which have been disclosed by the Contracting Authority to the Service Provider ("**Information Records**"), and all copies thereof which are in the possession of the Service Provider and their subcontractors, shall at the written request and election of the Contracting Authority, be returned to the Contracting Authority or securely Deleted. Without prejudice to the generality of the foregoing:-
- 2.14.1. Where the Contracting Authority has requested that the Service Provider return Information Records, the Information Records shall be returned from the Service Provider to the Contracting Authority in a commonly used electronic format;
 - 2.14.2. Where the Contracting Authority has requested that the Service Provider securely Delete Information, the Service Provider shall ensure the Information is permanently Deleted from any of the Service Provider's systems or devices which were used to store the Information and from those of third parties to whom the Service Provider has disclosed and/or permitted access to the Information or Information Records, save in the case of Information to the extent that European Union or Member State law requires storage or retention of the Information;
 - 2.14.3. Where the Service Provider is required for legal or regulatory compliance to retain a copy of any Information, the Service Provider shall provide the Contracting Authority in writing with full details of any Information they are proposing to retain and the details of the legal and regulatory obligations governing this action;
 - 2.14.4. Without prejudice to the obligations at Clause 2.14.3 above, in circumstances where European Union or Irish law requires the Service Provider to retain any Personal Data which the Contracting Authority has shared with the Service Provider, the Service Provider shall provide the Contracting Authority in writing with full details of any Personal Data they are legally required to retain and the details of the European Union or Irish legal obligations governing this action, and ensure the Personal Data retained by them is anonymised or Pseudonymised by them to the Contracting Authority's satisfaction and in a manner and to a standard which is satisfactory under European Union law (including, without limitation, the GDPR);

- 2.15. Provide all necessary assistance to the Contracting Authority in ensuring compliance with the provisions of Articles 32 to 36 of the GDPR and/or any legislative requirements of the Data Protection Acts or any guidance issued by the Irish Data Protection Commissioner regarding Data Breaches, and in particular to notify the Contracting Authority as soon as is practical, but no later than 48 hours after they or (as applicable) their subcontractors become aware of any actual or suspected Data Breach. In such an event the Service Provider will immediately supply the Contracting Authority with all the relevant facts surrounding the actual or suspected Data Breach and will provide all necessary assistance to the Contracting Authority to investigate, report upon, ameliorate, correct and end (or, as applicable, prevent) the Data Breach and to ensure that no such Data Breach (or any similar breach) occurs in future;
- 2.16. Ensure that all appropriate and necessary technical and organisational measures are in place to enable the Contracting Authority to fulfill its obligations to respond to requests from Data Subjects exercising their rights under Section 2D of the Data Protection Acts and Chapter III of the GDPR, (including the rights of access to, rectification of and erasure of their Personal Data), and shall promptly comply with any request from the Contracting Authority to amend, transfer, restrict Processing of, or Delete such Personal Data;
- 2.17. For the purposes of Freedom of Information/ transparency obligations placed upon the Contracting Authority (by FOIA 2014, national or European public procurement regulations or otherwise):
- 2.17.1. Procure that it and its servants, employees, agents, subsidiaries or sub-contractors shall assist the Contracting Authority, at no additional charge and within such timescales as the Contracting Authority may reasonably specify, in meeting any requests for *Information* which are made to the Contracting Authority under the *FOIA 2014* or other applicable transparency rules, such assistance to include (but not be limited to) the provision of a copy of the requested Information.
- 2.17.2. Notwithstanding anything to the contrary in this Agreement, if the Contracting Authority receives a request for Information pursuant to the FOIA 2014, the Contracting Authority shall be entitled to disclose all Information (in whatever form) as is necessary to comply with the FOIA 2014.
- 2.17.3. If, at the request of the Service Provider, the Contracting Authority seeks to withhold Information protected by this Agreement and a competent authority determines, or the parties subsequently agree, that the Information is not exempt, then the Service Provider shall reimburse the Contracting Authority for all costs (including but not limited to legal costs) incurred by the Contracting Authority in seeking to withhold such Information from a request under the FOIA 2014.
- 2.17.4. Not (and shall procure that its servants, employees, agents, subsidiaries or sub-contractors do not) respond directly to a request for Information under the FOIA 2014 unless expressly authorised to do so by the Contracting Authority;
- 2.18. Ensure the security of Information stored on all fixed and mobile devices, including medical devices, desktop computers, servers and mobile computer devices (i.e. laptops, notes, tablets, personal data assistants, Blackberry-enabled devices, iPads, iPhones and other smart type

devices etc) and removal storage devices (i.e. CD, DVD, portable hard drives, Diskettes, ZIP disks, Magnetic tapes, etc); and further -

- 2.18.1. Only in exceptional circumstances and with the written consent of the Contracting Authority, should the Service Provider hold Information on mobile computing or removable storage devices. Should the business requirements necessitate the holding of Information on such devices then the Service Provider shall ensure that only the Information absolutely necessary for their purpose is stored in this format and that the Information is held on such devices only for the minimum amount of time necessary and furthermore, after such period that they will Delete all Information from these devices;
 - 2.18.2. Where the use of mobile computing or removal storage devices is a necessity then the Service Provider will take all necessary precautions to ensure the safety of these devices from theft, or loss and authorized access. As a minimum all mobile computing and removal storage devices must be appropriately secured including by means of strong encryption and protected by the use of strong complex passwords;
 - 2.18.3. The encryption used by the Service Provider must satisfy or better the requirements of the HSE Encryption Policy (the current version of which is available at http://hse.ie/eng/services/Publications/pp/ict/Encryption_Policy.pdf) as may be updated from time to time. At any time during the term of this Agreement, the Contracting Authority may request the Service Provider to set out in writing the current encryption measures used and the Service Provider will provide this information within five business days. If, in the reasonable opinion of the Contracting Authority, the encryption standard employed by the Service Provider is not sufficient, the Service Provider will implement, at their expense, whatever encryption standards are proposed by the Contracting Authority. At no time should cipher keys be held on the mobile computing or removal storage device for the data which they secure. In addition, the Service Provider will at all times hold cipher keys in a secure fashion;
 - 2.18.4. Under no circumstances (encrypted or otherwise) is the Service Provider sanctioned by the Contracting Authority to download or store Information on USB memory sticks/keys;
- 2.19. Ensure the security of the Information in transit (including by way of electronic transit/transit by way of electronic communication). Where it is necessary to transfer the Information, the Service Provider must take all necessary precautions to ensure the security of the Information before, during and after transit; and further -
- 2.19.1. The Service Provider shall ensure that all transfers of the Information are legal, justifiable, and only the minimum Information absolutely necessary for a given purpose is transferred.
 - 2.19.2. All transfers of Information should, where possible, only take place electronically via secure on-line channels or electronic mail. Where the Service Provider transfers Information electronically, in any form and by any means, the Information must be

encrypted using strong encryption. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy referred to by Clause 2.18.3.

- 2.19.3. Where it is not possible to transfer the Information electronically, the Information may be encrypted and copied to a mobile storage device (with the exception of USB memory sticks/keys) and transported manually. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy referred to by Clause 2.18.3. The encrypted mobile storage media, should wherever possible, be hand delivered by the Service Provider to, and be signed for by, the intended recipient. If this is not possible, the use of registered post or some other certifiable delivery method must be used.

2.20. In relation to transfers of Information outside of the Republic of Ireland:

- 2.20.1. The Service Provider must seek the written consent of the Contracting Authority prior to the Service Provider sending Information outside the jurisdiction of the Republic of Ireland. The Contracting Authority may, at its discretion, prohibit the Service Provider from sending *Information* outside the jurisdiction of the Republic of Ireland;
- 2.20.2. Where the Contracting Authority has consented to the transfer of Information outside the Republic of Ireland, the Service Provider may only transfer Information to a legal entity located in:
 - 2.20.2.1. A country within the European Economic Area;
 - 2.20.2.2. A country outside the European Economic Area but approved for this purpose by the EU Commission pursuant to Article 25 of the Data Protection Directive and (when effective) to Article 45(3) of the GDPR;
 - 2.20.2.3. A country outside the European Economic Area but subject to the execution by the Contracting Authority, the Service Provider and the transferee of standard contractual clauses adopted by the EU Commission in accordance with the examination procedure referred to in Article 31(2) of the Data Protection Directive (and Article 93(2) of the GDPR), as provided for in Article 26(4) of the Data Protection Directive (and Article 46 of the GDPR);
 - 2.20.2.4. A country outside the European Economic Area but where the transferee of the Information is a parent or subsidiary company of the Service Provider, provided that the Service Provider and that parent or subsidiary company have adopted Binding Corporate Rules which have been approved by the relevant national Data Protection Authority under Article 26(2) of Data Protection Directive and/or the comply with the provisions of Article 47 of the GDPR; or
 - 2.20.2.5. The United States of America only when the Information transferee has agreed in writing to be bound by the European Commission's

Implementing Decision (EU) 2016/1250 of 12th July 2016 (EU-US Privacy Shield).

2.21. Make available all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR in respect of the duties of Data Processors and in particular, If so requested by the Contracting Authority, the Service Provider shall:

2.21.1. Permit the Contracting Authority or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider's data Processing facilities and activities (and/or those of its agents, subsidiaries and sub-contractors) and comply with all reasonable requests or directions by the Contracting Authority to enable the Contracting Authority to verify and/or procure that the Service Provider is in full compliance with its obligations under this Agreement;

2.21.2. Make available for audit by the Contracting Authority or its representatives, (subject to reasonable and appropriate confidentiality undertakings), all staff procedures, processes and instructions that the Service Provider employ for the management of Information;

2.21.3. Permit the Contracting Authority or its representatives, (subject to reasonable and appropriate confidentiality undertakings), to inspect the contractual arrangements that the Service Provider has in place, governing the transfer of any Information from the Service Provider to legal entities located outside the European Economic Area (whether they be in the form of standard contractual clauses as referred to in Clause 2.20.2.3, Binding Corporate Rules as referred to in clause Clause 2.20.2.4, an agreement by the transferee to be bound by the EU-US Privacy Shield as referred to in Clause 2.20.2.5 or any other form);

3. DISCLOSURE REQUIRED BY LAW

In the event that the Service Provider is legally required to disclose any of the Information to a third party, the Service Provider undertakes to notify the Contracting Authority of such requirement prior to any disclosure and, unless prohibited by law, to supply the Contracting Authority with copies of all communications between the Service Provider and any third party to which such disclosure is made. The Service Provider must co-operate with the Contracting Authority in bringing any legal or other proceedings to challenge the validity of the requirement to disclose Information.

4. BREACH OF AGREEMENT

The Service Provider hereby indemnifies and agrees to keep indemnified the Contracting Authority against any costs, expenses, damages, harm or loss suffered or incurred by reason of any disclosure of the Information in breach of the terms and conditions of this Agreement and shall account to the Contracting Authority for any moneys received by the Service Provider directly or indirectly arising out of the disclosure or use of any of the Information in breach of the terms and conditions of this Agreement.

5. NO WARRANTY

Nothing in this Agreement shall constitute a warranty by the Contracting Authority as to the accuracy of any of

the Information and the Contracting Authority will not be liable to the Service Provider or to any other party to which any of the Information may be disclosed for any loss or damage howsoever caused, arising directly or indirectly out of the inaccuracy of any of the Information.

6. NO LICENCE

The Service Provider acknowledges that the Information is of a special and unique character and that the Information and any patent, copyright or other intellectual property rights of whatever nature attaching thereto are and will remain the property of the Contracting Authority and nothing in this Agreement will be construed as giving the Service Provider a licence in respect of such patent, copyright or other intellectual property rights.

7. SURVIVAL OF OBLIGATIONS

The non-disclosure obligations of this Agreement will survive and continue and will bind the Service Provider's legal representatives, successors and assigns notwithstanding that the Service may not be actually implemented by the parties.

8. WAIVER

The rights of the Contracting Authority under this Agreement will not be prejudiced or restricted by any indulgence or forbearance extended to the Service Provider or other parties, and no waiver by the Contracting Authority in respect of any breach of this Agreement will operate as a waiver in respect of any subsequent breach.

9. VARIATION

This Agreement may not be released, discharged, supplemented, amended, varied or modified in any manner except by an instrument in writing signed by a duly authorised officer or representative of each of the parties hereto.

10. NOTICE

All notices to the Contracting Authority or the Service Provider from the other party under this Agreement shall be in writing and sent to the appropriate address set out above.

11. SEVERANCE

If any provision of this Agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions of this Agreement will remain in force. If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision will apply with whatever modification is necessary to make it valid, enforceable or legal.

12. GOVERNING LAW

This Agreement will be governed by and construed in accordance with the laws of Ireland and the parties hereto hereby irrevocably submit to the exclusive jurisdiction of the courts of Ireland.

13. SIGNATURE

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

SIGNED for and on behalf of the Contracting Authority by:

Signed: _____

Date: _____

Witnessed by: _____

SIGNED for and on behalf of the Contractor by:

Signed: _____

Date: _____

Witnessed by: _____