

## APPENDIX 2 – CALL-OFF TERMS AND CONDITIONS

### WHEREAS:-

The following terms and conditions shall, unless otherwise agreed to in writing by Enterprise Ireland, apply to all purchases of services by Enterprise Ireland:-

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### Definitions:

**"Framework Agreement"** means the Framework Agreement entered into between Enterprise Ireland and the Seller, dated xx Xxxx 2023, for the provision of [insert title of Framework Agreement], including the Recitals to, and Schedules of, the Framework Agreement;

**"Seller"** means [insert framework member name] of [insert framework member address]

### IT IS AGREED:-

#### 1 PURCHASE

- 1.1 The Seller shall provide, and Enterprise Ireland shall receive the services, as set out in Appendix 1 – Statement of Work, on the execution by Enterprise Ireland of a purchase order or contract for the price agreed and shown thereon.
- 1.2 Services supplied to Enterprise Ireland shall be deemed to be supplied on these terms and conditions and no purported variation of these terms and conditions shall be valid unless specifically agreed by Enterprise Ireland.
- 1.3 Enterprise Ireland will not accept responsibility for any order which is not on an official order form and fully signed by an authorised officer.

#### 2 APPLICABILITY AND LAW

These terms and conditions shall be governed and construed by the laws of Ireland and the parties agree to submit to the exclusive jurisdiction of the Irish Courts.

### **3 PAYMENT**

- 3.1** In consideration of the provision of services, Enterprise Ireland shall pay Seller in accordance with agreed prices and rates ("charges") as stated in the Purchase Order.

#### **3.2 Invoice and Monthly Statement**

- 3.2.1** Seller shall issue an invoice for each individual Purchase Order.
- 3.2.2** The invoice shall be sent directly to Accounts Payable in the Finance Department Enterprise Ireland or e-mailed to [accounts.payable@enterprise-ireland.com](mailto:accounts.payable@enterprise-ireland.com) quoting the Purchase Order number
- 3.2.3** The supplier name on the invoice must be the same as on the Purchase Order.
- 3.2.4** The invoice quantity, value and currency must be the same as on the Purchase Order.
- 3.2.5** The description on the invoice must reasonably match that on the Purchase Order.
- 3.2.6** Invoices received without a Purchase Order will be returned. A single monthly statement shall be submitted by Seller within three (3) working days of month end. This statement shall include a breakdown showing all individual invoice charges for the month.

#### **3.3 Tax Clearance Certificates**

Where cumulative payments exceed €10,000 (including VAT), in a 12-month rolling period, a valid Tax Clearance Certificate from Irish Revenue must be submitted to Enterprise Ireland. This applies to both Irish Resident suppliers and Non-Resident suppliers.

### **3.4 Professional Services Withholding Tax**

Where professional Services are provided to Enterprise Ireland, the payment for such services are liable to Professional Services Withholding Tax (PSWT) at 20%. An F45 will be issued in receipt of the deduction. The PSWT deducted can be re-claimed from the Irish Revenue. This applies to both Irish Resident suppliers and Non-Resident suppliers.

### **3.5 E-Day Bank Details for Payment**

**3.6.1** Enterprise Ireland (like all Irish Public Bodies) no longer sends cheques to businesses in Ireland.

**3.6.2** To receive payment for your supply to Enterprise Ireland the business bank details must be submitted to [accounts.payable@enterprise-ireland.com](mailto:accounts.payable@enterprise-ireland.com)

### **3.7 Late Payments**

**3.7.1** Enterprise Ireland is bound by the **Late Payment in Commercial Transactions Regulations 2012**.

**3.7.2** All public sector bodies must pay invoices within 30 days of receipt of invoice (invoice must be received by Accounts Payable, Finance, Enterprise Ireland) or the services, whichever is the later.

**3.7.3** After 30 days, interest and compensation is automatically applied to monies outstanding, if the invoice is correct and there are no outstanding queries in relation to it.

**3.7.4** Invoices/delivery shall be queried by Enterprise Ireland within 10 working days of receipt in writing.

**3.7.5** The rate of interest payable under this sub-clause shall be ECB main re-financing rate plus 8 percentage points.

**3.7.6** Any queries on invoices should be addressed to [accounts.payable@enterprise-ireland.com](mailto:accounts.payable@enterprise-ireland.com).

## **4 INDEPENDENT CONTRACTOR**

- 4.1** Seller is an independent contractor and neither it nor its sub-contractors or its or their employees or agents are the sub-contractor, agent or employee of Enterprise Ireland, and they shall not hold themselves out to be so.
- 4.2** Seller shall comply with all applicable laws, ordinances, statutes, orders, rules and regulations of any governmental authority having jurisdiction (hereafter "Laws") and shall, unless otherwise stipulated, obtain and pay for all licences and permits necessary for the provision of services in accordance with such Laws.

## **5 WARRANTY**

- 5.1** Seller hereby warrants its power to enter into contracts and that it has obtained all necessary approvals to do so.

## **6 INDEMNITY**

- 6.1** If notified promptly in writing of any action brought against Enterprise Ireland based upon a claim that any services provided by Seller infringes any patent, trade mark, copyright or other intellectual property right, the Seller shall if called upon to do so by Enterprise Ireland defend such action at its expense and pay any costs and damages awarded and any expenses incurred by Enterprise Ireland in connection with the claim (including legal and other expert fees). If so called upon, Seller shall have sole control of the defence of any such action and all negotiations for its settlement or compromise.

## **7 LIMITATION OF LIABILITY**

- 7.1** In no event will Enterprise Ireland's total liability for damages and actions based on contract or tort arising out of or in connection with a Purchase Order exceed the amount remaining due under that Purchase Order.
- 7.2** In no event shall Enterprise Ireland be liable for any indirect or consequential loss suffered by Seller.

## **8 FREEDOM OF INFORMATION**

Please note Enterprise Ireland is subject to the Freedom of Information Act 2014. The following extract may be relevant to this Purchase Order:

*A record in the possession of a service provider shall, if and in so far as it relates to the service, be deemed for the purposes of this Act to be held by the FOI body, and there shall be deemed to be included in the contract for the service a provision that the service provider shall, if so requested by the FOI body for the purposes of this Act, give*

*the record to the FOI body for retention by it for such period as is reasonable in the particular circumstances.*

## **9 CONFIDENTIALITY**

Save as provided for by law, including the Freedom of Information Act 2014, both parties agree to maintain in confidence and not disclose, reproduce, copy any materials, documentation or specification which are provided to the other hereunder. Both parties shall take all reasonable steps to ensure that its employees, agents, Sub-contractors are bound by the same obligation.

## **10 FORCE MAJEURE**

Neither party will be liable for failure or delay in the performance of its obligations under a Purchase Order due to causes beyond its control including but not limited to strikes, wars, revolutions, fires, floods, explosions, earthquakes or governmental regulations.

## **11 ASSIGNMENT**

Seller shall not assign a Purchase Order or any part thereof without Enterprise Ireland's prior written approval.

## **12 SUB-CONTRACTING**

**12.1** Seller shall not sub-contract all or any part of its obligations under a Purchase Order without Enterprise Ireland's prior written approval. No such approval shall create any contractual relationship between Enterprise Ireland and any sub-contractor.

**12.2** Seller shall be fully responsible for those elements performed by its sub-contractors and for the acts and omissions of all its sub-contractors to the same extent as it is for the acts and omissions of persons directly employed by it.

## **13 NOTICES**

**13.1** Any demand, notice or communication shall be deemed to have been duly served:-

**13.1.1** If delivered by hand, when left at the proper address for service (except that where such delivery is not on a working day, service shall be deemed to occur on the next following working day).

**13.1.2** If given or made by prepaid post, two working days after being posted.

**13.2** Any demand notice or communication shall be made in writing to the recipient at its registered offices, or in the case of Enterprise Ireland, East Point Business Park, Dublin 3, Ireland (or such other address as may be notified in writing from time to time) marked for the attention of the Purchasing Manager, Enterprise Ireland.

### **13 WAIVER**

**14.1** Failure to exercise or delay in exercising on the part of either party any right, power or privilege of that party under a Purchase Order shall not in any circumstances operate as a waiver thereof nor shall any single or partial exercise of any right, power or privilege in any circumstances preclude any other or further exercise thereof or the exercise of any other right, power or privilege.

**14.2** Any waiver of a breach of any of the terms hereof or of any default hereunder shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of a Purchase Order.

### **15 HEADINGS**

The headings to the clauses of these terms and conditions shall not affect the construction of the clauses.

### **16 SEVERABILITY**

If any part of a Purchase Order is found by a court of competent jurisdiction or other competent authority to be invalid, unlawful or unenforceable, then such part shall be severed from the remainder of the Purchase Order which will continue to be valid and enforceable to the fullest extent permitted by law.

### **17 CANCELLATION**

**17.1** Enterprise Ireland may cancel an order in whole or in part at any time by written or electronic notice in the event that the Seller:

**17.1.1** fails to comply with any term or condition of the order including but not limited to delivery terms; or

**17.1.2** is subject to a receiver, liquidator or other similar officer being appointed over any or all of its property or assets; or files a voluntary petition in bankruptcy; or

### 17.1.3 voluntarily ceases trading

## 18 INSURANCE

If Seller's work involves operations by Seller on Enterprise Ireland's premises or at any of Enterprise Ireland's customers or at any place where Enterprise Ireland conducts operations, the Seller shall take all necessary precautions to prevent the occurrence of any injury to persons or property during the progress of such work and except to the extent that such injury is due solely and directly to Enterprise Ireland's negligence, the Seller shall indemnify Enterprise Ireland against all loss which may result in any way from any act or omission of Seller, its employees, servants, agents or sub-contractors and Seller shall maintain such public liability, personal injury and property damage and employer's liability and compensation insurance as will protect Enterprise Ireland from said risks and shall produce evidence of such insurance upon request by Enterprise Ireland.

## 19 Data Protection

- 19.1** Seller shall comply with all applicable data protection law including but not limited to the General Data Protection Regulation 2016 (the GDPR), the Data Protection Act 2018 and any other national implementing legislation ("**Data Protection Law**").
- 19.2** In this clause 19, the terms "personal data", "processor", "controller", "data subject", supervisory authority", "personal data breach" and "processing" have the meaning given to those terms in Data Protection Law. "Sub-processors" shall mean other processors that are used by Seller to process personal data.
- 19.3** To the extent that Enterprise Ireland acts as a controller and Supplier acts as a processor, and the provision of the goods or services requires Supplier to process personal data relating to Enterprise Ireland's clients, employees, officers and/or other persons, at Enterprise Ireland's request or under Enterprise Ireland's instructions, Seller shall comply with its obligations as processor under this clause 19.
- 19.4** The subject-matter and duration of the processing, the nature and purpose of the processing, the type of personal data, the categories of data subjects and Enterprise Ireland's obligations and rights as controller are as provided in the applicable agreement between Enterprise Ireland and Seller and/or further to written or oral instructions that Seller receives from Enterprise Ireland. <sup>1</sup>
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**19.5** In processing personal data that Enterprise Ireland provides to Seller, Seller warrants and represents that Seller is, and shall be for so long as Seller processes any such data, fully compliant with the Data Protection Law and Seller agrees:

**19.5.1** To only process the personal data on Enterprise Ireland's documented instructions, unless Seller is required to do so by EU or Irish law. Seller shall inform Enterprise Ireland of that legal obligation before processing, unless that law prohibits such information on important grounds of public interest.

**19.5.2** Not to transfer the personal data to a recipient outside the EEA, without Enterprise Ireland's prior written consent, unless the transfer is subject to the terms of a contract incorporating the standard contractual clauses in the form adopted by the European Commission; the recipient is in a country the subject of an adequacy decision by the European Commission; or the transfer is to the US to an entity that is a certified member of the EU-US Privacy Shield scheme.

**19.5.3** To impose a duty of confidentiality on any staff and subcontractors of Seller, where applicable, with access to the personal data.

**19.5.4** To implement technical and organisational security measures appropriate to the risks of processing the personal data, including pseudonymisation and encryption of personal data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident, and a process for regularly testing, assessing and evaluating the effectiveness of security measures.

**19.5.5** Not to engage another processor without Enterprise Ireland's prior specific or general written authorisation. In the case of general written authorisation, Seller shall inform Enterprise Ireland of any intended changes concerning the addition or replacement of other processors, thereby giving Enterprise Ireland the opportunity to object to such changes.

**19.5.6** To require any sub-processor that Seller engages to process the personal data on Enterprise Ireland's behalf, to adhere to the same obligations that Seller undertakes in these terms and conditions, to ensure such processing meets the requirements of the Data Protection Law, and Seller will remain fully liable for any breach by a sub-processor of its obligations in relation to the processing of the personal data.

**19.5.7** Insofar as possible, and taking into account the nature of the processing, assist Enterprise Ireland by appropriate technical and organisational measures to fulfil Enterprise Ireland's obligation to respond to individuals' requests to exercise their rights to transparent information, access,

rectification, erasure, restriction of processing, objection and portability under Data Protection Law.

- 19.5.8** Taking into account the nature of the processing and the information available to Seller, assist Enterprise Ireland in ensuring compliance with its obligations under Data Protection Law in regard to data security; data breach notification to the supervisory authority and to individuals; carrying out Data Protection Impact Assessments and related consultations with supervisory authorities.
- 19.5.9** At Enterprise Ireland's request, delete or return all the personal data to Enterprise Ireland after the end of the provision of Seller's goods or services, and delete existing copies unless EU or Member State law requires storage of that personal data.
- 19.5.10** Make available to Enterprise Ireland all information necessary to demonstrate compliance with the obligations laid down in Article 28 of the GDPR, and allow for and contribute to audits, including inspections, conducted by Enterprise Ireland or another auditor mandated by Enterprise Ireland.
- 19.5.11** Immediately inform Enterprise Ireland if, in Seller's opinion, an instruction of Enterprise Ireland infringes Data Protection Law.

**On behalf of the Seller**

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

**On behalf of Enterprise Ireland**

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

## **APPENDIX 1 – Statement of Work**

Note to Tenderers: Details of the Call-Off Contract services will be inserted here prior to issuing for signing