



INVITATION TO TENDER DOCUMENT

BEAUMONT HOSPITAL

OPEN PROCEDURE

CONTRACT

For

THE PROVISION OF FLUID WARMERS AND ALL RELATED CONSUMABLES

DURATION OF CONTRACT: In the first instance, a contract of four years' duration shall be awarded for the provision of thirty fluid warmers and accessories, including all support, maintenance, repair requirements, the replacement of equipment as necessary and the supply of all sterile single use consumables. The Contracting Authority shall remunerate the successful tenderer for the provision of the required equipment through the purchase of sterile single use consumables only; the fluid warmers, accessories and any required attachments will be provided by the successful tenderer at no cost and will remain the property of the successful tenderer.

Following the expiry of the initial four-year contract term, and as a recurring option that may be availed of solely at the discretion of the Contracting Authority, subsequent one-year contracts for the supply of consumables, all support, maintenance, repair requirements, the replacement of equipment as necessary and the supply of all sterile single use consumables may be awarded until the obsolescence of the thirty fluid warmers. During each subsequent extension, ownership of the equipment will remain with the successful tenderer.

DEADLINE DATE FOR RECEIPT OF TENDERS: 19/10/2026 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. Beaumont Hospital 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').

Tenderers are recommended to read the 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:

INFORMATION	✓ for YES
All information required under each Award Criterion (Section 6)	
The Completed Specification of Requirements – Appendix 1	
The completed and signed Form of Tender – Appendix 2	
The completed Pricing Schedule – Appendix 3	
The completed European Single Procurement Document – Appendix 4	
All other information required in connection with this competitive process	

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 Invitation to Tender document and its appendices in full in order to provide a comprehensive and compliant response.

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1. INTRODUCTION

1.1 About the Contracting Authority

Beaumont Hospital, incorporating St. Joseph's Hospital Raheny, employs approximately 4,300 whole-time equivalent staff and has a total 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. Further information regarding the hospital is available online: www.beaumont.ie/aboutus.

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 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 be considered for appointment to the contract in accordance with the award criteria, rules and weightings contained in Section 6 of this document.

1.3 Duration and Format of the Contract

In the first instance, a contract of four years' duration shall be awarded for the provision of thirty fluid warmers, any required accessories, including all support, maintenance, repair requirements, the replacement of equipment as necessary and the supply of all sterile single use consumables. The Contracting Authority shall remunerate the successful tenderer for the provision of the required equipment through the purchase of sterile single use consumables only; the fluid warmers will be provided by the successful tenderer at no cost and will remain the property of the successful tenderer.

Following the expiry of the initial four-year contract term, and as a recurring option that may be availed of solely at the discretion of the Contracting Authority, subsequent one-year contracts for the supply of consumables, all support, maintenance, repair requirements, the replacement of equipment as necessary and the supply of all sterile single use consumables may be awarded until the obsolescence of the thirty fluid warmers initially provided under this contract. During each subsequent extension, ownership of the equipment will remain with the successful tenderer.

1.4 Contractual Terms and Conditions

While precise contractual terms will be discussed with the successful tenderer, the essential features of the contract to be awarded will be as follows:

- 1.4.1 The successful tenderer shall be awarded a contract of four years' duration for the supply, installation and commissioning of the required thirty fluid warmers, any

attachments and a range of accessories at the Contracting Authority's premises, the on-going support, maintenance, repair and replacement of the equipment, the provision of training and the supply of consumables.

- 1.4.2 The Contracting Authority shall remunerate the successful tenderer for the provision of the required equipment solely through the purchase of sterile single use consumables.
- 1.4.3 The attention of tenderers is drawn to the quantities of sterile single use consumables listed in the Pricing Schedule contained in Appendix 3 of this Invitation to Tender document. While the quantities listed are based on actual volumes, they constitute no guarantee as to the volume of single-use consumables that will be procured; however, in order to allow the successful tenderer to recoup the cost of providing the fluid warmers to the Contracting Authority (and in order to afford the successful tenderer certainty in this regard), the Contracting Authority commits to purchasing the minimum volumes indicated in the Pricing Schedule.
- 1.4.4 On the basis that, following the expiry of the initial four year contract, the successful tenderer will have recouped the cost of providing the fluid warmers to the Contracting Authority, the Contracting Authority expects a marked reduction in the price of sterile single use consumables.
- 1.4.5 At all points during the initial four year contract duration and any subsequent extension, the successful tenderer will retain ownership of all equipment except the sterile single use consumables, in respect of which title will transfer to the Contracting Authority upon delivery.
- 1.4.6 While the equipment is available for use by the Contracting Authority, the Contracting Authority shall keep the equipment free and clear of all attachments, liens or security interests of any type.
- 1.4.7 Upon expiry of the initial four-year contract term, the Contracting Authority shall have the right to award subsequent one-year contracts for the provision of the required thirty fluid warmers, any required accessories, including all support, maintenance, repair and replacement of the equipment and the supply of all sterile single use consumables until the obsolescence of the equipment.

By submitting a tender, each tenderer agrees that, if successful in the competition, they will enter into a contract based upon the provisions of Section 1.4 of this document. For the avoidance of doubt, any tender submission seeking to vary, amend, qualify or reject the provisions of Section 1.4 of this document will be automatically rejected as an inadmissible submission.

1.5 Scope of Contract and Options

In the first instance, it is envisioned that the Contracting Authority will procure thirty fluid warmers, any required accessories, from the successful tenderer under the terms outlined in Section 1.4 above. However, the Contracting Authority shall have the option to procure any number of additional fluid warmers it so requires over the currency of the initial four-year contract, whether through an adjustment to the price tendered for sterile single-use consumables or through the agreement of a capital purchase price.

1.6 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 at any time during the tender validity period. This shall be without prejudice to the right of the Contracting Authority to terminate the contract in accordance with agreed contractual terms and commence a new competitive process.

2 SPECIFICATION OF REQUIREMENTS

NOTE: This Section of the Invitation to Tender document merely contains a broad outline of the Contracting Authority's Requirements. Appendix 1 of this document contains a detailed specification of requirements, which tenderers are required to complete and return with their tender submissions. The extent to which tenderers' proposed solutions comply with the functional requirements detailed in Appendix 1 of this document will be assessed by the Award Criteria contained in Section 6 of this document.

2.1 Introduction to Requirements

The Contracting Authority intends to award a contract for the supply and support of Medical Grade Fluid warmers and their corresponding consumables. Maintaining patient normothermia is a critical clinical priority across Beaumont Hospital. The Contracting Authority requires highly reliable, safety-tested fluid warming technologies. It is a requirement that the equipment must perform accurately across a range of clinical environments and must accommodate varying clinical demands ranging from routine, low-flow continuous infusions to high-volume, rapid trauma requirements.

A contract of four years' duration shall be awarded for the provision of thirty fluid warmers, any required attachments, including all support, maintenance, repair and replacement of the equipment and the supply of all sterile single use consumables. The Contracting Authority shall remunerate the successful tenderer for the provision of the required equipment through the purchase of sterile single use consumables.

2.2 General Data Protection Regulation (GDPR)

As a service provider engaged in providing services to the Contracting Authority, the successful tenderer will be required to adhere to the following provisions:

- (i) To the extent that it may be deemed a 'data processor' for the purposes of the 'GDPR,' the successful tenderer 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.
- (ii) To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the successful tenderer 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.
- (iii) To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the successful tenderer will comply with the provisions of Article 28(3)(a) to 28(3)(h) of the GDPR;
- (iv) To the extent that it may be deemed a 'sub-processor' for the purposes of the GDPR, the successful tenderer will comply with the provisions of Article 28(4) of the GDPR.

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 the Tender 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 Invitation to 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 close of business on 12/10/2026. 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 Invitation to Tender. 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 Invitation to 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 **19/10/2026** at 12.00 noon (local time). Tenders must be submitted via the Irish government's Procurement Opportunities 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 and all other information required by this Invitation to Tender document, must be compiled in such a manner such that it can be read immediately upon opening of the e-mail. 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 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.

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 Invitation to 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 the 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

Tender prices and any other financial information must be submitted in Euro (€) only. All invoices and payments will be in Euro (€) only.

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 Acts.

In this regard, tenderers are asked to consider if any of the information supplied by them in response to this Invitation to 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 Invitation to Tender or in the course of any contract established as a result thereof, will not be released pursuant to the Contracting Authority's obligations under law, including the

Freedom of Information Acts 2014, the 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, as updated. Failure to disclose a conflict of interest may disqualify a tenderer or invalidate the establishment 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 sectoral agreements in preparing tenders. Moreover, tenderers are advised that the laws of Ireland will govern this competitive process. 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 established, 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 the 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 (as updated) 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 established about any aspect of the competition in a 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.

3.20 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 established 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 tender 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 - €13m (b) Public Liability Insurance - €6.5m (c) Product Liability Insurance - €6.5m
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 €300,000 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 €200,000 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

6.1 Award Criteria and Weightings

This contract will be established with 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	Ultimate Cost	40	4,000	N/A
B	Clinical Suitability and Technical Merit of Proposed Fluid Warmers	35	3,500	2,100
C	Proposed Support and Maintenance Methodology	10	1,000	600
D	Proposed Training Mechanisms	10	1,000	600
E	Reliability and Continuity of Proposed Equipment	5	500	300

6.2 Financial Award Criterion Explained

Tenderers are required to complete in full the Form of Tender contained in Appendix 2 and the Pricing Schedule contained in Appendix 3 (see separate Excel document). The Form of Tender and Pricing Schedule must be completed, signed and returned in soft copy formats. The manner in which a single notional cost figure will be arrived at for evaluation purposes is detailed in the Pricing Schedule.

The lowest notional ultimate cost tender that also meets all minimum requirements described in this document will attain the highest score available under this criterion. The scores of all other valid tenders will be calculated as follows:

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 a tender submission not eliminated by virtue of a failure to meet a minimum required score associated with a qualitative award criterion.

6.3 Qualitative Award Criteria Explained

Each qualitative award criterion is associated with certain mandatory requirements, as clearly set out in Appendix 1 – Specification of Requirements.

The requirements in the associated Specification of Requirements document are designated as 'MANDATORY' requirements. In order to attain the minimum required score associated with each award criterion, each mandatory requirement must be complied with in full. For the avoidance of doubt, it is hereby stated that failure to comply with a mandatory requirement under any section of the Specification of Requirements document will result in a failure to attain the minimum required score associated with the relevant award criterion and, consequently, will result in the tenderer's elimination from the competition.

Scores other than the minimum required score under each award criterion will be apportioned by reference to the overall merit of responses, taking into account the following factors:

- In the event that a mandatory requirement is expressed in terms of a minimum standard (i.e., the requirement incorporates the phrases 'minimum' and/or 'at least,' or any other equivalent wording that implies the possibility of a higher level of performance than the level specified), the Contracting Authority will take into account the extent to which the specified minimum standard has been exceeded;
- The Contracting Authority will also take into account the overall quality of responses received to all mandatory requirements.

Individual requirements associated with qualitative award criteria as detailed in Appendix 1 do not have the status of criteria in their own right and are not subject to individual weightings, nor are they equally weighted. The individual requirements detailed in Appendix 1 serve as a means of collecting evidence to be relied upon by the Contracting Authority in apportioning scores under the qualitative award criteria listed.

As a general condition of evaluation, the Contracting Authority will utilise the evaluation process in order to 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 the contract to be awarded, the tender submission may, depending upon the severity of the deviation in question, be rejected.

The evaluation team shall rely upon the following scoring bands for the purposes of apportioning scores under the qualitative award criteria:

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

6.4 Minimum Qualitative Score Required

Tenderers should note that they must achieve a minimum rating of ‘acceptable,’ or 60% of the total marks available, for each qualitative award criterion in order to avoid elimination from the competition. Should a tender submission fail to attain a minimum required score, Tenderer’s attention is drawn to the fact that the following provisions shall apply:

- The tender submission in question shall not be subject to a comparative assessment against other tender submissions.
- The financial proposal contained in the tender submission in question shall not be subject to evaluation under Award Criterion A (Ultimate Cost).
- The tenderer in question will be notified of the reasons for the failure to attain the minimum required score. 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 taken place 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 Demonstrations and Equipment Trials

The Contracting Authority reserves the right to request that the equipment constituting the subject-matter of this competition is made available to the Contracting Authority on a trial basis. In the event that a trial of any proposed equipment is requested, the trial will afford the Contracting Authority the opportunity to verify the scores achieved by tenderers in respect of their written tender submissions. Following any such trial or demonstration, any scores provisionally awarded by the Contracting Authority may legitimately be revised and/or amended in order to take into account matters becoming apparent during the trial or demonstration. A request to facilitate a product demonstration or equipment trial should not be construed as an indication of success in this competition; no legitimate expectations should arise from any such request.

It is emphasised that the Contracting Authority shall exercise its discretion in determining which equipment to trial. In this regard, tenderers' attention is drawn to the following conditions:

- The Contracting Authority may legitimately elect to award this contract without requesting a trial or demonstration of any tendered equipment.
- The Contracting Authority may request trials or demonstrations of products offered by certain tenderers. In particular, in the event that the evaluation of written tender submissions demonstrates that a particular tenderer has not submitted an admissible tender, or has submitted a tender that cannot, mathematically, be identified as the most economically advantageous tender submission, said tenderer will not be required to facilitate a trial or demonstration.
- Conversely, in the event that the Contracting Authority is already familiar with the equipment tendered by a particular tenderer (e.g., on the basis that it is already in use by the Contracting Authority or by staff members of the Contracting Authority), said tenderer will not be required to facilitate a trial or demonstration.

The Contracting Authority expressly warrants that any demonstrations or trials will not introduce new conditions to the competition, will not have the effect of amending the assessment methodology described in this Invitation to Tender documentation and will not pejoratively impact upon the principles of equal treatment and transparency in accordance with which this procurement exercise is being conducted. In particular, any information becoming apparent during any trial or demonstration will be relied upon only in the context of the award criteria, sub-criteria, weightings and specification of requirements contained in this Invitation to Tender documentation.

In the event that a tenderer is required to facilitate a demonstration or trial for evaluation purposes, the equipment and any required consumables must be provided to the Contracting Authority without charge for a period of time sufficient to enable the Contracting Authority to fully assess its technical merit. In the event that equipment cannot be provided for trial or demonstration purposes within 21 calendar days of a request from the Contracting Authority, the tenderer in question will be at a distinct disadvantage in respect of the evaluation process.

6.6 Conditions Relating to Trial Equipment

Any equipment provided to the Contracting Authority for the purposes of facilitating a product trial must conform to the Medical Device Directives and must be CE marked. The tenderer shall be fully responsible for the support and maintenance of the equipment during the trial period. In the event that the equipment in question constitutes an RIMD, a satisfactory and compliant decontamination certificate must be provided to the Contracting Authority prior to the commencement of the product trial, for any other equipment, a letter stating that the equipment has not been in contact with proteins must be provided. The tenderer must hold a full tracking record of patients on whom any trial equipment has been used. The tenderer will be responsible for providing all end-user training necessary to facilitate the product trial, will make a suitably detailed and appropriate user manual available to the Contracting Authority's staff and will provide the results of an electrical safety test to

the Contracting Authority prior to the commencement of the trial. Finally, the tenderer must provide the Contracting Authority with suitably detailed cleaning and decontamination instructions for the equipment in question prior to the commencement of the trial.

6.7 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 3 of this document prior to the submission of a tender.

APPENDIX 1 – DETAILED SPECIFICATION OF REQUIREMENTS

Please consult the separate Excel document, which must be completed in full and returned, in soft copy format, with tender submissions. In completing Appendix 1, tenderers must confirm their compliance with each individual requirement and must provide comprehensive narrative information in the relevant fields. Responses to the effect that a requirement are 'noted' or 'understood' must be avoided – the Contracting Authority requires meaningfully detailed responses to all qualitative award criteria.

APPENDIX 2 – 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. Any discrepancy between the figure contained in this document and the Notional Ultimate Cost for Evaluation Purposes detailed in the associated Pricing Schedule (Appendix 3) may, at the sole discretion of the Contracting Authority, result in the elimination of the tender in question.

Contracting Authority: Beaumont Hospital

Competition: The Provision of Fluid Warmers and all Related Consumables

From: _____

I/We, having read the full Tender Documents and associated Appendices, do hereby offer to execute this Contract to the entire satisfaction of the Contracting Authority for the following ultimate cost:

NOTIONAL ULTIMATE COST FOR EVALUATION PURPOSES	Insert, € (as per Appendix 3 – Pricing Schedule)
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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 contract may be performed that are in force seven days prior to the deadline for receipt of tenders;
- Will not, if awarded membership of the contract, employ labour in a manner that is discriminatory in relation to gender, race, religious beliefs, age, etc.;
- Will not, if awarded membership of the contract, source any products 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 3 – PRICING SCHEDULE

Please consult the separate Excel document, which must be completed in full and returned, in soft copy format, with tender submissions.

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 Fluid Warmers and all Related Consumables
Title or short description of the procurement:	The Provision of Fluid Warmers and all Related Consumables
File reference number attributed:	3078

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:	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		
GROUNDS:	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; • That its business activities are suspended?	Yes ☐ No ☐	

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 contract, 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, contract 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, contract 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 18/10/2018 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: *The following terms and conditions are provided as an indication of the contract that will be implemented with the successful tenderer identified by this competitive process. 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 4 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 Fluid Warmers and the Supply of all related Consumables

PARTIES

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

[To be entered prior to signature]
(Hereinafter referred to as ‘the Supplier’)

BACKGROUND

- The Contracting Authority has conducted a tender competition for the award of a contract for the provision of thirty fluid warmers, including all support, maintenance, repair requirements, the replacement of equipment as necessary and the supply of all sterile single use consumables.
- The Contracting Authority shall remunerate the successful tenderer for the provision of the required equipment through the purchase of sterile single use consumables only; the fluid warmers and any required attachments will be provided by the successful tenderer at no cost and will remain the property of the successful tenderer.
- The competition was advertised in the Official Journal of the European Union and via the Irish Government’s Procurement Opportunities Portal (www.etenders.gov.ie).
- The open procedure was used and an Invitation to Tender was issued. The deadline date for receipt of tender submissions was xx/xx/2026.
- Following evaluation of the submitted tender against the published award criteria, the Supplier is now appointed to deliver the required supplies in accordance with the terms of this Contract.

EFFECTIVE DATE AND SCOPE OF CONTRACT

- The effective date of this Contract is xx/xx/2026. This Contract shall expire on xx/xx/2026, unless it is otherwise terminated in accordance with the provisions of this Contract or otherwise lawfully terminated, or otherwise lawfully extended.

- In the first instance, a contract of four years' duration shall be awarded for the provision of thirty fluid warmers and any required accessories, including all support, maintenance, repair requirements, the replacement of equipment as necessary and the supply of all sterile single use consumables. The Contracting Authority shall remunerate the successful tenderer for the provision of the required equipment through the purchase of sterile single use consumables only; the fluid warmers and any required attachments will be provided by the successful tenderer at no cost and will remain the property of the successful tenderer.
- At all points during the initial four year contract, ownership of the equipment in question will remain with the Supplier.
- Following the expiry of the initial four year contract, and as a recurring option that may be availed of solely at the discretion of the Contracting Authority, subsequent one-year contracts for the support and maintenance of the equipment in question may be awarded until the obsolescence of the equipment. During the term of any such extensions, the Supplier will be required to make the equipment in question available for use by the Contracting Authority without charge. During each subsequent extension, ownership of the equipment will remain with the Supplier.

CONTRACTUAL TERMS AND CONDITIONS

1. Ownership and Title of Equipment

- 1.1 For the avoidance of doubt, it is hereby stated that ownership of all equipment provided under this Contract shall remain with the Supplier, both during the initial four-year term of the contract and during any subsequent extension.
- 1.2 The Contracting Authority shall keep the equipment free and clear of all attachments, liens or security interests of any type.
- 1.3 The Supplier reserves the right to remove the equipment from the Contracting Authority's premises in the event that the Contracting Authority fails to meet its obligations in respect of payment as described in this Contract.
- 1.4 The Contracting Authority shall be responsible to the Supplier for all costs arising from theft or other loss or destruction or damage to the Equipment during the term of this Contract, except to the extent that such damage or loss is objectively attributable to the negligence of the Supplier.
- 1.5 The Contracting Authority shall insure the equipment against loss, theft and damage for its full list price at all times while the equipment is in the possession or control of the Contracting Authority, with the Supplier named as an additional insured, should the Supplier so request. Upon reasonable request, the Contracting Authority shall provide a certificate to the Supplier comprising evidence of such insurance.

- 1.6 The Contracting Authority shall provide the Supplier with duly executed documents reasonably requested by the Supplier to protect or document the Supplier's ownership of, and interest in, the Equipment.

2. Supplier's Obligations

- 2.1 The Supplier shall provide all equipment and associated services described in Schedule 1 of this Contract, which contains the Specification of Requirements issued with the Invitation to Tender document used to award this Contract.
- 2.2 The Supplier undertakes to provide all equipment and associated services in conformity with the Specification of Requirements, all issued clarifications and the Supplier's tender submission. In particular, the nature, quantity, quality and functional specification of the equipment and associated services shall conform to both the Specification of Requirements and the Supplier's tender submission. For the avoidance of doubt, any failure in this regard on the part of the Supplier, or any deviation from the terms of the Specification of Requirements, all issued clarifications or the Supplier's tender submission, will be construed by the Contracting Authority as a breach of Supplier's Obligations and, depending upon its severity and materiality, may give rise to the termination of this Contract in accordance with Clause 11 thereof.
- 2.3 In the event of any contradiction, inconsistency or conflict between the Specification of Requirements, all issued clarifications and the Supplier's tender submission as referred to by Clause 2.2, the Specification of Requirements and all issued clarifications shall take precedence.
- 2.4 The Supplier undertakes to perform its obligations arising from this Contract with due care, skill and diligence. The Supplier shall require its agents to exercise due care, skill and diligence in the carrying out of obligations allocated by the Supplier to its agents under this Contract.
- 2.5 The Supplier undertakes to comply with all policies, guidelines, project governance protocols and local security arrangements issued by the Contracting Authority from time-to-time.
- 2.6 The Supplier 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 Supplier shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of performing its obligations arising from this Contract.

3. Delivery and Installation

- 3.1 The Supplier shall deliver all required equipment at the time(s), to the location(s) and on the date(s) detailed in the Specification of Requirements or otherwise agreed between the Supplier and the Contracting Authority.

- 3.2 Where the equipment is delivered by the Supplier, the point of delivery shall be when the equipment is removed from the transporting vehicle at the Contracting Authority's premises as notified to the Supplier. Where the equipment is collected by the Contracting Authority, the point of delivery shall be when the goods are loaded on the Contracting Authority's vehicle.
- 3.3 Delivery shall include the unloading, stacking or installation of the equipment by the Supplier's staff, agents or carriers at such place as the Contracting Authority shall reasonably direct.
- 3.4 The equipment shall be packed and marked in a proper manner and in accordance with the Contracting Authority's instructions and any statutory requirements and any requirements of the carriers and manufacturers. In particular, the equipment shall be marked with any agreed reference number and, if so requested by the Contracting Authority, the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of hazardous goods (and all documents relating thereto) shall bear prominent and adequate warnings.
- 3.5 Pending satisfactory delivery, all products shall remain at the risk of the Supplier.
- 3.6 The Supplier is ultimately responsible for the commissioning of all equipment provided under this Contract.
- 3.7 The Supplier shall ensure that the equipment is compatible with, and is correctly rated for, connection to the Irish Electrical Distribution System and the Contracting Authority's electrical distribution system.
- 3.8 The Supplier shall ensure that, where relevant, all equipment is supplied with the correct mains fuse. The rating of this fuse shall be in accordance with the manufacturer's recommendations for the protection of the equipment supplied.
- 3.9 In respect of commissioning, the Supplier shall ensure that the equipment is located, installed and configured in such a manner as to ensure its correct functioning in accordance with the Specification of Requirements, the terms of this Contract, the content of the Supplier's tender submission and all reasonable expectations of the Contracting Authority.

4. Inspection of Products and Right of Rejection

- 4.1 The Contracting Authority may reject any of the equipment supplied that fails to comply with the Specification of Requirements. In the event that the Contracting Authority rejects any of the equipment in accordance with this Clause, the Contracting Authority may treat the Contract as discharged by the Supplier's breach and obtain a refund (if payment for the products has already been made) from the Supplier in respect of the equipment concerned together with payment of any additional expenditure reasonably incurred by the Contracting Authority in obtaining other products in replacement.

5. Payment

5.1 In respect of the provision of all equipment designated in Schedule 1 of this Contract, the Contracting Authority shall remunerate the Supplier as follows:

- The first 9,000 sterile single use consumables provided under this contract will be supplied at a cost of €[TO BE INSERTED PRIOR TO SIGNATURE] each exclusive of Vat;
- Any additional sterile single use consumables provided under this contract or any extensions to this contract will be supplied at a cost of €[TO BE INSERTED PRIOR TO SIGNATURE] each exclusive of Vat.

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

5.3 Remuneration is conditional upon the Supplier maintaining compliant tax clearance status with the Irish Revenue Commissioners for the duration of the Contract, including any extensions.

5.4 Throughout both the initial five year period of the Contract and any optional annual extension, invoices shall be submitted monthly in arrears by the Supplier, or as otherwise agreed between the Supplier and the Contracting Authority.

5.5 Following the expiry of the initial five year managed equipment service contract, the Supplier shall invoice the Contracting Authority annually in arrears for the provision of the required support and maintenance services.

6. Personal Circumstances of the Supplier

6.1 The Supplier shall retain a copy of its signed European Signed Procurement Document (ESPD). If at any point during the Contract, including any extension, the Supplier becomes aware of circumstances that may affect the validity of any of the statements in its ESPD document, the Supplier shall notify the Contracting Authority in writing of such circumstances at the earliest possible opportunity. Additionally, the Supplier shall maintain the currency of all forms and levels of insurance specified in the Invitation to Tender document for the duration of the Contract, including all potential extensions.

7. Remedies

7.1 The Supplier 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 Supplier, its employees, subcontractors or agents or as a result of the Supplier's failure to exercise due care in executing this Contract.

8. Confidentiality

- 8.1 The Contracting Authority and the Supplier 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.
- 8.2 In the event of the Contracting Authority receiving a request for information related to this Contract, the Contracting Authority shall consult with the Supplier in respect of the request. The Supplier 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 shall consult the Supplier 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.

9. Force Majeure

- 9.1 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.
- 9.2 If, however, force majeure causes a delay or failure in performance for a period longer than seven days, the Contracting Authority shall have the right to terminate this Contract at seven days' notice in writing.
- 9.3 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 including, but not limited to, acts of God or the public enemy, expropriation or confiscation of facilities, government intervention, war, hostilities, rebellion, terrorist activities, local or national emergency, sabotage or riots, floods, or unusually severe weather conditions which could not be reasonably anticipated, fires, explosions, or other catastrophe, national or district strikes or other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Supplier's workforce.

10. Termination of Contract

- 10.1 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 Supplier forthwith and without liability by giving notice at any time if:
- 10.1.1 The Supplier commits a material breach of any term or condition of this Contract;
- 10.1.2 The Supplier fails to adhere to the Specification of Requirements contained in Schedule 1 of this Contract or to the terms of the Supplier's tender submission;

- 10.1.3 The Supplier 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 Supplier to do so;
- 10.1.4 The Supplier's performance of an obligation under this Contract is not in accordance with any agreed Service Level Agreement or fails to meet any standard prescribed by law;
- 10.1.5 Any person employed by the Supplier or acting on its behalf offers or appears to offer a corrupt gift or inducement, whether with or without the knowledge of the Supplier;
- 10.1.6 The Supplier convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors;
- 10.1.7 The Supplier ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law;
- 10.1.8 The Supplier 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;
- 10.1.9 An order is made or an effective resolution is passed for the winding up of the Supplier's company other than for the purpose of a restructuring, the terms of which have been agreed by the Contracting Authority;
- 10.1.10 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 Supplier's company;
- 10.1.11 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Supplier;
- 10.1.12 The Contracting Authority reasonably believes that any of the events mentioned above is about to occur in relation to the Supplier and notifies the Supplier;
- 10.1.13 The Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Contract
- 10.1.14 Any assertion made by the Supplier in its completed European Single Procurement Document (ESPD) proves to be demonstrably untrue, either at the time the assertion was made or at any point during the currency of this Contract, including any extension;

- 10.1.15 Any representation made by the Supplier 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.
- 10.2 The Supplier 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 10.1.1 to 10.1.15.
- 10.3 Termination of this Contract in accordance with Clauses 10.1.1 to 10.1.15 shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any clause of this Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- 10.4 For the avoidance of doubt, it is hereby stated that, in the event of termination of this Contract in accordance with Clauses 10.1.1 to 10.1.15, the Contracting Authority shall be under no obligation to remunerate the Supplier for any products or services not already provided prior to the date of termination. Moreover, the Contracting Authority shall be under no liability to the Supplier for any invoices not already submitted regarding the Contract.
- 10.5 Termination shall be effected by formal written communication from the Contracting Authority to the Contractor.

11. Contract Management

- 11.1 The Supplier 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 Supplier shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.

12. Dispute Resolution

- 12.1 Subject to the rights of the Supplier and the Contracting Authority to apply to the Courts upon any cause of action at any time, the Supplier 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.

13. Governing Law

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

14. Assignment and Subcontracting

- 14.1 Subject to the obligations of the Supplier 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 shall 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.

15. Non-exclusivity

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

16. Media

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

17. Conflicts of Interest and Corrupt Gifts

- 17.1 The Supplier 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 Supplier 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.
- 17.2 The Supplier 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.

18. General Data Protection Regulation (GDPR)

- 18.1 As an economic operator engaged in providing products and related services to the Contracting Authority, the Supplier will be required to adhere to the following provisions:
- 18.1.1. To the extent that it may be deemed a 'data processor' for the purposes of the 'GDPR,' the Supplier 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.
- 18.1.2. To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Supplier 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;

18.1.3. To the extent that it may be deemed a 'data processor' for the purposes of the GDPR, the Supplier will comply with the provisions of Article 28(3)(a) to 28(3)(h) of the GDPR;

18.1.4. To the extent that it may be deemed a 'sub-processor' for the purposes of the GDPR, the Supplier will comply with the provisions of Article 28(4) of the GDPR.

19. Notices

19.1 The address and e-mail address of the parties for the purpose of the giving of notices under this Agreement are as follows:

For the Contracting Authority:

[To be entered prior to signature]

For the Supplier:

[To be entered prior to signature]

20. 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 Supplier 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 1 – Specification of Requirements

[TO BE INSERTED PRIOR TO SIGNATURE]

Schedule 2 – Form of Tender / Pricing Schedule

[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 to which it is appended and is made between:

- (1) **Beaumont Hospital**
(the 'Contracting Authority')
- (2) **[To be entered prior to signature]**
(the 'Service Provider')

GENERAL

- A. In connection with a current or proposed Service between the Contracting Authority and the Service Provider, whereby the Supplier 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 Supplier 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 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 to which this Contract is appended, the provisions of the Contract 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 to which this Contract is appended.

1. DEFINITIONS

In this Agreement, unless the context otherwise requires:

Data Breach(es) means any breach of security lending 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.

11. 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.

12. 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 Contracting Authority by:

Signed: _____

Date: _____

Witnessed by: _____

SIGNED for and on behalf of by: [To be entered prior to signature]

Signed: _____

Date: _____

Witnessed by: _____