

APPENDIX [3] – IDA IRELAND’S TERMS AND CONDITIONS

Subject to contract / contract denied

THIS FRAMEWORK AGREEMENT is made on the [date] day of [month] 202[year] BETWEEN:

- (1) **Industrial Development Agency (Ireland)**, having its offices at Three Park Place, Hatch St. Upper, Dublin 2 (the "IDA" or "IDA IRELAND" which expression includes its successors and permitted assigns and any body to whom its functions are transferred under Applicable Law) of the one part; and
- (2) [insert contractor name], a company established under [Insert] law with company registration number [insert] and its registered address at, [insert], (hereinafter referred to as the "Contractor" which expression includes its successors and permitted assigns) of the other part,

(each a "Party" and together the "Parties").

RECITALS

(A) Notice and Award Procedure

The IDA has conducted a tender competition advertised on the Irish Government procurement website www.etenders.gov.ie and/or in the supplement to the Official Journal of the European Union, OJEU Notice Number [e.g. 2024/S 188-424912] dated the [Insert date] and entitled ["Insert"], the Request for Tenders (the "RFT") by Open procedure. The RFT including any clarifications in relation to the RFT issued by the IDA between the [Insert date] and the [Insert date] is hereby incorporated by reference into this Framework Agreement. A copy of the RFT is set out in Schedule 2.

The Contractor submitted a response to the RFT dated the [Insert date] (the "Tender Submission"). References to the Tender Submission shall include any clarifications issued by the Contractor in writing to the IDA between the [Insert date] and the [Insert date] (the "Submission Clarifications"). The Tender Submission (including the Submission Clarifications) is hereby incorporated by reference into this Framework Agreement. A copy of the Tender Submission is set out in Schedule 3.

(B) Appointment

Following evaluation of Tender Submissions received in accordance with the RFT, the Contractor is now appointed to this Framework Agreement to provide the services, if required to do so from time to time by the IDA, subject to and in accordance with the terms and conditions of this Framework Agreement.

1. DEFINITIONS AND INTERPRETATION

1.1 In this Framework Agreement the following terms have the meaning given to them below:

“Applicable Law” means any law applicable in Ireland and includes without limitation, common law, statute, statutory instrument, proclamation, bye-law, directive, decision, regulation, rule, order, notice, code of practice, code of conduct, rule of court, instruments, or delegated or subordinate legislation;

“Call-off Contract” means the legally binding agreement pursuant to the scope and provisions of this Framework Agreement to be entered into by the IDA and the Contractor under and pursuant to which the Contractor will provide Services in accordance with the terms and conditions contained therein in the form of the Template Call-off Contract issued by the IDA in the RFT.

“Commencement Date” means [Insert Date] or the date on which the Framework Agreement comes into force, namely: the date on which the Framework Agreement is signed by all of the Parties; or, if signed by the Parties on different days, the date on which it is signed by the last Party to sign.

“Conflict of Interest” means any actual or potential conflict of interest (including any relationship, filial or otherwise, or any interest, whether arising through personal, company or professional association, or current or prospective contractual obligations) which the Contractor or any of its Personnel may have including, without prejudice to the generality of the foregoing, any actual or potential conflict relating to any aspects of (i) this Framework Agreement; (ii) the Services, (iii) a Call-off Contract, (iv) the IDA, (v) any stakeholders or other parties having an interest in the Services and/or (vi) any economic Contractor or tenderer in any way connected with the Services or any of the Services.

"Data Protection Laws" means all national and EU laws relating to processing of personal data and privacy, including (but not limited to) Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation), the Electronic Communications Data Protection Directive (2002/58/EC), and all applicable laws and regulations affecting the Contractor relating to the processing of personal data and privacy and all applicable similar or related legislation in any competent jurisdiction to include any guidelines and codes of practice issued by the Data Protection Commission or other supervisory authority for data protection in Ireland.

"Deliverables" means all documents, products and materials developed by the Contractor or its agents, contractors, and employees as part of or in relation to the Services in any form, including without limitation information technology hardware, software, computer programs, data, reports, and specifications (including drafts).

“Framework” means the single party framework established for the provision of the Services, subject to and in accordance with the terms and conditions of the relevant Framework Agreement and Call-Off Contract;

“Framework Agreement” means this Agreement, including the Recitals to, and Schedules of, this Agreement;

“Framework Period” means the period set out in Sub-Clause 5.1 and 5.2;

“Request for Tenders” or “RFT” means the document issued by the IDA on the [Insert date], together with any clarifications, additions or amendments issued by the IDA, as evidenced in Schedule 2;

“Party” means the IDA and/or the Contractor;

“Personnel” means all persons employed by the Contractor together with the Contractor's servants, agents and suppliers of any tier used in the performance of its obligations under this Framework Agreement or a Call-off Contract;

“Services” means any of the services, falling within the scope set out in Sub-Clause 6.1, including without limitation any deliverables and services to be provided by the Contractor to the IDA (i) described in the Tender Submission, (ii) identified in this Agreement, or (iii) otherwise necessary to comply with this Agreement.

“Sub-Contractor” means a legal person identified as a sub-contractor in the Tender Submission or any authorised replacement in accordance with Sub-Clause 8.4.3;

“Tender Submission” means the tender document(s) dated the [Insert date] submitted by the Contractor to the IDA in response to the IDA’s Request for Tenders together with any clarifications, additions or amendments accepted by the IDA, as evidenced in Schedule 3.

1.2 In this Framework Agreement, unless where otherwise specified:

1.2.1 headings are included for ease of reference only and shall not affect the construction of this Framework Agreement;

1.2.2 references in this Framework Agreement to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Framework Agreement so numbered;

1.2.3 unless the context requires otherwise, the masculine gender includes the feminine and neuter and the singular number includes the plural and vice versa;

1.2.4 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.2.5 references to any statute, enactment, order, regulation, or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, unless specifically indicated otherwise;

1.2.6 references to a day mean a calendar day;

1.2.7 references to a month mean a calendar month; and

1.2.8 any phrase introduced by the terms “including”, “include”, “in particular” or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

2. CONFLICT

2.1 The provisions of the Request for Tender and the Tender Submission shall apply to the relationship of the parties under this Framework Agreement. If there is an inconsistency between any of the

provisions in the Request for Tender, the Tender Submission and this Framework Agreement, the following order of priority shall prevail:

- 2.1.1 This Framework Agreement;
- 2.1.2 The Call-off Contract;
- 2.1.3 The Request for Tender;
- 2.1.4 The Tender Submission.

3. APPOINTMENT OF CONTRACTOR

3.1 In consideration of payment by the Contractor of good and valuable consideration, receipt of which is hereby acknowledged, the Contractor accepts its appointment subject to the terms and conditions of this Framework Agreement.

4. NON-EXCLUSIVITY

4.1 The Contractor acknowledges that, in entering this Framework Agreement, no form of exclusivity or volume guarantee has been granted by the IDA for Services from the Contractor and that the IDA is at all times entitled to enter into other contracts and agreements with other service providers for the provision of any or all services, which are the same as or similar to the Services. In the event of the latter the IDA shall observe all applicable public procurement rules and shall not afford any advantage to the Contractor.

5. PERIOD OF FRAMEWORK AGREEMENT

5.1 This Framework Agreement shall take effect on the Commencement Date and expire [insert e.g. three (3) years] thereafter unless terminated earlier in accordance with these terms and conditions (the “**Initial Framework Agreement Term**”).

5.2 IDA Ireland reserves the right to extend the Initial Framework Agreement Framework for a period or periods of [insert e.g. one (1) year] (each the “**Extended Framework Agreement Term**”) up to a maximum duration of [insert e.g. three (3) years] on the same terms and conditions. The Initial Framework Agreement Term and the Extended Framework Agreement Term(s) shall together constitute the “**Framework Agreement Term**”.

5.3 Contractor performance will be continually monitored over the term of the Framework Agreement.

5.4 For the avoidance of any doubt, the term of a Call-off Contract may last for longer than the Framework Period.

6. SCOPE OF FRAMEWORK AGREEMENT

6.1 This Framework Agreement relates to the provision of [insert tender title] as more particularly described in Schedule 2 the Request for Tender.

6.2 There is no guarantee of any spend under the Framework Agreement.

7. PROCEDURE FOR THE AWARD OF CALL-OFF CONTRACTS

7.1 As and when the IDA decides to source Services through this Framework Agreement, then it may award a Call-off Contract to the Contractor based on the Tender Submission in accordance with the procedure set out in Sub-Clause 7.4.

7.2 When awarding a Call-off Contract, the IDA and the Contractor shall not make any substantial amendments to the terms laid down in this Framework Agreement.

7.3 On each occasion that a Call-off Contract is awarded to the Contractor pursuant to this Clause 7, the IDA and the Contractor shall enter into a contract in accordance with the Call-off Contract Terms and Conditions.

7.4 Procedure for the award of a Call-off Contract based on the Tender Submission

7.4.1 Where all the terms necessary for the performance of a Call-off Contract are included in this Framework Agreement, the IDA may issue a Call-off Contract to the Contractor at any time during the Framework Period.

7.4.2 The IDA will complete a Call-off Contract indicating the scope and term of the Call-off Contract to be awarded subject to the terms set out in Clause 8.

7.4.3 The IDA will issue the Call-off Contract by email to the Contractor to the address given in or notified under Clause 15.

7.4.4 The IDA shall fix a deadline for the receipt from the Contractor of the Call-off Contract duly executed on behalf of the Contractor. Upon receipt of the executed Call-off Contract from the Contractor, the IDA will enter into the Call-off Contract with the Contractor.

7.4.5 The Contractor acknowledges that the IDA shall not be obliged to award any Call-off Contract pursuant to this Sub-Clause 7.4 and that the IDA may terminate the award procedure at any time at its sole discretion.

8. CALL-OFF CONTRACTS

8.1 The terms contained in this Clause 8 shall apply to the award of any Call-off Contract. Failure by the Contractor to meet its obligations under this Clause 8 shall be considered a material breach of this Framework Agreement for the purposes of Sub-Clause 11.2.1.

8.2 Personnel

8.2.1 The Personnel assigned by the Contractor to deliver any Call-off Contract shall be those identified in its Tender Submission, or other Personnel of equivalent qualifications, skills and expertise approved by the IDA in accordance with Sub-Clause 8.2.2.

8.2.2 The Contractor shall only be permitted to replace or supplement a Personnel member identified in its Tender Submission if:

- (a) so requested by the in accordance with this Agreement or

- (b) necessary to do so due to that person's death, illness, or incapacity; or
- (c) due to the departure of the member of the Personnel from the employment of the Contractor.

8.2.3 In such cases the Contractor shall submit to the IDA details of the proposed replacement or additional Personnel and, subject to the IDA's consent (which shall not be unreasonably withheld or delayed), shall so replace or supplement the Personnel identified in its Tender Submission as appropriate. The IDA shall be entitled to reject a proposed Personnel member on the ground, inter alia, that he does not have equivalent qualifications, or skills, or expertise as the Personnel being replaced.

8.2.4 The Contractor shall ensure that the rates of pay and conditions of employment of the Personnel comply with all Applicable Law.

8.3 Maximum Rates

8.3.1 The maximum rates chargeable by the Contractor under a Call-Off Contract shall be those identified in its Tender Submission.

8.3.2 The IDA may seek, or the Contractor may offer, lower rates at any time during the Framework Period. In particular, where the Contractor is offering services, which are the same as or similar to the Services, generally in the open market at a lower rate than the maximum rates described in Sub-Clause 8.3.1, the IDA may request adjustment of the maximum rates to reflect this.

8.4 Sub-Contractor

8.4.1 Any Sub-Contractor relied on by the Contractor in its Tender Submission in relation to technical and professional ability must perform the Services in relation to which the Contractor has relied on its experience.

8.4.2 In addition, any Sub-Contractor assigned by the Contractor to deliver any Call-Off Contract shall be identified in its Tender Submission, or other Sub-Contractor approved by the IDA in accordance with Sub-Clause 8.4.3.

8.4.3 The Contractor will not replace a Sub-Contractor without the prior written consent of the IDA. The IDA shall be entitled to instruct the Contractor to replace any Sub-Contractor if the IDA believes (acting reasonably) that the Sub-Contractor is incompetent or fails to perform its obligations in respect of any Call-Off Contract to the satisfaction of the IDA. Any such replacement shall have equivalent or higher qualifications and expertise as the incumbent Sub-Contractor and shall have the legal capacity and credit status to enter into and meet the obligations of any Call-Off Contract as they fall due.

8.4.4 The Contractor shall ensure that the Tender Submission, includes, distinguishes between, and clearly particularises the Services to be provided by the Sub-Contractor.

8.4.5 During the performance of a Call-Off Contract, the Contractor shall be responsible to the IDA for the management and supervision of the Sub-Contractor and for the acts and omissions of the Sub- Contractor as if they were its own.

8.4.6 The Contractor acknowledges and agrees that the IDA may require the Contractor, as a condition of, or pre-condition to the award of, a Call-Off Contract to promptly execute under seal and deliver a Sub-Contractor collateral warranty from any or all of its Sub- Contractors of any tier

proposed to deliver Services under a Call-Off Contract.

9. OBLIGATIONS OF CONTRACTOR

9.1 Insurances

9.1.1 As and from the Commencement Date, the Contractor is required to procure and maintain the forms and levels of insurance set out in the Request for Tender. This may be subject to revision during the Framework Period, in which case the IDA shall notify the Contractor of the revised requirements and allow thirty (30) days for the provision of evidence that the required policies are in place.

9.1.2 Where the forms and/or levels of insurance required in respect of individual Call-Off Contracts are different to those set out in section 4.2 of the Request for Tender, the IDA shall notify the Contractor of the required changes in the relevant Request for Tender or at the earliest opportunity.

9.1.3 The insurance required under Sub-Clause 9.1.1 and/or 91.2 shall be written by reputable and well-established insurers approved by the IDA (whose approval shall not be unreasonably withheld or delayed).

9.1.4 At any time during the Framework Period, the Contractor shall produce to the IDA, on request, copies of all insurance policies referred to in this Sub-Clause 9.1 or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies.

9.1.5 Where the insurance policies held by the Contractor in accordance the Request for Tender are due to lapse prior to the end of the Framework Period, it shall be the responsibility of the Contractor to ensure that the said insurance policies are renewed and that the insurance details are notified to the IDA.

9.1.6 If, for whatever reason, the Contractor fails to give effect to and maintain in effect the insurances required by this Framework Agreement then the IDA may make alternative arrangements to protect its interests and may recover the costs of such arrangements from the Contractor.

9.2 Tax Clearance Certificate

The Contractor shall, and shall procure that any Sub-Contractor of any tier shall, for the term of any Call-Off Contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance and the maintenance of a valid Tax Clearance Certificate issued by the Revenue Commissioners of Ireland.

9.3 Changes to Declaration

The Contractor and any Sub-Contractor shall retain a copy of its signed Declaration of Personal Circumstances of the Tenderer. If at any point during the Framework Period or during the lifetime of a Call-Off Contract the Contractor becomes aware of circumstances that might affect the validity of any of the statements in its or its Sub-Contractors' Declaration, it shall notify the IDA in writing of such circumstances at the earliest possible opportunity.

9.4 Confidentiality

9.4.1 The provisions of the Second Schedule, paragraph 5, subparagraphs (1), (2) and (3) of the Industrial Development Act 1993, (as amended by the Industrial Development (Enterprise Ireland) Act 1998) which states that a person shall not disclose any information obtained by that person while performing duties (or as a result of having performed) duties as, inter alia, an adviser or consultant to IDA or an employee of such person while performing duties relating to such advice or consultation, shall apply to the Contractor, except in respect of disclosures permitted by Clause 9.4.4.

9.4.2 Any such disclosure by the Contractor in breach of Sub-Clause 9.4.1 may give rise to termination pursuant to Sub-Clause 11.2 of the Contract.

9.4.3 In addition to the statutory obligations of confidentiality as set out in Sub-Clause 9.4.1, the Contractor undertakes that it shall not at any time disclose to any person information that the IDA notifies the Contractor is confidential or any confidential information concerning the business, affairs, customers, clients, or supplier of the IDA, except as permitted by Clause 9.4.4.

9.4.4 The Contractor party may disclose the IDA's confidential information:

(a) to its employees, officers, representatives, or advisers who need to know such information for the purposes of exercising the party's rights or carrying out its obligations under or in connection with this Framework Agreement. The Contractor shall ensure that its employees, officers, representatives, or advisers to whom it discloses the other party's confidential information comply with this Clause 9.4; and

(b) as may be required by law, a court of competent jurisdiction or any governmental or regulatory authority.

9.4.5 The Contractor shall not use the IDA's confidential information for any purpose other than to exercise its rights and perform its obligations under or in connection with this Framework Agreement.

9.4.6 The Contractor undertakes to comply with all reasonable directions of the IDA with regard to the use and application of all and any confidential information.

9.4.7 The Contractor acknowledges that the IDA is subject to the Freedom of Information Acts 2014. In the event of the IDA receiving a request for information related to this Framework Agreement, the IDA shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. The IDA will consult the Contractor about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the Irish courts. The IDA accepts no liability whatsoever in respect of any consequential damage suffered as a result of such obligations.

9.4.8 Within fourteen (14) days of the date of termination or expiry of this Framework Agreement, the Contractor shall return to the IDA any data and confidential information belonging to the IDA in the Contractor's possession, power or control, either in its then current format or in a format nominated by the IDA (in which event the IDA will reimburse the Contractor's reasonable data conversion expenses), together with all training manuals and other related documentation, and

any other information and all copies thereof owned by the IDA, save that it may keep one copy of any such data or information for a period of up to twelve (12) months to comply with its obligations under this Framework Agreement, or such period as is necessary for such compliance.

9.4.9 The terms of this Sub-Clause 9.4 are perpetual, and this Sub-Clause 9.4 survives the expiry or termination of this Framework Agreement.

9.5 Data Protection and Data Processing

9.5.1 The Contractor shall comply with its obligations under the Data Protection Laws and all regulations made thereunder, in the collection, storage and any processing of data pursuant to the provision of Services under this Framework Agreement.

9.4.2 Where the Contractor acts as processor on behalf of the IDA in relation to personal data processed in connection with this Framework Agreement (**Personal Data**), the Contractor shall:

- (a) process the Personal Data only to the extent, and in such a manner as is necessary for the purposes specified in this Framework Agreement and in accordance with the documented instructions of the IDA and only in accordance with the Data Protection Laws;
- (b) promptly respond to any request from the IDA requiring the Contractor to amend, transfer or delete the Personal Data;
- (c) implement technical and organisational security measures appropriate to the risks of processing the Personal Data, including pseudonymisation and encryption of Personal Data; the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services; the ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident, and a process for regularly testing, assessing and evaluating the effectiveness of security measures;
- (d) not to engage another processor without the IDA's prior specific or general written authorisation. In the case of general written authorisation, the Contractor shall inform IDA of any intended changes concerning the addition or replacement of other processors, thereby giving IDA the opportunity to object to such changes.
- (e) subject to 9.4.2(d), to require any sub-processor that the Contractor engages to process the Personal data on the IDA's behalf, to adhere to the same obligations that the Contractor undertakes in these terms and conditions, to ensure such processing meets the requirements of the Data Protection Law, and the Contractor will remain fully liable for any breach by a sub-processor of its obligations in relation to the processing of the Personal Data.
- (f) not transfer the Personal Data outside the EEA without the IDA's written consent and only on such terms as are required by Data Protection Laws, including where necessary "standard contractual clauses" as approved by the European Commission;
- (g) notify the IDA (by email: dpo@ida.ie) without undue delay and at least within 48 hours after becoming aware of a personal data breach;
- (h) ensure that persons authorised to process the Personal Data are bound by confidentiality provisions;
- (i) assist the IDA in ensuring compliance with the obligations regarding security of processing, notifications of breaches, data protection impact assessments and prior consultations taking

into account the nature of the processing and the information available to the Contractor;

- (j) at the choice of the IDA, to delete or return any Personal Data to the IDA on the expiration or termination of this Framework Agreement and delete existing copies unless applicable law requires the storage of the data;
- (k) provide the IDA with assistance in complying with any subject access request served under Data Protection Laws;
- (l) promptly inform the IDA (by email: dpo@ida.ie) about the receipt of any subject access request; and
- (m) not disclose or release any Personal Data in response to a subject access request without first consulting with and obtaining the consent of the IDA.

9.5.3 The Contractor agrees to provide the IDA with contact details of at least one employee as point of contact for all issues arising out of the Data Protection Laws.

9.5.4 The Contractor shall indemnify the IDA against all claims and proceedings and all liability, loss, costs, and expenses incurred by the other as a result of any claim made or brought by a data subject or other legal person in respect of any loss, damage or distress caused to them as a result of the Contractor's or its processor's unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by that party, its employees, or agents.

9.5.5 In this clause **controller**, **processor**, **data subject**, **data**, **personal data**, and **processing** shall have the same meanings as set out in the Data Protection Laws, and **process** shall be construed accordingly.

9.6 Conflict of Interest

9.6.1 The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that it has no Conflict of Interest in relation to the Services and its obligations undertaken under this Framework Agreement.

9.6.2 The Contractor hereby undertakes to advise the IDA forthwith should any actual or potential Conflict of Interest arise during the Framework Period and to comply with the IDA's directions in respect thereof.

9.7 Compliance

9.7.1 The Contractor shall comply with all relevant legislation, regulatory requirements, and best industry practice in the provision of the Services. The term 'legislation' shall be deemed to mean any Act of the Oireachtas (Parliament), regulation, statutory instrument, European Community or other international obligation, direction of a regulatory or other competent authority, condition of any consent, authorisation, lease, or other permission granted by any regulatory or other competent authority and any decision of a court of competent jurisdiction, in each case having effect in Ireland.

9.7.2 The Contractor will be solely responsible in law for the employment, remuneration, taxes, immigration, visa, and work permits or other authorisations appropriate to the work carried out for, or on behalf of the IDA. The IDA reserves the right to seek confirmation that the relevant legal requirements are being met.

9.8 Registrable Interests

Any registrable interest involving the Contractor (and any Sub-Contractor or agent as the case may be) and the IDA, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the IDA immediately upon such information becoming known to the Contractor (or any Sub-Contractor or agent as the case may be) and to comply with the IDA's directions in respect thereof, to the satisfaction of the IDA. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 as amended.

9.9 Corrupt Gifts and Inducements

9.9.1 The Contractor shall not give, provide, or offer to any staff or agent of the IDA any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this Framework Agreement or any Call-Off Contract.

9.9.2 Any breach of this Sub-Clause 9.9 or the commission of any offence by the Contractor, any subcontractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the IDA to terminate this Framework Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration, or commission.

9.10 Audit

The Contractor shall keep and maintain until a minimum of six (6) years after the expiry of the Framework Period, full and proper records and all documents relating to the performance of its obligations under this Framework Agreement and shall allow the IDA and any auditors access to such records.

9.11 Publicity

Unless otherwise directed by the IDA, the Contractor shall not make any press announcements or publicise this Framework Agreement in any way without the IDA's prior written consent.

9.12 Transfer of Undertakings

The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "**TUPE Regulations**") and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the IDA indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said TUPE Regulations.

9.13 Third Country Access

9.13.1 In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Contractor shall comply with the following obligations:

- i. Not to subcontract more than 50% of the total value of the contract to economic Contractors originating in a third country which is subject to an IPI measure;

- ii. For contracts whose subject matter covers the supply of goods, to ensure for the duration of the contract that goods or services supplied or provided in the execution of the contract and originating in the third country which is subject to the IPI measure represent no more than 50% of the total value of the contract, irrespective of whether such goods or services are supplied or provided directly by the Contractor or by a subcontractor;
- iii. To provide the IDA, upon request, adequate evidence corresponding to point (i) or (ii) above;
- iv. To pay a proportionate charge, in the event of non-observance of the obligations referred to at point (i) or (ii) above, of between 10% and 30% of the total value of the contract.

9.13.2 Notwithstanding any other provision within this Agreement, the IDA agrees that where the Contractor is required to comply with a new direction/instruction and/or a new/revised policy issued by the IDA ("**Specific Instruction**") the Contractor's obligation will be to apply commercially reasonable endeavours to comply with that Specific Instruction, and that obligation will only apply if the Specific Instruction is issued in writing to the Contractor's Contact.

9.14 Performance Review

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

9.14.2 The Contractor agrees to:

- (a) liaise with and keep the IDA fully informed of any matter which might affect the observance and performance of the Contractor's obligations, including the time scale of completion of the key components of the Services;
- (b) comply with the reporting arrangements and protocols set out in the Request for Tender and otherwise as may be required by the IDA from time to time; and
- (c) comply with all reasonable directions of the IDA.

9.14.3 Failure by the Contractor to meet its obligations under this Clause 9 shall be considered a material breach of this Framework Agreement for the purposes of Sub-Clause 11.2.1.

10. INDEMNITY

10.1 The Contractor shall be liable for and shall indemnify the IDA for and in respect of all and any losses, claims, demands, damages, or expenses which the IDA may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, subcontractors, or agents or any of them or as a result of the Contractor's breach of this Framework Agreement. The terms of this clause shall survive termination of this Framework Agreement for any reason.

11. TERMINATION OF FRAMEWORK AGREEMENT

11.1 Subject to the provisions of Sub-Clause 11.2, this Framework Agreement, or the provisions of any part thereof, may be terminated by the IDA at any time during the Framework Period by serving [thirty (30) days written] notice to the Contractor. Neither Party shall be entitled to any additional amounts or compensation in the event that this Framework Agreement is terminated in accordance with this Clause 11.

11.2 Without prejudice to any other rights or remedies to which it may be entitled, the IDA shall be entitled to terminate the appointment of the Contractor to this Framework Agreement forthwith and without liability for compensation or damages by giving notice at any time if:

11.2.1 The Contractor commits any material breach of any provision of this Framework Agreement or of a Call-Off Contract and term or condition of this Framework Agreement, or a Contract concluded under the Framework Agreement; or

11.2.2 The Contractor fails to perform any obligation or responsibility under this Agreement or a Contract concluded under the Framework Agreement, and, if such breach is capable of being remedied, fails to remedy such breach to the reasonable satisfaction of the IDA within fourteen (14) days of notice given by the IDA requiring the Contractor to do so; or

11.2.3 The Contractor's performance of an obligation under a Contract is not in accordance with the terms of this Framework Agreement or the relevant Contract, or fails to meet any standard prescribed by law;

11.2.4 Any person employed by the Contractor or acting on its behalf offers or appears to offer a corrupt gift or inducement in the sense set out in Sub-Clause 9.9 above, whether with or without the knowledge of the Contractor; or

11.2.5 In circumstances where the IDA becomes aware that any of the excluding circumstances listed in the Contractor's "**Declaration as to Personal Circumstances**", which confirms that none of the excluding circumstances listed or referred to in Article 57 of Directive 2014/24/EU apply to the Contractor;

11.2.6 The Contractor (or its subcontractor(s), if any) falls within the category of prohibited economic Contractors identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same); or

11.2.7 The Contractor convenes a meeting for the purposes of, or proposes to enter into any arrangement or composition for the benefit of its creditors; or

11.2.8 The Contractor ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law; or

11.2.9 The Contractor is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990) or any analogous provision of law; or

11.2.10 An order is made or an effective resolution is passed for the winding up of the Contractor's company other than for the purpose of a restructuring the terms of which have been agreed by the IDA; or

11.2.12 An encumbrancer takes possession of, or a receiver is appointed to, any of the

property or assets of the Contractor; or

11.2.13 The IDA reasonably believes that any of the events mentioned above is about to occur in relation to the Contractor and notifies the Contractor; or

11.2.14 The Contractor has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Agreement or any Call-Off Contract;

11.2.15 Any representation made by the Contractor in connection with this Agreement or a Call-Off Contract which in the opinion of the IDA prove to be untrue or incorrect in a material respect as of the date when made; or

11.2.16 Where the Agreement or a Call-Off Contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Article 72 of Directive 2014/24/EU; and/or

11.2.17 Any event analogous to those contemplated in Sub-Clauses 11.2.5 through 11.2.14 occurs to the Contractor within the laws of any other jurisdiction.

11.3 The IDA may, at any time, terminate this Agreement early on such notice as it considers appropriate in the event that a challenge to the award of this Agreement or a Call-Off Contract to the Contractor or to any aspect of the competition leading to award of this Agreement is or has been made by any person on the grounds of non-compliance with applicable public procurement rules. If the IDA exercises its right of termination pursuant to this Sub-Clause 11.3 the Contractor shall not be entitled to any payment or to any compensation whatsoever as a result or in respect of early termination of this Agreement (other than any payment that properly accrued prior to the date of termination).

11.4 In the event that this Agreement or a Call-Off Contract is declared “ineffective”, the IDA shall have no liability to the Contractor other than in respect of Services provided prior to the date on which such “ineffectiveness” order takes effect, which cost shall be assessed in accordance with Schedule D of the Call-Off Contract. Under no circumstances shall the Contractor be entitled to any payment or compensation for any loss or damage arising from any such declaration of ineffectiveness, including loss of profit for Services not provided or for loss of opportunity or reputation or breach of statutory duty or otherwise.

11.5 Termination or expiry of this Framework Agreement shall not cause any Call-Off Contract to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms or unless the notice of termination terminating the Framework Agreement with the Contractor states that it is also to constitute notice terminating all Call-Off Contracts between the IDA and the Contractor.

12. CONSEQUENCES OF TERMINATION AND EXPIRY

12.1 Termination or expiry of this Framework Agreement shall not cause any Call-Off Contract to terminate automatically. For the avoidance of doubt, all Call-Off Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms or unless the notice of termination terminating this Framework Agreement states that it is also to constitute notice terminating all Call-Off Contracts between the IDA and the Contractor.

12.2 The Contractor shall have no claim against the IDA for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred as a result of the termination of this Framework Agreement or any Call-Off Contract pursuant to Clause 11.

12.3 Termination or expiry of this Framework Agreement shall not affect any antecedent and accrued rights, obligation, or liabilities of either Party, nor shall it affect any provision of this Framework Agreement that is expressly or by implication intended to come into or continue in force on or after such termination or expiry.

13. TRANSFER AND SUB-CONTRACING

13.1 This Framework Agreement is personal to the Contractor and the Contractor shall not assign, novate, or otherwise dispose of this Framework Agreement or any Call-Off Contract or any part thereof without the previous consent in writing of the IDA. Without prejudice to the provisions of Sub-Clause 8.4, the Contractor shall not be entitled to sub-contract any of its rights or obligations under this Framework Agreement without the prior written consent of the IDA, such consent not be unreasonably withheld.

13.2 The IDA shall be entitled to assign, novate, or otherwise dispose of its rights and obligations under this Framework Agreement or any part thereof to any other body (including any private sector body) which substantially performs any of the functions that previously had been performed by the IDA provided that such assignment, novation, or disposals shall not increase the burden of the Contractor's obligations under this Framework Agreement.

13.3 Failure by the Contractor to meet its obligations under Sub-Clause 13.1 shall be considered a material breach of this Framework Agreement for the purposes of Sub-Clause 11.2.1.

14. GENERAL

14.1 Amendments

This Framework Agreement may only be amended by a document in writing signed by authorised representatives of each Party.

14.2 Waiver

No failure or delay by either Party to exercise any right, power or remedy shall operate as a waiver of it, nor shall any partial exercise preclude further exercise of same or some other right, power or remedy.

14.3 Severability

If any term or provision herein is found to be invalid, unlawful, or unenforceable, then such term or provision shall be deemed severed from the Framework Agreement and all other terms and provisions shall remain in full force and effect.

14.4 Force Majeure

14.4.1 If through no fault of a Party, its performance 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.

14.4.2 More particularly, to the extent that the provision of the Services is impacted by COVID-19 and any reasonable concerns or measures taken to protect the health and safety interests of either Party's personnel, the Parties will work together to amend the relevant Call-off Contract under this Framework Agreement, or this Framework Agreement as necessary, to provide for the Services to be delivered in an appropriate manner, including any resulting modifications with respect to the timelines, location or manner of the delivery of Services.

14.4.3 If, however, force majeure causes a delay or failure in performance for a period longer than thirty (30) days, the IDA shall have the right to terminate this Framework Agreement by seven (7) days' notice in writing.

14.4.4 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, diseases, epidemics or pandemics (including COVID-19) or national or district strikes or other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Contractor's workforce.

14.5 Counterparts and Execution

This Framework Agreement shall, if required, be executed in two or more counterparts, each of which shall be deemed to be an original, and which together shall constitute one and the same Framework Agreement. This Framework Agreement shall become effective and be dated (and each counterpart shall be dated) on the date the last party has executed and delivered the Agreement. The parties hereby consent to the use of electronic signatures in connection with the execution of this Framework Agreement. Each of the Parties to this Framework Agreement confirms that this has been executed by their duly authorised officers.

14.6 Public Procurement

Nothing in this Framework Agreement shall prevent the IDA from complying with its obligations under public procurement legislation. If necessary this Framework Agreement and any Call-Off Contract concluded hereunder may be abridged modified, or amended without penalty to the IDA so as to enable it to comply with the said obligations.

15. NOTICES

15.1 The address, e-mail address, facsimile, and telephone numbers of the Parties for the purpose of the giving of notices under this Framework Agreement or any Call-Off Contract are as follows:

For the IDA:

Contact Name: []

Address: []

E-mail: []

Phone: []

For the Contractor:

Contact Name: []

Address: []

E-mail: []

Phone: []

15.2 Any notice or other communication whether required or permitted to be given by one Party to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the Party giving the notice and:

15.2.1 if delivered, at the time of delivery to the addressee or its duly authorised agent;

15.2.2 if sent by pre-paid post, four (4) days after posting if addressed to the Party to whom such notice is to be given at the address set forth for such Party in this Framework Agreement (or such other address as is from time to time notified to the other Party);

15.2.3 if transmitted by fax or electronic means, twenty-four (24) hours after transmission.

15.3 All notices to the IDA or the Contractor from the other Party under this Framework Agreement or any Call-Off Contract shall be in writing and sent to the appropriate address set out above.

15.4 All notices, documents and communications provided under this Framework Agreement or any Call-Off Contract shall be in the English or Irish language.

15.5 Any Party may, by notice to the other in compliance with this Clause 15 change the contact details set out at Sub-Clause 15.1.

16. RESOLUTION OF DISPUTES

16.1 Any dispute or difference of any kind whatsoever which arises or occurs between the Parties or their respective assigns in relation to anything or matter arising under, out of, or in connection with this Framework Agreement or any Call-Off Contract shall, in the first instance, be referred to a Mediator to be appointed by agreement between the parties and, in the absence of agreement within five (5) working-days of the receipt by one Party of a written notice to concur in the appointment of a Mediator, by the Chairman of the Chartered Institute of Arbitrators Irish Branch.

16.2 In the event that the dispute or difference is not resolved within fifteen (15) working-days of the appointment of the Mediator, the dispute or difference shall be referred to an Arbitrator to be agreed between the Parties and, in default of agreement within ten (10) working-days of the receipt by one Party of a written notice to concur in the appointment of an Arbitrator, by the Chairman of the Chartered Institute of Arbitrators Irish Branch, such arbitration to be governed by the Arbitration Act 2010 as amended or replaced and shall be conducted in accordance with the Model Law as defined in

the Arbitration Act 2010. The Arbitrator shall have no connection with the Mediator or Mediation Proceedings unless both Parties have otherwise consented in writing.

16.3 Nothing contained in this Clause 16 shall restrict either Party's freedom to commence legal proceedings where such proceedings are required urgently to preserve any legal right or remedy, to protect any Intellectual Property Rights or rights in Confidential Information or to otherwise prevent irreparable harm.

17. CHANGE CONTROL

Any request for a material change to the Services will be dealt with in accordance with the Change Control Procedure set out in Schedule 5 to this Framework Agreement.

18. JURISDICTION

IDA and the Contractor accept the exclusive jurisdiction of the Irish courts, subject to the provisions of Clause 16, and agree that this Framework Agreement and any Call-Off Contract is to be governed by and construed according to the laws of Ireland.

IN WITNESS WHEREOF this Agreement has been executed by the Parties on the date shown at the beginning of this Agreement.

SIGNED for and behalf of **IDA Ireland**

SIGNED for and behalf of **[Contractor's Name]**

[Name]

(being a duly authorised person)

[Name]

(being a duly authorised person)

[Name]

(being a duly authorised person)

[Name]

(being a duly authorised person)

SCHEDULE 1 – CALL-OFF CONTRACT

[To be completed when completing Call-off Contract]

SCHEDULE 2 – THE RFT

[To be inserted when completing Framework Agreement]

SCHEDULE 3 – THE TENDER SUBMISSION

[To be inserted when completing Framework Agreement]

SCHEDULE 4 – THE CHARGES

[To be inserted when completing Framework Agreement]

SCHEDULE 5 – CONFIDENTIALITY AGREEMENT

[To be inserted when completing Framework Agreement]

SCHEDULE 6 – CHANGE CONTROL PROCEDURE

1. Where either Party (the “**Requesting Party**”) wishes to make a material change to the terms of this Framework Agreement or a Call-Off Contract including, without limitation, any change to:

- (c) the Services;
- (d) the duration of the provision of the Services;
- (e) the duration for which certain Key Personnel are made available to the IDA,

the procedure in this Schedule shall apply. The Change Control Procedure shall also apply in respect of any matters which are specifically identified in the Framework Agreement as being subject to the Change Control Procedure.

2. All change requests must be documented in a request form (a “**Change Request Form**”) which shall include, as a minimum, the following details:

- (a) description of the requirements for the change;
- (b) comparison of the new requirements with the existing requirements;
- (c) reasons for the change, including a high level description of the proposed business impact; and
- (d) timeframe for completion of the change.

3. The Change Request Form shall be signed by the representative of the Requesting Party as set out in Clause 15 of the Framework Agreement and submitted to the representative of the other Party as set out in Clause 15 of the Framework Agreement.

4. The Contractor shall provide the IDA representative with an impact statement (an “**Impact Statement**”) within ten (10) Business Days of receipt or submission of a Change Request Form (or such longer period as the Parties may agree). The Impact Statement shall include, as a minimum, the following details:

- (a) the estimated number of Business Days and Personnel (including levels of qualification) and details of the work categories required to deliver the change within the timeframe specified in the Change Request Form;
- (b) the overall impact on the charges payable under the Call-Off Contract (i.e. reduction or increase) which shall include a breakdown of how such fees relate to the details in (a) above so as to facilitate, where relevant, any reduction being offset against any increase in Cost; and
- (c) the impact on the Services to be provided under the Framework Agreement.

5. After consideration, the IDA representative may elect by giving written notice to the Contractor either to:

- (a) accept the Impact Statement in which case the Framework Agreement and/or Call-Off Contract shall be amended accordingly;
- (b) reject the Impact Statement in which case the Framework Agreement and Call-Off Contract shall remain unchanged; or
- (c) require the Contractor to produce a revised Impact Statement by repeating (up to a maximum of 2 times) the procedure set out in paragraphs 4 and 5 of this Schedule.

6. Following completion of the procedure in paragraph 5 above, where the Parties fail to reach agreement on a request for change, the dispute resolution procedure set out in Clause 16 of the Framework Agreement may be invoked.

END OF DOCUMENT