

APPENDIX [4] – IDA IRELAND’S TEMPLATE CALL-OFF CONTRACT

Subject to contract / contract denied

THIS CALL-OFF CONTRACT 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").

WHEREAS:

- A. The IDA and the Contractor entered into a framework agreement for **[insert]** on the **[Insert Date]** (the "Framework Agreement") allowing the IDA to request certain services from the Contractor. The Framework Agreement is incorporated by reference into this Call-off Contract.
- B. Pursuant to the Framework Agreement, the IDA requests certain services to be provided by the Contractor, and the Contractor agrees to provide such services to the IDA in accordance with this call-off contract (the "Call-off Contract").

IT IS HEREBY AGREED AS FOLLOWS

1. This Call-off Contract consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Call-off Contract;
 - ii. The Services;
 - iii. The Proposal;
2. The Contractor agrees to provide the Services described in Schedule B (the "Services") to the IDA in accordance with this Call-off Contract noting in particular Schedule D. Schedule B details the nature, quantity, quality, time of delivery, key personnel, and specifications of the Services in accordance with **[To be inserted e.g., the RFT and the Tender Submission/the Proposal]**.

3. Subject to the terms and conditions of this Call-off Contract, the IDA agrees to pay to the Contractor the charges as stipulated in Schedule D (the “**Charges**”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
4. For the purposes of this Call-off Contract, the IDA’s Contact is [Insert Name] of [Insert Address]; the Contractor’s Contact is [Insert Name] of [Insert Address].
5. This Call-off Contract shall take effect on the Services Effective Date and shall expire on [Insert] unless it is otherwise terminated in accordance with the provisions of this Call-off Contract or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (the “**Term**”). The IDA reserves the right to extend the Term for a period or periods of up to [Insert Term] with a maximum of [Insert number of extensions] such extensions permitted subject to its obligations at law. The Term will not exceed **four (4)** years in aggregate.
6. Unless otherwise specified herein, a defined term used in this Call-off Contract shall have the same meaning as assigned to it in the RFT and/or Framework Agreement. In this Call-off Contract each capitalised term will have the meaning set out below:

“**Business Day**” means a day other than a Saturday, Sunday, or public holiday in the Republic of Ireland, when banks in Dublin, Ireland are open for business.

“**Call-off Contract**” means this Call-off Contract, including the Recitals to, and Schedules of, this Call-off Contract” for the provision of the Services, subject to and in accordance with the terms and conditions of the relevant Framework Agreement;

“**Services Effective Date**” means [[insert date] or the date on which this Call-off Contract comes into force, namely: the date on which this Call-off Contract 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;

“**Proposal**” means the proposal submitted by the Contractor to the IDA in connection with this Call-off Contract and in accordance with Clause 7 of the Framework Agreement;

“**Charges**” means the payments set out in Schedule D;

“**Deliverables**” means such products, work, or services to be delivered by the Contractor under this Call-off Contract;

“**Project Schedule**” means the plan submitted with the Contractor’s Proposal for the fulfilment of its responsibilities under this Call-off Contract including the Deliverables and Key Milestones as approved by the IDA and set out at Schedule C to this Call-off Contract;

“**Key Milestones**” or “**Milestones**” means the dates and deadlines by which particular Deliverables or obligations of the Contractor are scheduled to be completed as set out in Schedule C to this Call-off Contract;

“**Key Personnel**” means all the Contractor’s Personnel listed in Schedule E to this Call-off Contract;

7. Headings are included for ease of reference only and shall not affect the construction of this Call-off Contract.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.

9. References to any statute, enactment, order, regulation, or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation, or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Call-off Contract, this Call-off Contract shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Call-off Contract.

IN WITNESS WHEREOF this Call-off Contract has been executed by the Parties on the date shown at the beginning of this Call-off Contract.

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 A – GENERAL TERMS AND CONDITIONS

1. CONTRACTOR'S OBLIGATIONS

- A. The Contractor undertakes to act with due care, skill, and diligence in the provision of the Services and generally in the carrying out of its obligations under this Call-off Contract and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill, and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Call-off Contract.
- B. In consideration of the payment of the Charges and subject to Clause 3 the Contractor shall:
1. provide the Services in accordance with the [To be inserted e.g., the Specification, the RFT,] the IDA's directions, the terms of this Call-off Contract, noting in particular Schedule D;
 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the IDA from time to time and notified to the Contractor in writing;
 3. comply with all local security and health and safety arrangements as notified to it by the IDA; and
 4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of health and safety, waste, environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Annex X of **Directive 2014/24/EU**. The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration, and work permits of all personnel retained for the purposes of complying with this Call-off Contract.
- C. The Contractor is deemed to be the prime contractor under this Call-off Contract and the Contractor assumes full responsibility for the discharge of all obligations under this Call-off Contract and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the relevant Framework Agreement hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Call-off Contract, including but not limited to Clause 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to Clause 14, the Contractor shall notify the IDA as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- D. Without prejudice to Clause 1C, where the IDA becomes aware that any of the exclusion grounds set out in Article 57 of **Directive 2014/24/EU** apply to any Subcontractor, the IDA reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion

grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

- E. During this Call-off Contract the Contractor shall be an independent contractor and not the employee of the IDA. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the IDA for any purposes whatsoever.
- F. The IDA acknowledges that the Contractor may from time to time be dependent on the IDA to facilitate the Contractor in the carrying out of its duties under this Call-off Contract. The IDA agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with Clause 10.
- G. The Contractor 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 Call-off Contract. 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.

H. **Third Country Access**

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.
- I. Notwithstanding any other provision within this Call-off Contract, 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.

2. KEY PERSONNEL

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

3. PAYMENT

- A. Subject to the provisions of this Clause 3 the IDA shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule D. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is in consideration of:
 - 1. Material compliance by the Contractor with the provisions of this Call-off Contract including but not limited to Schedule D, any milestones, compliance schedules and/or operational protocols in place pursuant to Clause 10A from time to time;
 - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation (including the provision of timesheets) as may be required by the IDA from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to the IDA Contact (as set out in this Call-off Contract or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the IDA's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the IDA or upon such deemed acceptance the invoice shall be payable by the IDA. Payment is subject to any rights reserved by the IDA under any other provision of this Call-off Contract;
 - 4. The IDA being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all applicable EU and domestic taxation law and requirements. The Contractor may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by the IDA; and
 - 5. The deduction of any Service Credits to which the IDA is entitled under the Service Level

Agreement in Schedule F.

- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Call-off Contract any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the IDA in respect of any breach of this Call-off Contract), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under this Call-off Contract or under any other agreement or contract with the IDA. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants, and agents in the performance of its obligations under this Call-off Contract.
- F. The Charges shall be discharged as provided for in this Clause subject to the retention by the IDA in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.
- G. The Charges shall be inclusive of the cost of any and all import, tariff, and other customs duties applicable to the provision of the Services, which shall be the sole responsibility of the Contractor and the Contractor so acknowledges and agrees.
- H. [Delete if not required: The Charges may only be increased or decreased in line with the Framework Price review provisions set out in the RFT. In the event that the charges are reviewed in accordance with the RFT, any revised charges as may be agreed as a result thereof, shall apply to this Call-off Contract immediately following the date thereof.]

4. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- A. The Contractor acknowledges, warrants, represents, and undertakes that:
 - 1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Call-off Contract and to provide the Services hereunder;
 - 2. it is entering into this Call-off Contract with a full understanding of its material terms and risks and is capable of assuming those risks;
 - 3. it is entering into this with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
 - 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance, or practices as may affect the provision of the Services as they apply to the Contractor;
 - 5. it has taken all and any action necessary to ensure that it has the power to execute and

enter into this Call-off Contract;

6. the status of the Contractor, as declared 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, remains unchanged;
 7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in Clause 6 below) that are necessary for the performance of its obligations under this Call-off Contract and for the IDA to obtain the benefit of the Services for its business purposes;
 8. the IDA shall be under no obligation to purchase any minimum number or value of Services, and the Contractor accepts and agreed to the provisions of Schedule D.
 9. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the IDA forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the IDA with regard to compliance with this Clause 4A.9;
- B. The Contractor undertakes to notify the IDA forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations, and undertakings as set out at Clause 4A and to comply with all reasonable directions of the IDA with regard thereto which may include termination of this Call-off Contract.

5. REMEDIES

- A. 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, willful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in Clause 1. The terms of this Clause 5A shall survive termination of this Call-off Contract for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under Clause 6 (Intellectual Property), a breach by the Contractor of Clause 27 (Data Protection and Security) or in respect of reputational damage, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the IDA find itself obliged to order similar services elsewhere in consequence of the failure of the Contractor to deliver Services, the IDA shall be entitled to recover from the Contractor any excess prices which may be paid by the IDA to an alternative contractor.
- D. Except as otherwise expressly provided by this Call-off Contract, all remedies available to either Party for breach of this Call-off Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy

to the exclusion of other remedies.

- E. Save in respect of the following, for which no limit applies: fraud (including fraudulent misrepresentation); personal injury, or death; and breaches under Clause 6 (Intellectual Property); breaches under Clause 7 (Confidentiality) and reputational damage, the limit of the Contractor's aggregate liability to the IDA under this Call-off Contract whatsoever and howsoever arising shall:
 - 1. In respect of any breach of its obligations under Clause 27 (Data Protection and Security) be an amount equal to [ten million (€10,000,000)] euro; and
 - 2. In respect of any other liability whatsoever and howsoever arising shall be [two million five hundred thousand (€2,500,000)] euro for any one claim or series of claims arising out of a single occurrence.
- F. If for any reason the IDA is dissatisfied with the performance of the Contractor in relation to the provision of any professional services, a sum not exceeding [15%] may be withheld from any payment otherwise due for professional services (the "**Retention Amount**"). In such event the IDA shall identify the particular professional services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said professional services as identified by the IDA or resolution of outstanding queries. The IDA shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this Clause 5F shall be without prejudice to and not be in substitution for any remedy of the IDA under this Call-off Contract.

6. INTELLECTUAL PROPERTY

- A. Intellectual Property Rights ("**IPR**") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the date of this Call-off Contract and all IPR in any materials, acquired or developed by or for the Contractor or IDA independently of this Call-off Contract, and any IPR in the Contractor's standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Call-off Contract (collectively "**the Materials**") (or any part or parts thereof) shall vest in the IDA and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title, and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the IDA absolutely.

- D. The IDA grants to the Contractor a royalty-free non-exclusive licence to use the IDA's Pre-existing IPR for the Term of the Call-off Contract to the extent necessary to enable the Contractor to fulfil its obligations under this Call-off Contract. Save as expressly set out in this Clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired, or developed such intellectual property.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Call-off Contract.
- F. Nothing in this Call-off Contract shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies, and techniques that are acquired or used in the course of providing the Services.
- G. The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality, or methodology are obtained and in place before use for the purposes of this Call-off Contract (to include but not be limited to ensuring that the IDA shall be vested with all necessary rights so as to enable the IDA to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the IDA and shall keep and hold the IDA harmless from and in respect of all and any losses (whether direct, indirect, or consequential) liability, damages, claims, costs, or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Call-off Contract.

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

- i. procure the necessary rights for the IDA to continue use;
 - ii. replace the relevant deliverable with a non-infringing equivalent;
 - iii. replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
 - iv. if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the IDA Charges paid for such deliverable less a reasonable amount for the IDA's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect, or consequential) thereby accruing to the IDA as a result of the breach.
- H. Upon the termination of this Call-off Contract for whatever reason, the Contractor shall immediately deliver up to the IDA all the Materials prepared up to the date of termination. The provisions of this Clause 6 will survive the expiration or termination of this Call-off Contract for any reason.

7. CONFIDENTIALITY

- A. Each of the Parties to this Call-off Contract agrees to hold confidential all information,

documentation and other material received, provided, or obtained arising from their participation in this Call-off Contract ("**Confidential Information**") and shall not disclose same to any third party except to:

1. its professional advisers subject to the provisions of this Clause 7; or
 2. as may be required by law; or
 3. as may be necessary to give effect to the terms of this Call-off Contract subject to the provisions of this Clause 7; or
 4. in the case of the IDA by request of any person or body or authority whose request the IDA or persons associated with the IDA (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the IDA with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Schedule 5 to the Framework Agreement (the "**Confidentiality Agreement**"). If requested by the IDA, the Contractor shall procure that its employees or sub-contractors who have access to Confidential Information shall sign the/a Confidentiality Agreement.

The obligations in this Clause 7 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
 2. which is or becomes public knowledge other than by breach of this Clause; or
 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the IDA. The Contractor also acknowledges the Second Schedule, paragraph 4, 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. Accordingly, the Contractor confirms that it will, if requested by the IDA, from time to time, submit full personal details of personnel (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Call-off Contract. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the IDA arising therefrom.
- D. In circumstances where the IDA is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the IDA receiving a request for information related to this Call-off Contract, the IDA shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or

commercial sensitivity and shall state the reasons for this sensitivity. The IDA will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The IDA accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

- E. The terms of this Clause 7 shall survive expiry, completion, or termination for whatever reason of this Call-off Contract.

8. FORCE MAJEURE

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in Clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Call-off Contract including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption, or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party (the "**Affected Party**") shall promptly notify the other Party in writing specifying:
 - 1. the nature of the Force Majeure Event;
 - 2. the anticipated delay in the performance of obligations;
 - 3. the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

- C. If the Force Majeure Event continues for 60 calendar days either Party may terminate at 14 days' notice.
- D. In circumstances where the Contractor is the Affected Party, the IDA shall be relieved from any obligation to make payments under this Call-off Contract save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Call-off Contract.

9. TERMINATION

- A. Subject to the provisions of Sub-Clause 9C, this Call-off Contract may be terminated by the IDA at any time during the Framework Period by serving [three (3) months] written notice to the Contractor. Neither Party shall be entitled to any additional amounts or compensation in the event

that this Call-off Contract is terminated in accordance with this Clause 9.

- B. Without prejudice to any other rights or remedies to which it may be entitled, the IDA shall be entitled to terminate this Call-off Contract forthwith and without liability for compensation or damages by giving notice at any time if:

1. The Contractor commits any material breach of any provision of this Call-off Contract and term or condition of this Call-off Contract; or
2. The Contractor fails to perform any obligation or responsibility under this Call-off Contract, 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
3. The Contractor's performance of an obligation under this Call-off Contract is not in accordance with the terms of the Framework Agreement, or fails to meet any standard prescribed by law; or
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 Clause 9.10 of the Framework Agreement, whether with or without the knowledge of the Contractor; or
5. In circumstances where the IDA becomes aware that any of the excluding circumstances listed in Article 57 of Directive 2014/24/EU apply to the Contractor; or
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
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
8. The Contractor ceases or threatens to cease to carry on business or takes or suffers any analogous action under any applicable law; or
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
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. A petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee, or any similar officer over the Contractor's company; or
12. An encumbrancer takes possession of, or a receiver is appointed to, any of the property or assets of the Contractor; or
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
14. The Contractor has committed any fraudulent act or any criminal activity or is guilty of

gross negligence in the performance of this Call-off Contract; or

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

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

17. Any event analogous to those contemplated in Clauses B.5 through B.14 occurs to the Contractor within the laws of any other jurisdiction.

- C. The IDA may, at any time, terminate this Call-off Contract early on such notice as it considers appropriate in the event that a challenge to the award of this Call-off Contract to the Contractor or to any aspect of the competition leading to award of this Call-off Contract 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 Clause 9.C 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 Call-off Contract (other than any payment that properly accrued prior to the date of termination).
- D. In the event that this 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. 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.
- E. Termination of this Call-off Contract shall not affect any antecedent and accrued rights, obligations, or liabilities of either Party, nor shall it affect any provision of this Call-off Contract which is expressly or by implication intended to come into or continue in force on or after such termination.
- F. On completion or termination of this Call-off Contract, howsoever arising, the Contractor shall immediately return, and/or at the written direction of the IDA destroy in a secure manner, all (or such part or parts thereof as may be identified by the IDA) Confidential Information, IDA Data, documents, records, papers, materials, media, and other property of the IDA which is in its possession and shall erase any IDA Data and documents which are held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the IDA so request in writing. For the avoidance of doubt “**document**” includes documents stored on a computer storage medium and data in digital form whether legible or not.
- G. If requested by the IDA, the Contractor shall, promptly furnish such anonymised information relation to the terms and conditions of the employment of all persons providing the Services as may be required by the IDA (“**Employment Information**”). The Contractor agrees that the IDA may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Call-off Contract for whatever cause.

10. CONTRACT MANAGEMENT

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

11. DISPUTES

- A. In the event of any dispute arising out of or relating to this Call-off Contract (the "**Dispute**"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [Insert Name] in the Contractor and to [Insert Name] within the IDA respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10)

Business Days of his/her appointment.

- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Call-off Contract shall not cease or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of this Call-off Contract at all times.

12. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

- A. This Call-off Contract shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that subject to Clause 11, the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Call-off Contract.
- B. This Call-off Contract may be executed in a number of counterparts and by any of the Parties on separate counterparts, each of which when executed shall be deemed to be an original, and which together shall constitute one and the same Call-off Contract. This Call-off Contract shall become effective and be dated on the Services Effective Date.
- C. The Parties hereby consent to the use of electronic signatures in connection with the execution of this Call-off Contract. Each of the Parties to this Call-off Contract confirms that this Call-off Contract is executed by their duly authorised persons.

13. NOTICES

- A. Any notice or other written communication to be given under this Call-off Contract shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this Clause 13.
- B. All notices shall be deemed to have been served as follows:
 - 1. if personally delivered, at the time of delivery;
 - 2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 - 3. if communicated by email, on the next calendar day following transmission.

14. ASSIGNMENT, NOVATION AND TRANSFER

- A. The IDA may, at any time, assign, or otherwise transfer the whole or any part of this Call-off Contract to any Minister or public sector body, entity, or office. Any such assignment, novation or transfer will be done at no additional cost to the IDA.
- B. Any assignment, novation, or transfer to a third party of the Contractors rights or obligations

under this Call-off Contract (the “**Transfer**”) requires the prior written consent of the IDA. Prior to any such Transfer, the transferee will be obliged to sign an undertaking to comply with all obligations under this Call-off Contract. Any attempted Transfer not complied with in the manner prescribed herein shall be null and void.

- C. Subject to a party’s obligations at law, any sub-contract of the Contractors rights or obligations under this Call-off Contract requires the prior written consent of the IDA, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void.

15. ENTIRE AGREEMENT

This Call-off Contract constitutes the entire agreement and understanding of the parties, and any and all other previous agreements, contracts, arrangements, and understandings (whether written or oral) between the Parties with regard to the subject matter of this Call-off Contract (save where fraudulently made) are hereby excluded. For the avoidance of doubt, no contractor or third-party terms and conditions shall apply to the provision of the services and any click through terms and conditions shall be disabled.

16. SEVERABILITY

If any term or provision herein is found to be illegal or unenforceable for any reason, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

17. WAIVER

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

18. NON-EXCLUSIVITY

Nothing in this Call-off Contract shall preclude the IDA from purchasing services (or Services) from a third party at any time during the Term of this Call-off Contract.

19. MEDIA

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

20. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be, has any conflicts in relation to the Services and its obligations undertaken under this Call-off Contract. The Contractor hereby undertakes to notify the IDA immediately should any conflict or potential conflict of interest come to its attention during the currency of this Call-off Contract and to comply with the IDA's directions in respect thereof. In the event of such notification, the IDA shall have the right (in addition to any other rights which it has at law) to terminate this Call-off Contract immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the 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 (Subcontractor or agent as the case may be) and the Contractor shall comply with the IDA's directions in respect thereof, to the satisfaction of the IDA. In the event of such disclosure, the IDA shall have the right (in addition to any other rights which it has at law) to terminate this Call-off Contract immediately and without liability for compensation or damages. The terms "**registrable interest**" and "**relative**" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this Clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the IDA to terminate this Call-off Contract immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

21. ACCESS TO PREMISES

- A. Any of the IDA's premises made available from time to time to the Contractor by the IDA in connection with this Call-off Contract, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Call-off Contract. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination, or abandonment of this Call-off Contract.
- B. The Contractor shall upon reasonable notice by the IDA and subject to the IDA signing the relevant documents accepting that it will comply with the Contractor's health and safety policies pertaining to the premises (provided such policies are reasonable), allow the IDA access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for the IDA under this Call-off Contract.

22. EQUIPMENT

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

23. NON-SOLICITATION

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

24. CHANGE CONTROL PROCEDURE

- A. At any time during the Term of this Call-off Contract, either Party may propose a change or changes to any part or parts of this Call-off Contract.
- B. The change control procedures set out in Schedule H of this Call-off Contract will apply to all changes irrespective of whether the Contractor or the IDA proposes the change.

25. LOCATION OF DATA CENTRES

The IDA requires that all data must be stored, hosted, and processed in data centres in the EEA including backup, failover, recovery, replication of data and test systems etc. Should any transfer of data outside of the EEA be required under the Call-off Contract, including to a jurisdiction which is not recognised by the European Commission as providing for an equivalent level of protection for personal data as is provided for in the European Union (a “**Third Country**”), the Contractor will be required to

ensure that appropriate measures are in place to comply with their obligations under applicable law governing such transfers, which may include entering into a contract governing the transfer which contains the 'standard contractual Clauses' approved for this purpose by the European Commission.

26. DATA PROTECTION AND SECURITY

A. In this Call-off Contract the following terms shall have the meanings respectively ascribed to them:

"Data" means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with IDA Ireland (including but not limited to its' employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with IDA Ireland provided under this Call-off Contract and includes any Personal Data;

"Data Controller" has the meaning given under the Data Protection Laws;

"Data Processor" has the meaning given under the Data Protection Laws;

"Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the **"General Data Protection Regulation"**), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.

"Data Subject" has the meaning given under the Data Protection Laws;

"Data Subject Access Request" means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

"Personal Data" has the meaning given under Data Protection Laws;

"Processing" has the meaning given under the Data Protection Laws;

B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.

C. The Parties acknowledge that for the purposes of the Data Protection Laws, IDA Ireland is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule G sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.

D. Without prejudice to the generality of Clause 26B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Call-off Contract:

1. process that Personal Data only on the written instructions of IDA Ireland;
2. ensure that it has in place appropriate technical and organisational measures, reviewed and approved by IDA Ireland, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss,

destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

3. ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 4. not transfer any Personal Data outside of the European Economic Area unless the prior written consent of IDA Ireland has been obtained and the following conditions are fulfilled;
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation); and
 - ii. the data subject has enforceable rights and effective legal remedies; and
 - iii. the Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. the Contractor complies with reasonable instructions notified to it in advance by IDA Ireland with respect to the processing of the Personal Data.
- E. The Contractor shall promptly notify IDA Ireland (by email: dpo@ida.ie) if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to IDA Ireland's obligations under the Data Protection Laws and provide full co-operation and assistance to IDA Ireland in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to IDA Ireland (by email: dpo@ida.ie) any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist IDA Ireland in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of IDA Ireland, amend, delete, or return Personal Data and copies thereof to IDA Ireland on termination of this Call-off Contract unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit IDA Ireland, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services under this Call-off Contract. The

Contractor shall comply with all reasonable directions of IDA Ireland arising out of any such inspection, audit, or review.

- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by IDA Ireland from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 26 and allow for inspections and contribute to any audits by IDA Ireland or IDA Ireland's designated auditor.
- L. The Contractor shall:
 - 1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - 2. ensure that a back-up copy of any and all such Personal Data is made in accordance with the Contractor's data back-up policy and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - 3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at IDA Ireland's option, reimburse IDA Ireland for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. IDA Ireland does not consent to the Contractor appointing any third party processor of Personal Data under this Call-off Contract.
- N. The Contractor shall indemnify the IDA against all claims and proceedings and all liability, loss, costs, and expenses incurred by the IDA 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 breach of any Data Protection Laws or any unauthorised processing, unlawful processing, destruction of and/or damage to any Personal Data processed by the Contractor, its employees, or agents.
- O. Save for Clauses 26B, 26C, 26D(4) and 26E, all the obligations on the Contractor in this Clause 26 relating to the processing of Personal Data shall apply to the processing of all Data.
- P. The provisions of this Clause 26 shall survive termination and or expiry of this Call-off Contract.

SCHEDULE B – THE SERVICES

[To be inserted when completing Contract]

SCHEDULE C – THE PROPOSAL

[To be inserted when completing Contract]

SCHEDULE D – THE CHARGES

1. No Guaranteed Drawdown

- A. The Contractor acknowledges and agrees that IDA Ireland does not guarantee any minimum level of drawdown of the Services under this Call-off Contract. The inclusion of any Services, resources, or personnel in Schedule B, Schedule C, Schedule E, the Response or any related proposal does not constitute a commitment by IDA Ireland to utilise, engage, or pay for such Services, resources, or personnel.
- B. The Contractor enters this Call-off Contract on the express understanding that IDA Ireland's actual requirements may be significantly less than any estimated volumes or values set out in the RFT, this Call-off Contract, the Framework Agreement or elsewhere, and may be nil.

2. Drawdown Mechanism

- A. In the event that IDA Ireland requires the provision of the Services, it shall notify the Contractor by email when it requires the provision of any Services or resources under this Call-off Contract. Such notification (a "**Drawdown Notice**") shall specify:
 - (a) the nature and scope of the Services or resources required;
 - (b) the anticipated duration or timeline for the provision of such Services or resources, including the relevant start date for the provision of such Services;
 - (c) any specific deliverables, milestones, or performance standards applicable to the drawdown; and
 - (d) the relevant Charges applicable to the Services or resources being drawn down, as set out in this Schedule D.
- B. Upon the Contractor's receipt of the Drawdown Notice, it shall perform the Services in accordance with the Drawdown Notice and the terms of this Call-off Contract. For the avoidance of doubt, the issue and acceptance of a Drawdown Notice within the scope of the Services, the Term, the applicable Charges and the Framework Agreement shall not of itself constitute a change requiring the Change Control Procedure in Schedule H.
- C. IDA Ireland shall assess its ongoing requirements for Services on a periodic basis (monthly or quarterly, as IDA Ireland may determine in its sole discretion) and shall issue Drawdown Notices as and when required to the Contractor, but shall provide the Contractor with advance notice of its ongoing requirements to the extent it is possible to do so.
- D. The Contractor acknowledges that IDA Ireland's requirements may fluctuate and that there may be periods during the Term when no Services are drawn down and no Drawdown Notices issued. The Call-off Contract may be in force notwithstanding that no Services have commenced or been drawn down.

- E. For the avoidance of doubt, the Contractor shall have no claim against IDA Ireland for loss of profit, loss of opportunity, or any other loss or damage arising from IDA Ireland's decision not to draw down Services, or to draw down Services at a level lower than any estimate, projection, or expectation the Contractor may have.

3. No Services without Drawdown Notice

The Contractor shall not commence the provision of any Services or deploy any resources under this Call-off Contract unless and until a Drawdown Notice has been issued by IDA Ireland in respect of such Services or resources. Any Services provided or resources deployed without a valid Drawdown Notice shall be at the Contractor's sole risk and expense, and IDA Ireland shall have no liability to pay for such Services or resources. Any mobilisation, transition or preparatory activity shall be chargeable only where it is expressly authorised in a Drawdown Notice or otherwise agreed in writing by IDA Ireland.

4. **Payment** Without prejudice to Clause 3 of Schedule A, payment of the Charges shall be exclusively linked to the actual drawdown of Services by IDA Ireland. The Contractor shall only be entitled to invoice IDA Ireland for Services that are:

- (a) the subject of a valid Drawdown Notice issued by IDA Ireland; and
- (b) actually provided by the Contractor in accordance with the terms of this Call-off Contract and the relevant Drawdown Notice.

The provisions of Clause 3 of Schedule A shall apply in relation to invoicing by the Contractor, including the requirements relating to valid invoices, supporting documentation, tax clearance, service credits, invoice queries and any other payment conditions set out in that Clause.

5. Charges

Subject to compliance with the provisions of this Call-off Contract, including the provisions of this Schedule D and Clause 3 of Schedule A, the Contractor shall be entitled to charge the charges, rates, prices or other payment amounts specified in the Contractor's Form of Tender dated [INSERT] and accepted by IDA Ireland, but only in respect of Services performed in accordance with a valid Drawdown Notice. Unless expressly stated otherwise in a Drawdown Notice, the relevant charges, rates, prices or other payment amounts shall be maximum amounts and shall include all costs and expenses incurred by the Contractor in the performance of the relevant Services.

6. Service Levels and Key Personnel

Any service levels, performance indicators, service credits or Key Personnel obligations shall apply only to the extent applicable to the Services drawn down under a valid Drawdown Notice, and from the start date specified in that Drawdown Notice, unless this Call-off Contract or the relevant Drawdown Notice expressly provides otherwise.

7. Order of Priority

This Schedule D governs the Charges, drawdown mechanism, charging entitlement and payment consequences of any Drawdown Notice. To the extent of any conflict between this Schedule D and any other Schedule in relation to those matters, this Schedule D shall prevail, subject always to the Framework Agreement and any applicable order of precedence in this Call-off Contract.

SCHEDULE E – KEY PERSONNEL

[To be inserted when completing Contract]

SCHEDULE F – SERVICE LEVEL AGREEMENT

[To be inserted when completing Contract]

SCHEDULE G – DATA PROTECTION

[To be completed when completing Contract]

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1 Subject matter of processing: all information, whether in oral or written (including electronic) form, created by or in any way originating with the IDA (including but not limited to its' employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the IDA provided under this Call-off Contract which relates to an identified or identifiable natural person as may be provided in connection with the provision of the Services.

1.2 Nature of processing: [to be inserted on completion of contract]

1.3 Purpose of processing: to allow the Contractor to provide the Services under the Call-off Contract;

1.4 Duration of the processing: [to be inserted on completion of contract]

2. **Types of personal data:** [to be inserted on completion of contract].

3. **Categories of data subject:** [to be inserted on completion of contract].

SCHEDULE H – CHANGE CONTROL PROCEDURE

1. Where either Party (the “**Requesting Party**”) wishes to make a material change to the terms of this 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 Call-off Contract 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 the Call-off Contract and submitted to the representative of the other Party as set out in the Call-off Contract.

4. The Contractor shall provide the IDA representative with an impact statement (the “**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 Call-off Contract.

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 Call-off Contract shall be amended accordingly;
- (b) reject the Impact Statement in which case the 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 11 of the Call-off Contract may be invoked.

END OF DOCUMENT