Request for Tenders dated
for the provision of
Consultancy Services to prepare a Strategic Assessment and Preliminary Business Case in relation to the provision of Irish-language based early-years (Naíonra) facilities in Dún Garbháin on behalf of Croí na nÓg, Naíonra Garbháin, Clais na Lachan, Dún na Mainistreach, Dún Garbháin, Co. Phort Láirge, X35 NP84

Tender procedure: Open procedure

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Part 1: Introduction

1.1 Croí na nÓg (Naíonra Garbháin) (the "Contracting Authority") invites tenders ("Tenders") to this request for tenders ("RFT") from economic operators ("Tenderers") for the provision of the services as described in Appendix 1 to this RFT (the "Services").

1.2 In summary, the Services comprise: consultancy services to prepare a Strategic Assessment and Preliminary Business Case in accordance with the Infrastructure Guidelines issued by the Department of Public Expenditure, National Development Plan Delivery and Reform as further detailed herein.

1.3 *Not Used*

This public procurement competition will be divided into lots (each a "Lot") as described below. Each Lot will result in a separate contract.

1.4 This public procurement competition (the "Competition") will be conducted in accordance with the open procedure under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations"). Any contract that may result from this Competition (the "Services Contract") will be issued for a term of **9** months ("the Term").

1.5 *Not Used*

The Contracting Authority reserves the right to extend the Term for a period or periods of up to with a maximum of] such extension or extensions on the same terms and conditions, subject to the Contracting Authority's obligations at law.

1.6 The Contracting Authority estimates that the expenditure on the Services to be covered by the proposed Service Contract may amount to some €30,000 (excl. VAT) over the Term and any possible extensions. Tenderers must understand that this figure is an estimate only based on current and future expected usage.

1.7 Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises ("SME"s) in this Competition. SMEs that believe the scope of this Competition is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Services Contract that may result from this Competition and therefore increase their social and economic benefits.

Larger enterprises are also encouraged, subject to paragraph 2.5, to consider the practical ways that SMEs can be included in their proposals to maximise the social and economic benefits of any Services Contracts that may result from this Competition.

Part 2: Instructions to Tenderers

2.1 IMPORTANT NOTICES

2.1.1 While every effort has been made to provide comprehensive and accurate information in all notices and documents prepared for the purposes of this Competition, the Contracting Authority does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers.

2.1.2 The Contracting Authority does not bind itself to accept the lowest priced or any Tender.

This RFT does not constitute an offer or commitment to enter into a Services Contract.

No contractual rights in relation to the Contracting Authority will exist unless and until a formal written Services Contract has been executed by or on behalf of the Contracting Authority.

Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer.

The Contracting Authority may cancel this Competition at any time prior to a formal written Services Contract being executed by or on behalf of the Contracting Authority.

The award of a Services Contract does not confer exclusivity on the successful Tenderer.

2.1.3 This RFT supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence.

2.1.4 In this clause 2.1.4, "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 Commission or other supervisory authority for data protection in Ireland from time to time.

The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender, is required to confirm in the statement required under paragraph 2.4 below that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for

providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

2.1.5 The Contracting Authority would refer Tenderers in particular to the provisions of Regulation (EU) 2022/1031 on the access of third country economic operators, goods and services to the Union's public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI), and to their obligation to comply therewith.

In particular, tenderers and candidates should note in Article 6 of Regulation (EU) 2022/1031, the obligations for a Contracting Authority in the context of a procurement procedure where the EU Commission has adopted an IPI measure.

2.1.6 Tenderers are referred to the provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council on Foreign Subsidies distorting the Internal Market, in addition to Commission Implementing Regulation (EU) 2023/1441, and their obligation to comply therewith. In particular, tenderers and candidates should note the requirements in Articles 28 and 29 of Regulation (EU) 2022/2560 relating to the prior notification or declaration of foreign financial contributions, where the estimated value of the public procurement procedure is equal to or greater than the applicable financial thresholds set out therein. In that regard, Tenderers and Candidates are referred to Appendix 3A of the RFT.

2.2 COMPLIANT TENDERS

2.2.1 If a Tenderer fails to comply in any respect with the requirements of this paragraph 2.2.1, the Contracting Authority reserves the right to reject the Tenderer's Tender as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- seeking written clarification from the Tenderer;
- seeking further information from the Tenderer; or
- waiving a requirement, which in the Contracting Authority's view, is non-material or procedural.

Tenderers are required:

(a) To complete and submit with their Tender the electronic version of the European Single Procurement Document ("eESPD"). Tenderers may submit an eESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that: (i) the information contained in it continues to be correct and (ii) that they satisfy the Selection Criteria for this Competition as set out at part 3.2 below;

(b). To submit all documentation which this RFT requires to be submitted with their Tender;

(c) To follow the format of this RFT and respond to each element in the order as set out in this RFT;

(d) To conform to and comply with all instructions and requirements set out in this RFT;

(e) To submit the statement required under paragraph 2.4 below; and

(f) Not to alter or edit this RFT in any way.

2.2.2 Without prejudice to the generality of paragraphs 2.2.1, failure to comply with paragraph 2.6.1, 2.6.2 or 2.6.3 below will render the Tender non-compliant and it will be rejected.

2.3 SERVICES CONTRACT

2.3.1 Tenderers should note the terms and conditions of the Services Contract at Appendix 5 to this RFT.

2.3.2 Tenderers are required to confirm their acceptance of the terms and conditions of the Services Contract by signing the Tenderer's Statement at Appendix 3. Tenderers may not amend the Services Contract.

2.4 ACCEPTANCE OF RFT REQUIREMENTS

Each Tenderer is required to accept the provisions of this RFT. ALL TENDERERS MUST RETURN, with their Tender, a scanned signed copy of the Tenderer's Statement, as set out in Appendix 3, printed on the Tenderer's letterhead. The Contracting Authority must be able to read the scanned signature of the Tenderer. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderer's Statement.

2.5 CONSORTIA AND PRIME / SUBCONSULTANTS

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit a Tender in response to this RFT, the Contracting Authority will deal with all matters relating to this Competition through a single nominated entity authorised to represent all members of the group of undertakings. The Tenderer must provide details of all members of the group of undertakings and their role in the Tender and clearly set out the contact details including name, title, telephone number, postal address, facsimile number and e-mail address of the nominated entity authorised to represent the Tenderer and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person will NOT be accepted, acknowledged or responded to.

Prior to and as a condition of award of any Services Contract, the successful Tenderer shall be required to designate a single entity who will carry overall responsibility for the Services Contract (the "Prime Consultant"), irrespective of whether or not tasks are to be performed by a subconsultant or other consortium member (the "Subconsultant").

2.6 TENDER SUBMISSION REQUIREMENTS

2.6.1 Tenders must be submitted via the 'electronic tenderbox' available on www.etenders.gov.ie. Only Tenders submitted to the electronic tenderbox will be accepted. Tenders submitted by any other means (including but not limited to: by email, fax, post, hand delivery, etc.) will NOT be accepted.

Tenderers must ensure that they give themselves sufficient time to upload and submit all required tender documentation in their Tender before the Tender Deadline (as defined in paragraph 2.6.2). Tenderers should take into account the fact that upload speeds vary.

Tenderers must note that in the electronic tenderbox, there is a file size limit for each single file uploaded, and a maximum total limit for all documentation (combined) in the Tender submitted. Tenderers should familiarise themselves with those limits well in advance of the tender submission deadline..

In order to submit a Tender to the electronic tenderbox, Tenderers must ensure that they follow the necessary steps on the eTenders platform to ensure that their tender has been submitted properly, which includes ensuring that the "Submit" button has been clicked. in the event that Tenderers need to modify or change any aspect of their Tender before the Tender Deadline, the Tender in its entirety will need to be re-submitted. Tenderers should be aware that the "Submit" button will be disabled automatically at the Tender Deadline.

2.6.2 Tenders must be received not later than the time stated on the etender contract notice associated with this competition on the date stated on the etender contract notice associated with this competition (the "Tender Deadline"). Tenders that are received late WILL NOT be considered in this Competition.

2.6.3 Tenders must be submitted in Gaeilge or English.

2.6.4 Subject to paragraph 2.14 and 2.18, each Tenderer is limited to submitting one Tender in its own capacity and one Tender as part of a consortium/group of undertakings under this RFT .

2.6.5 All Tenders submitted in soft copy must be compiled such that they can be read immediately using PDF, or such other format as shall be agreed to in writing with the Contracting Authority in advance of the Tender Deadline]. The Contracting Authority is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

2.7 QUERIES AND CLARIFICATIONS

2.7.1 All queries relating to any aspect of this Competition or of this RFT must be directed to the messaging facility on www.etenders.gov.ie. Queries will be accepted no later than [the latest time for submission of queries stated on the etender contract notice associated with this competition on the date for submission of queries stated on the etender contract notice associated with this competition unless otherwise published by the Contracting Authority. For the avoidance of doubt, Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.

2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie. Where appropriate, queries may be amalgamated. Tenderers should note that the Contracting Authority will not respond to individual Tenderers privately.

2.7.3 The Contracting Authority reserves the right to issue or seek written clarifications.

2.7.4 The Contracting Authority reserves the right at any time before the Tender Deadline, to update or amend the information contained in this document and/or to extend the Tender Deadline. Participating Tenderers will be informed of any such amendment or extension through the eTenders website.

2.7.5 Tenderers should ensure that they register their interest in this Competition, by clicking on the "Accept" button on www.etenders.gov.ie, in order to receive all responses to queries and other updates in relation to this Competition.

2.8 TENDERING COSTS

2.8.1 All costs and expenses incurred by Tenderers relating to their participation in this Competition including, but not being limited to, site visits, field trials, demonstrations and/or presentations shall be borne by and are a matter for discharge by the Tenderers exclusively.

2.9 CONFIDENTIALITY

2.9.1 All documentation, data, statistics, drawings, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this Competition:

(a) are furnished for the sole purpose of replying to this RFT only;

(b) may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;

(c) shall be treated as confidential by the Tenderer and by any third parties (including subconsultants) engaged or consulted by the Tenderer; and

(d) must be returned immediately to the Contracting Authority upon cancellation or completion of this Competition if so requested by the Contracting Authority.

2.10 PRICING

2.10.1 All Tenderers must complete the Pricing Schedule at Appendix 2 to this RFT.

2.10.2 All prices quoted must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.

2.10.3 Tenderers must confirm that all prices quoted in the Tender will remain valid for 180 days commencing from the Tender Deadline.

2.10.4 Any currency variations occurring over the term of the Services Contract shall be borne by the Tenderer.

2.10.5 Payments for Services provided pursuant to this RFT shall be subject to and made in accordance with the Services Contract at Appendix 5 to this RFT.

2.10.6 *Not Used*

Tenderers should note that prices may be increased or decreased only on the first anniversary of the Effective Date of the Services Contract (as defined in the Services Contract) and on subsequent anniversaries of the Effective Date thereafter, and then only

by the percentage by which the n/a has increased or decreased in the edition of that index published by the n/a most recently prior to that anniversary.

2.11 ENVIRONMENTAL, SOCIAL AND LABOUR LAW

2.11.1 In the performance of any Services Contract awarded, the successful Tenderers and their Subconsultants (if any), shall be required to comply with all applicable obligations in the field of 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 or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.

2.11.2 Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.

2.11.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the "2012 Act") provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the Services will involve the provision to the Contracting Authority of Agency Workers (within the meaning of the 2012 Act), Tenderers should ensure that they consider their obligations under the 2012 Act when pricing their Tender. The Contracting Authority shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the Services.

2.12 PUBLICITY

No publicity regarding this Competition or any Services Contract pursuant to this Competition is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

2.13 REGISTRABLE INTEREST

Any Registrable Interest involving any Tenderer or Subconsultant and the Contracting Authority, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority and their relatives must be fully disclosed in the Tender or, in the event of this information only coming to the notice of the Tenderer or Subconsultant after the submission of a Tender, must be communicated to the Contracting Authority immediately upon such information becoming known to the Tenderer or Subconsultant.

The terms "Registrable Interest" and "Relative" shall be interpreted as per Section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.ie. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Services Contract entered into by a Tenderer.

2.14 ANTI-COMPETITIVE CONDUCT

Tenderers' attention is drawn to the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a criminal offence for Tenderers to collude on prices or terms in a public procurement competition.

2.15 INDUSTRY TERMS USED IN THIS RFT

Where reference is made to a particular item, source, process, trademark, or type in this RFT then all such references are to be given the meaning generally understood in the relevant industry and operational environment.

2.16 FREEDOM OF INFORMATION

2.16.1 Tenderers should be aware that, under the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, information provided by them during this Competition may be liable to be disclosed.

2.16.2 Tenderers are asked to consider if any of the information supplied by them in their Tender should not be disclosed because of its confidentiality or commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Tenderers must, when providing such information, clearly identify the specific sections of their Tender containing such information and specify the reasons for its confidentiality or commercial sensitivity. For the avoidance of doubt Tenderers may not assert confidentiality or commercial sensitivity over the entire Tender but must clearly identify the specific section containing such information. If Tenderers do not identify information as confidential or commercially sensitive, it is liable to be released in response to a request under the above legislation without further notice to or consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about confidential or commercially sensitive information so identified before making its decision on a request received. The Contracting Authority 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.

2.17 TAX CLEARANCE

It will be a condition of any Services Contract pursuant to this Competition that the successful Tenderer(s) shall, for the term of such contract(s), comply with all applicable EU and domestic tax laws. Tenderers are referred to www.revenue.ie for further information. Prior to the award of any Services Contract arising out of this Competition the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online.

2.18 CONFLICTS OF INTEREST

Any conflict of interest or potential conflict of interest on the part of a Tenderer, Subconsultant or individual employee(s) or agent(s) of a Tenderer or Subconsultant(s) must be fully disclosed to the

Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. Tenderers are required to declare that the preparation of their Tender was carried out independently. In the event of any actual or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict of interest might be removed and in circumstances where there are links between Tenderers, the Contracting Authority may seek further information to confirm the Tenders have been prepared independently. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or any Mini-Competition or terminating any Framework Agreement or Services Contract entered into by a Tenderer.

2.19 WITHDRAWAL FROM THIS COMPETITION

Tenderers are required to notify the Contracting Authority immediately via the e-tenders website, if at any stage they decide to withdraw from this Competition.

2.20 SITE VISIT

2.20.1 *Not Used*

2.20.2 *Not Used*

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2.21 INSURANCE

2.21.1 The successful Tenderer shall be required to hold for the term of the Services Contract the following insurances:

Type of Insurance	Indemnity Limit
Employer's Liability	€13,000,000 limit for any one claim or series of claims arising out of a single occurrence
Public Liability	€6,500,000 limit for any one claim or series of claims arising out of a single occurrence
Product Liability	
Professional Indemnity	€350,000 in respect of annually renewable Professional Indemnity policy, against liability for losses due to professional negligence.limit for any one claim or series of claims arising out of a single occurrence for each and every claim or series of claims arising out of the same originating cause. Insurnace to be in place from start to completion of the Services; and for six years from completion of the Services subject to reasonable adjustment of cover for any exceptional increases in insurance market rates

2.21.2 By signing the Tenderer's Statement at Appendix 3, Tenderers confirm that, if awarded a Services Contract under this Competition, (i) they will, from the Effective Date of the Services Contract (as defined in the Services Contract), obtain and hold the types and levels

of insurance as specified at paragraph 2.21.1, (ii) the territorial limits and jurisdiction of its insurance policies include Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the Tenderer's insurance company or broker to this effect will be requested from the successful Tenderer(s) prior to the award of (and shall be a condition of) any Services Contract.

2.21.3 The successful Tenderer will, during the term of the Services Contract, be required to:

(a) immediately advise the Contracting Authority of any material change to its insured status;

(b) produce proof of current premiums paid upon request;

(c) produce valid certificates of insurance upon request.

Part 3: Selection and Award Criteria

3.1 COMPLIANT TENDERS

3.1 Only those Tenderers who have:-

(a) Submitted compliant Tenders pursuant to paragraph 2.2 above, and

(b) Declared by way of eESPD that either:

(i) no mandatory grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Regulations apply to them, or

(ii) in circumstances where any mandatory exclusion grounds apply to the Tenderer (and where the Tenderer is not precluded from doing so under Regulation 57(17) of the Regulations), that it can provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability despite the existence of any such relevant exclusion ground, and

(c) Declared by way of eESPD that they satisfy the selection criteria for this Competition as set out in part 3.2 below (the "Selection Criteria"), will be evaluated in accordance with the Award Criteria at part 3.3 below.

However, please note that the Contracting Authority also reserves the right to exclude from evaluation a Tenderer to whom a discretionary ground for exclusion pursuant to Regulation 57 of the Regulations applies.

Tenderers should note that where a Tenderer is relying on the capacity of other entities (for example, Subconsultants) for the purposes of fulfilling any of the Selection Criteria in part 3.2 below it must ensure that each such entity:

(i) completes and submits a separate eESPD in respect of each such entity, and

(ii) when requested by the Contracting Authority, submit proof, to the satisfaction of the Contracting Authority, that each such entity will place the necessary resources at the disposal of the Tenderer.

Where a Tenderer (Prime Consultant) intends to subcontract any share of any Contract to a Subconsultant, but is not relying on the capacity of such Subconsultant for the purposes of fulfilling any of the Selection Criteria in part 3.2 below, it must ensure that each such Subconsultant submits a separate eESPD in respect of such Subconsultant completing those sections of the eESPD which are specified in section 2.D of the eESPD for this Competition.

The Contracting Authority may decide to examine Tenders before verifying the absence of exclusion grounds in Regulation 57 of the Regulations (the "Exclusion Grounds") and the fulfilment of the Selection Criteria.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit any or all of the following for the purposes of verification of the status of the Tenderer (including the Prime Consultant and any Subconsultant):

(i) a Declaration in the form attached at Appendix 4;

(ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;

(iii) in the case of the Prime Consultant and any Subconsultant on whose capacity the Prime Consultant relies, all or any of the supporting documents specified at paragraph 3.2 below;

(iv) information concerning the Tenderer, and any proposed subconsultants, for the purposes of Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the legal person is established; and

(v) information concerning the origin of goods, if any, for the purposes of assessing compliance with Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

If a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion Ground and (iii) that it does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576) and (iv) that the origin of goods, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) then it shall be excluded from further participation in this Competition.

If a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subconsultant on whose capacity the Prime Consultant relies of the Selection Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds in respect of any Subconsultant, or the reliability of any Subconsultant despite the existence of a relevant Exclusion Ground and (iii) that any proposed Subconsultant on whose capacity the Tenderer relies (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576) then, it shall be excluded from further participation in this Competition *unless* it replaces the Subconsultant with one which meets all relevant requirements of this RFT.

3.2 SELECTION CRITERIA

3.2 Tenderers will either pass OR fail each of the Selection Criteria in this part 3.2. A Tenderer who fails a selection criterion will be excluded from participating in this Competition.

3.2.A **Economic and Financial Standing**

Tenderers must declare by way of eESPD that they satisfy the financial and economic standing requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case.

Tenderers must submit copies of their annual accounts (audited, if required by law) for the 3 most recent financial years which demonstrates that the Tenderer has had an average annual turnover of more than €100,000 in each of the three most recent financial years OR if the company has been trading less than three years, reassurance of company's financial and operational bona fides, in a form which is acceptable to the Contracting Authority, must be provided.

Tenderers must provide the supporting documentation specified above without delay when requested by the Contracting Authority. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation, the Tenderer must inform the Contracting Authority of the valid reason as to why the documentation cannot be supplied and, if the Contracting Authority considers the reason given to be valid, provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

3.2.B **Technical and Professional Ability**

Tenderers must declare by way of eESPD that they satisfy the technical and professional requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case.

Tenderers must demonstrate their capability to successfully complete the proposed assignment by providing evidence, using the forms included in Appendix 1, of having successfully completed three (3) similar projects within the past five (5) years.

Tenderers must provide the supporting documentation specified above without delay when requested by the Contracting Authority.

3.3 AWARD CRITERIA

3.3.1 The Services Contract will be awarded on the basis of the most economically advantageous tender(s) as identified in accordance with the following criteria:

Quality 70%/Price 30%

Quality Assessment (70% of overall marks)	Score (0-5)	Weighting	Max Total Marks
CRITERION A - PROJECT MANAGEMENT AND DELIVERY A written submission of not more than 2000 words shall be submitted specifically addressing the Tenderer's proposals for the efficient management and delivery of this project, detailing the appropriateness of the skill balance and time commitment of the Tenderer's proposed team, the team structure together with the educational and professional qualifications and relevant experience of each of the proposed team members. An organisation chart and curriculum vitae of all team members, highlighting their previous experience of undertaking similar assignments, shall be included (these shall not contribute to the 2000 word count referred to above).		X30	150
CRITERION B - UNDERSTANDING OF REQUIREMENTS AND METHODOLOGY FOR DELIVERY A written submission of not more than 4000 words demonstrating a thorough appreciation and understanding of the objectives and the scope of the engagement, identifying the critical issues, detailing the studies/surveys and modelling to be undertaken by the Tenderer if successful in the competition, and describing the Tenderer's proposals for consultation with the various stakeholders.		X60	300
CRITERION C - PROGRAMME A detailed, resourced programme to include timelines for project familiarisation, stakeholder consultation, data acquisition and assessment, developing proposed solutions, financial and economic appraisals and milestones for deliverables with critical pathways identified.		X30	150
CRITERION D: GREEN PUBLIC PROCUREMENT A written submission of not more than 500 words, which demonstrates to the Contracting Authority		X20	100

that the Tenderer is committed to take practical and reasonable measures to reduce their carbon footprint when delivering the proposed service.			
Total Potential Qualitative Marks			**700**

Marks will be awarded for the quality of the offer made by each Tenderer in respect of each of the Criteria A to D, inclusive, on a comparative basis, using the following scoring methodology:

SCORE	Characteristics of submission from Tenderer
5	• Excellent response to the criterion with no weaknesses. • Response is comprehensive, demonstrates a thorough understanding of the requirement, and clearly and unambiguously details how the requirement will be fully met.
4	• Good response to the criterion with few weaknesses. • Response is sufficiently detailed to demonstrate a good understanding and details how the requirements will be fulfilled.
3	• Provides a compliant response to the criterion but lacks specific information or analysis on some aspects to award a higher mark. • Strengths outweigh weaknesses.
2	• The treatment of the criterion is limited in detail, and there are doubts about particular points. • The understanding of the requirement and delivery method is not fully demonstrated. • Medium risk that the proposed approach will not be successful. • Weaknesses and risks outweigh strengths.
1	• The evaluation panel has major reservations about the response to the criterion, and there is insufficient detail to award a higher mark. • Weaknesses far outweigh the strengths.
0	• Response fails to provide sufficient detail to allow the panel to assess the response against the criterion. • Unacceptable response with serious deficiencies. • There is a high risk that the proposed approach will fail. • Minimal evidence was provided against the criteria.

The score awarded to each Tenderer for each criterion shall be multiplied by the weighting allocated to that criterion to arrive at the Tenderer's mark for that criterion. The total marks for Quality for each Tenderer shall be calculated by adding that Tenderer's marks for each of the criteria A to D, inclusive.

Tenderers must clearly identify on each page of their tender submission which, if any, of the above criteria the information on the page relates to, by using the words "CRITERION A", "CRITERION B", "CRITERION C" or "CRITERION D", as applicable at the top right hand corner of each applicable page. A page which does not clearly identify the criterion to which it relates may not be assessed under any of the above criteria.

Tenderers who are awarded a score of 0 or 1 in any of the criteria will be automatically eliminated from the competition.

Price Assessment (30%)

The price element of the submission will be scored from a maximum of 300 marks. Tenderers are required to provide a fixed price, lump sum, all-inclusive Tender Sum in the Form of Tender in Appendix 2 which will be used to determine marks for the Price criterion as follows:

A price assessment shall not be carried out for any Tenderer who has been eliminated from the competition.

The Tenderer with the lowest Tender Sum shall be awarded full marks for the Price criterion. All other Tenderers who have not been eliminated from the competition will be awarded marks for the Price criterion by dividing the Tender Sum of the Tenderer with the lowest Tender Sum by the Tender Sum of the Tenderer being considered and then multiplying the result by the maximum mark for the Price criterion.

A Tender Sum of zero or "nil" or "no cost" or the likes shall be allocated Tender Sum of €1 for the purpose of carrying out the Price assessment only.

Combined Quality and Price Assessment

The Quality marks and Price marks for each Tenderer not eliminated from the competition will be added together to arrive at an overall mark for each Tenderer. The Tender submitted by the Tenderer with the highest overall mark so calculated shall be considered to be the most economically advantageous tender.

If for any reason it is not possible to award the contract to the designated successful Tenderer emerging from this competitive process, or if the Contracting Authority considers that the successful Tenderer has not met its obligations, the contracting authority reserves the right to award the contract to the next highest scoring Tenderer on the basis of the terms advertised. This shall be without prejudice to the rights of the Contracting Authority to cancel this competitive process and/or initiate a new tender competition at its sole discretion.

3.3.2 Subject to paragraphs 2.1 (Important Notices) and 3.5 (Standstill Period) of this RFT, award of the Services Contract to the highest ranked Tenderer (as determined by paragraph 3.3.1) will be conditional upon:

(a) the Tenderer submitting the following evidence in respect of the Tenderer (including the Prime Consultant and any Subconsultants, as applicable in accordance with paragraph 3.1 above) to the extent not already provided, within seven (7) days of request by the Contracting Authority: (i) a Declaration in the form attached at Appendix 4; (ii) if applicable, evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground; (iii) all or any of the supporting documents specified at paragraph 3.2; and

(b) the evidence specified at paragraph 3.3.2(a) above demonstrating that each entity concerned meets the Selection Criteria and the compliance requirements specified at paragraph 3.1(b) and (c) above.

3.4 PRESENTATION OF PROPOSALS

Tenderers may be required to make a presentation of the proposal contained in their Tender. The Contracting Authority will not be responsible for the cost of such presentations (in accordance with paragraph 2.8). Performance at presentations will NOT be evaluated.

3.5 STANDSTILL PERIOD

3.5.1 In circumstances where the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010), as amended by the European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory Instrument 192 of 2015) and the European Communities (Public Authorities' Contracts (Review Procedures) (Amendment) Regulation 2017 (Statutory Instrument 327 of 2017) apply, no contract can or will be executed or take effect until at least fourteen (14) calendar days after the day on which the Tenderers have been sent a notice informing them of the result of this Competition ("Standstill Period") if such notice is sent by electronic means. The Standstill Period shall be sixteen (16) calendar days if such notice is sent by other means. The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.

3.5.2 Tenderers should note that the Contracting Authority may, when notifying Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the preferred bidder in respect of each award criterion assessed by the Contracting Authority.

3.6 RETURN OF SIGNED CONTRACTS

3.6.1 The successful Tenderer must sign and return the Services Contract and the Confidentiality Agreement, both in duplicate, to the Contracting Authority no later than 20 calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing by the Contracting Authority. A signed Services Contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Services Contract in accordance with paragraph 2.1.2 above.

3.6.2 Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period as specified at paragraph 3.6.1 then the Contracting Authority may proceed to award the Services Contract to the next highest-ranked Tenderer in accordance with paragraph 3.6.1 above.

Appendix 1: Requirements and Specifications

Tenderers must address each of the issues and requirements in this part of the RFT and submit a detailed description in each case which demonstrates how these issues and requirements will be dealt with / met and their approach to the proposed delivery of the Services. A mere affirmative statement by the Tenderer that it can/will do so or a reiteration of the tender requirements is NOT sufficient in this regard.

INTRODUCTION

Naíonra Garbháin was established in 1981 as an early-immersion Irish-language based educational setting for pre-school children in Dún Garbhán and the surrounding areas. Dún Garbhán is a Baile Seirbhíse Gaeltachta (Gaeltacht Service Town). Naíonra Garbháin provides education and childcare services for people from the Gaeltacht who do not have access to housing in An Rinn or An Sean Phobal and who live in the surrounding area.

Naíonra Garbháin is managed by a voluntary committee known as Croí na nÓg. As it is located immediately adjacent to the Irish-language based primary school, Scoil Gharbháin, progression from the Naíonra to the primary school is seamless and therefore the Naíonra is an important foundation and integral part of life on the Scoil Gharbháin campus.

The Naíonra operates three morning sessions at present (8:45 am – 12 noon) and one afternoon session (12noon - 3pm), catering for children in the 2 years 8months to 5 years age group. Gaeilge is the language of the Naíonra and the programme of total immersion begins in the Naíonra, and is continued through to Scoil Gharbháin.

Children in the Naíonra learn through the medium of play

- Games
- Sand and water
- Playing with toys
- Role play
- Rhymes and songs
- Art and crafts
- Nature walks
- Visits to the library and excursions in our local community

Naíonra Garbhán is registered with Gaeloideachas and also with the ECCE scheme.

The current Naíonra is accommodated in a two-classroom building constructed in 2008 and a newly constructed, one-classroom facility constructed in 2026. The latter replaced an old prefabricated building which had fallen into a state of disrepair due to its age.

As the population of the town of Dún Garbháin, and in particular the area adjacent to the Naíonra, continues to grow, Croí na nÓg wishes to ensure that the facilities provided in the town of Dún Garbháin are sufficient to cater for the demand for Irish-language based education for pre-school children in the town. It also wishes to ensure that suitable facilities are available to cater for the demand for Irish-language based pre- and post-school services in the area. The latter is particularly important as a significant number of parents of primary school travel into Dún Garbháin on a daily basis for employment and are likely to avail of such services if they were available.

Croí na nÓg have recently purchased lands immediately adjoining the Department of Education and Skills lands upon which Scoil Gharbháin is constructed and wish to ensure that the lands are utilised in the most efficient manner possible to meet the Irish-language based early education and pre/post school service demands of the area.

PURPOSE

The Strategic Assessment and Preliminary Business Case to which this tender process relates will explore options for solutions to meet the needs identified for the town of Dún Garbháin in relation to the Irish-language based early education and pre/post school services, and shall identify the most appropriate solution based on the methodology set out in the Infrastructure Guidelines.

While the objectives and delivery methodology will ultimately be agreed between the appointed Consultant and Croí na nÓg as part of the Strategic Assessment stage of the appointment, it is expected that the Consultant will, as a minimum, be required to carry out the following:

- assess the demand for services in the town of Dún Garbháin by undertaking research and surveys to determine the likely needs over a minimum 30-year timeframe (Appendix 7 contains a document prepared by Waterford County Council which is provided for information purposes only);
- identify a long list of options to meet the identified demand;
- assess opportunities to collaborate with other interested and compatible parties;
- assess the construction and operating costs of various proposed options;
- assess capital and current funding strategies, and identify potential income streams for both;
- assess the educational, social and economic benefits for the area that would result from the various options considered for the proposed facilities;
- prepare a Preliminary Business Case which identifies a preferred option to deliver on the needs identified during the Strategic Assessment stage of the assignment.

SCOPE OF SERVICES

The Consultant shall undertake a Strategic Assessment of options to meet the demand identified by it for Irish-language based early education and pre/post school services in the town of Dún Garbháin. For the avoidance of doubt, the demand shall, in addition to that identified for current and future residents of the town, also include the demand for such services from those who travel to the town for employment.

If the rationale set out in the Strategic Assessment are sufficient to warrant a public policy intervention and are aligned with national and sectoral policy, the Consultant shall, when permitted by the Client, proceed to prepare a Preliminary Business Case which shall be based on and which shall incorporate the Strategic Assessment. The Strategic Assessment and Preliminary Business Case shall be prepared in accordance with the Infrastructure Guidelines: A Guide to the Strategic Assessment and Preliminary Business Case (SAPBC Guidelines) as issued by the Department of Public Expenditure, National Development Plan Delivery and Reform and additional requirements and clarifications set out in this document.

The Approving Authority shall be the Department of Rural and Community Development and the Gaeltacht or such other Government Department as may be advised from time to time by the Client. The Client shall be the Sponsoring Agency.

Where the SAPBC Guidelines refers to an action or task to be undertaken by a Sponsoring Agency, this shall be taken to be an action or task to be performed by the Consultant.

Notwithstanding the statement in the first paragraph of section 1.2 of the SAPBC Guidelines, the strategic assessment elements of the Preliminary Business Case shall be carried out in this case regardless of the estimated cost of the proposed solutions identified.

Notwithstanding the statement in the first paragraph of section 1.10 of the SAPBC Guidelines, an economic appraisal shall be carried out in this case. The Consultant shall engage with the Sponsoring

Agency and the Approving Authority to agree on the choice of appropriate appraisal methodology as part of the discussion on the appraisal plan during the Strategic Assessment stage.

The Consultant shall be required to agree the objectives, as referenced in 1.2.2 of the SAPBC Guidelines, with the Sponsoring Agency before proceeding with the Strategic Assessment.

The Consultant shall, at the initial stages of the Strategic Assessment, carry out surveys and research to assess the need Irish-language based early education and pre/post school services in the town of Dún Garbháin relevant to the remit of Croí na nÓg (the Client). The surveys and research shall be undertaken using existing educational, social and economic data supplemented by surveys to be designed and carried out by the Consultant. The purpose of the surveys and research is to establish the demand for Irish-language based early education and pre/post school services in the town of Dún Garbháin. The content and purpose of surveys to be carried out by the Consultant, and an explanation as to why the Consultant believes it shall obtain data in an objective manner, shall be discussed and agreed with the Client in advance of undertaking any survey.

When developing a long list of options to meet the demand for services, the potential demand for a period of at least 30 years into the future shall be considered.

For the purpose of developing the long-list described in the SAPBC Guidelines, the Consultant will be required to hold workshops and consultations with stakeholders as envisaged in 1.2.5 of the SAPBC Guidelines. In this regard, stakeholders shall include but shall not be limited to community groups, local schools, government departments and agencies, the local authority and potential alternative providers and users of the service needs identified as a result of the Consultant's research and surveys.

Where notifications for public meetings are required, these shall be bi-lingual (text in Irish shall appear first and shall be as prominent, visible and legible as the text in English and shall communicate the same information) and shall be issued at least 10 working days in advance of the meeting date. Notifications shall be posted at prominent locations in the area and shall be advertised on local radio and Raidió na Gaeltachta. The Consultant shall ensure that at least one member of the Consultant's personnel present at public meetings or at meetings with community groups shall be capable of communicating with attendees/participants in the Irish language. As an alternative, the Consultant shall arrange for simultaneous translation services to be provided.

Before assessing the long-list of options as envisaged in 1.2.5 of the SAPBC Guidelines, the Consultant shall agree the assessment methodology with the Client having first provided a report to the Client setting out the advantages and disadvantages of potential assessment methodologies, and recommending the most suitable methodology for this case. In this regard, the methodology will be expected to include the social, cultural and economic impacts of the proposed facility related to the remit of the Client, should the needs assessment identify a demand for such a facility.

The Consultant shall be required to send a Draft Strategic Assessment Report detailing the strategic assessment carried out by the Consultant to the Client at least two weeks prior to the workshop/meeting at which the Consultant shall present the contents of the Draft Strategic Assessment Report to the Sponsoring Agency and the Approving Authority. The Client shall share the Draft Strategic Assessment Report with the Approving Authority in advance of the workshop/meeting. Not later than one week after the workshop/meeting, the Consultant shall send a Strategic Assessment Report which shall be based on the Draft Strategic Assessment Report, and which addresses any queries arising at the workshop/meeting, to the Client. The Client shall submit the Strategic Assessment Report to the Approving Authority for their assessment in relation to proceeding to prepare a Preliminary Business Case. The Consultant shall allow a period of at least four weeks for the

completion of the assessment of the Strategic Assessment Report by the Approving Authority. The Client shall advise the Consultant of the outcome of the Approving Authority's assessment. Should the Client advise the Consultant that it has been decided to proceed with the preparation of a Preliminary Business Case, the Consultant shall proceed with its preparation without delay. In the event that the Client advises the Consultant that it has been decided not to proceed with the preparation of a Preliminary Business Case, the contract between the Client and the Consultant shall be taken to be complete.

The Preliminary Business Case shall document an objective options appraisal with outline designs that support credible cost estimates of the viable options, leading to a 'preferred solution' which is based on broad stakeholder and public engagement (including consideration of likely objection levels with the planning process) and which assesses the constructability of viable options and the feasibility of operating the preferred solution (in terms of financial and human resources) over a period of 30 years.

The Consultant shall submit a draft version of the Preliminary Business Case to the Client for review at least 4 weeks before a final copy is to be submitted in accordance with the service delivery programme. In completing the final version of the Preliminary Business Case, the Consultant shall take account of any comments or observations provided by the Client.

The Consultant shall organise meetings/workshops with the Sponsoring Agency/ Approving Authority as follows:

- to agree the objectives, as referenced in 1.2.2 of the SAPBC Guidelines, with the Sponsoring Agency, before proceeding with the strategic assessment;
- on completion of the Draft Strategic Assessment Report at which the Consultant shall present the contents of the report to the Sponsoring Agency and the Approving Authority, and address any queries arising in the Strategic Assessment Report;
- on completion of the draft Preliminary Business Case at which the Consultant shall present the contents of the report to the Sponsoring Agency and the Approving Authority, and address any queries arising.

All meetings/workshops shall take place at a location of the Consultant's choosing within a 10km radius of Dún Garbhán unless otherwise agreed with the Client.

The Consultant shall prepare a Non-Technical Summary, for publication in Irish and in English, to ensure that the public is aware of the process that has been followed and options that have been appraised in arriving at a 'preferred solution'. This shall include a description of the project, the results of the demand analysis, a summary of the options assessed, as well as the methods used for the assessment including explanations of any hurdles encountered during the process. The summary should be concise and comprehensive and should be written in language easily understood by a lay member of the public not having a technical background or an in-depth knowledge of the proposed project. It should not omit or understate any matters which may be controversial and should not use technical terms, abbreviations, references or jargon. Clear maps, plans or other illustrations should be included where they assist in conveying the contents of the Non-Technical Summary.

PROGRAMME

The Consultant shall comply with the following programme in providing the services:

Completion of Strategic Assessment Report including needs and demands	Maximum 4 months from appointment

analysis together with stakeholder consultations	
Preliminary Business Case (draft)	Maximum 7 months from appointment (includes the one month period for assessment of the Strategic Assessment Report by the Approving Authority).
Preliminary Business Case (final version)	Maximum 9 months from appointment.

Within 2 weeks of appointment, the Consultant shall submit a detailed resourced programme, as a further development of the programme included in response to Criterion "C" in 3.3 above, to the Client. The submitted programme shall demonstrate compliance with the timeframes for deliverables described above. It shall also show the dates proposed for surveys and consultations with stakeholders.

Tenderers must demonstrate their capability to successfully complete the proposed assignment by providing evidence, using the forms below, of having successfully completed three (3) similar projects within the past five (5) years.

Client name	
Comprehensive Description of services delivered	
Indication of how the services delivered are comparable with the subject matter of this competition	
Approx. Value (€)	
Date(s) delivered	
Reference Contact Details	

Appendix 2: Pricing Schedule

This Pricing Schedule must be completed, signed, and returned with the Tender via the eTenders postbox.

To: Croí na nÓg (Naíonra Garabhán)

I/we,

who have my signature/our signatures below, hereby commit to provide the proposed services as described in the tender documents for an all-inclusive, lump sum, fixed price of : € _____(excluding VAT). (the "Tender Sum")

A description in words of the amount stated _____EURO (excluding VAT)

We understand and agree that payment of the Tender Sum shall be as follows:

(a) 40% of the Tender Sum will fall due four weeks after the Consultant has delivered a completed Strategic Assessment Report that is acceptable to the Client*;

(b) an additional 30% of the Tender Sum will fall due after the Consultant has presented the content of the Preliminary Business Case to the Sponsoring Agency and the Approving Authority;

(c) the final 30% of the Tender Sum will fall due after the Consultant has delivered a completed Strategic Assessment and Preliminary Business Case that is acceptable to the Client.

* If the Client advises the Consultant that a decision has been made not to proceed with the preparation of a Preliminary Business Case, payments (b) and (c) shall not fall due.

Pricing Schedule signed by:

_____

Name and Surname (CAPITAL LETTERS)

_____

On Behalf of:

_____

Address:

_____

_____

_____

Date: _____

Appendix 3: Tenderers' Statement

[Tenderers shall complete and return the following form of Tenderers' Statement printed on the Tenderers' headed notepaper and signed by the Tenderer.]

TENDERERS' STATEMENT

TO: Croí na nÓg (Naíonra Garbháin) (the "Contracting Authority")

RE: Request for Tenders for the Supply of Consultancy Services to prepare a Strategic Assessment and Preliminary Business Case in relation to the provision of Irish-language based early-years (Naíonra) facilities in Dún Garbháin on behalf of Croí na nÓg, Naíonra Garbháin, Clais na Lachan, Dún na Mainistreach, Dún Garbháin, Co. Phort Láirge, X35 NP84

Having examined your Request for Tenders (the "RFT") including the Instructions to Tenderers, the Selection and Award Criteria, the Requirements and Specifications, and the Terms and Conditions of the Services Contract, we hereby declare the following:

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of the RFT, the Services Contract and the Confidentiality Agreement and agree if awarded a Services Contract to execute the Services Contract at Appendix 5 to the RFT and the Confidentiality Agreement at Appendix 6 to the RFT.
3. We accept all the Selection and Award Criteria as set out in Part 3 of the RFT.
4. We agree to provide the Contracting Authority with the Services in accordance with the RFT and our Tender.
5. We agree that, if awarded any Services Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out at Part 2 of the RFT.
7. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the Tender Deadline, as specified at paragraph 2.10.3 of the RFT.
8. We shall, if awarded any Services Contract under the RFT, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFT.
9. We confirm that all Data Subjects whose Personal Data is provided in our Tender have consented to the processing of such Personal Data by us, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this

Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.

10. We do not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

11. The origin of goods connected to our Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

12. The subconsultants(s) on whose capacity we rely as part of our Tender (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

SIGNED **Company**

(Authorised Signatory)

Print name **Address**

Date

Appendix 3A: Foreign Subsidies Regulation

Tenderers are referred to the provisions of Regulation (EU) 2022/2560 of the European Parliament and of the Council on Foreign Subsidies distorting the Internal Market, in addition to Commission Implementing Regulation (EU) 2023/1441, and their obligation to comply therewith. In particular, tenders and candidates should note the requirements under Articles 28 and 29 of Regulation (EU) 2022/2560 relating to the prior notification or declaration of a foreign financial contribution, where the estimated value of the public procurement procedure is equal to or greater than the applicable financial thresholds set out therein.

Where the estimated value of the public procurement procedure is equal to or greater than the financial threshold set out at Article 28 of Regulation (EU) 2022/2560, economic operators are required to comply in full with their obligations under both that Regulation and Implementing Regulation (EU) 2023/1441. In that regard, economic operators are required to complete the relevant form of declaration or notification that apply to their particular circumstances.

Appendix 3A: Schedule A – Declaration of no foreign financial contributions

[To be completed by notifying parties where the value of the procurement procedure is equal to or greater than the financial thresholds in Article 28 of Regulation (EU) 2022/2560 and where the notifying party has **not** been in receipt of any foreign financial contributions]

TO: Croí na nÓg (Naíonra Garbháin) (the "Contracting Authority")

RE: Request for Tenders for the Supply of Consultancy Services to prepare a Strategic Assessment and Preliminary Business Case in relation to the provision of Irish-language based early-years (Naíonra) facilities in Dún Garbháin on behalf of Croí na nÓg, Naíonra Garbháin, Clais na Lachan, Dún na Mainistreach, Dún Garbháin, Co. Phort Láirge, X35 NP84

We hereby declare that none of the notifying parties has been in receipt of any foreign financial contributions within the meaning of Regulation (EU) 2022/2560.

SIGNED **Notifying Party**

(Authorised Signatory)

Print name **Address**

Date

Appendix 3A: Schedule B – Declaration that any foreign financial contributions are non-notifiable having regard to the de minimis threshold

[To be completed by notifying parties where the value of the procurement procedure is equal to or greater than the financial thresholds in Article 28 of Regulation (EU) 2022/2560 and where the notifying party has been in receipt of foreign financial contributions that do not exceed *de minimis* aid as defined in Article 3(2) of Regulation (EU) 1407/2013 (i.e. €200,000) per third country over any consecutive three period]

Form FS-PP relating to the notification of financial contributions in the context of public procurement procedures pursuant to Regulation (EU) 2022/2560

1. Description of the public procurement (Section 1 of Form FS-PP)

2. Information about notifying parties (Section 2 of Form FS-PP)

3. Declaration (Section 7 of Form FS-PP)

None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560

4. Attestation (Section 8 of Form FS-PP)

The notifying party(ies) confirm(s) that, to the best of their knowledge and belief, the information given in this declaration is true, correct, and complete, that true and complete copies of documents required by this Form FS-PP have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The notifying party(ies) confirm that they aware of the provisions of Article 33 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.

Date:

[Signatory 1]	**[Signatory 2]**
Name:	Name:
Organisation:	Organisation:
Position:	Position:
Address:	Address:
Phone Number:	Phone Number:
Email:	Email:
Signed:	Signed:

Appendix 3A: Schedule C – Declaration of non-notifiable foreign financial contributions (valued between €200,000 and €999,000 in the last three years preceding the declaration)

[To be completed by notifying parties where the value of the procurement procedure is equal to or greater than the financial thresholds in Article 28 of Regulation (EU) 2022/2560 and where the notifying party has been in receipt of foreign financial contributions which are valued between €200,000 and €999,000 in the last three (3) years preceding the declaration. Notifying parties are required to complete Table 2 below and they may aggregate the foreign financial contributions without indicating their values.]

Form FS-PP relating to the notification of financial contributions in the context of public procurement procedures pursuant to Regulation (EU) 2022/2560

1. Description of the public procurement (Section 1 of Form FS-PP)

2. Information about notifying parties (Section 2 of Form FS-PP)

3. Declaration (Section 7 of Form FS-PP)

None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560

4. Attestation (Section 8 of Form FS-PP)

The notifying party(ies) confirm(s) that, to the best of their knowledge and belief, the information given in this declaration is true, correct, and complete, that true and complete copies of documents required by this Form FS-PP have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The notifying party(ies) confirm that they aware of the provisions of Article 33 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.

Date:

[Signatory 1]

Name:

Organisation:

Position:

Address:

Phone Number:

Email:

Signed:

[Signatory 2]

Name:

Organisation:

Position:

Address:

Phone Number:

Email:

Signed:

Table 2

For reporting of foreign financial contributions which are of a value between €200,000 and €999,000 in the last three (3) years preceding the declaration

Third Country	**Brief Description of the financial contributions**
Country A	
Country B	
Country C	
Country D	

Appendix 3A: Schedule D – Declaration of non-notifiable foreign financial contributions (valued between €1,000,000 and €3,999,000 in the last three years preceding the declaration)

[To be completed by notifying parties where the value of the procurement procedure is equal to or greater than the financial thresholds in Article 28 of Regulation (EU) 2022/2560 and where the notifying party has been in receipt of foreign financial contributions which are valued between €1,000,000 and €3,999,000 in the last three (3) years preceding the declaration. Notifying parties are required to complete the table below. They must list all foreign financial contributions received, to include all non-notifiable foreign contributions received in the last three (3) years preceding the declaration.]

Form FS-PP relating to the notification of financial contributions in the context of public procurement procedures pursuant to Regulation (EU) 2022/2560

1. Description of the public procurement (Section 1 of Form FS-PP)

2. Information about notifying parties (Section 2 of Form FS-PP)

3. Declaration (Section 7 of Form FS-PP)

None of the notifying parties have received foreign financial contributions notifiable under Chapter 4 of Regulation (EU) 2022/2560.

4. Attestation (Section 8 of Form FS-PP)

The notifying party(ies) confirm(s) that, to the best of their knowledge and belief, the information given in this declaration is true, correct, and complete, that true and complete copies of documents required by this Form FS-PP have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The notifying party(ies) confirm that they aware of the provisions of Article 33 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.

Date:

[Signatory 1]

Name:

Organisation:

Position:

Address:

Phone Number:

Email:

Signed:

[Signatory 2]

Name:

Organisation:

Position:

Address:

Phone Number:

Email:

Signed:

Table

For reporting of foreign financial contributions which are of a value between €1,000,000 and €3,999,000 in the last three (3) years preceding the declaration, to include all non-notifiable foreign contributions.

Third Country	**Type of Financial Contribution (FC)**	**Brief Description of the purpose of the FC and the granting entity**	**Estimated value of the FC**
Country A			
Country B			
Country C			
Country D			

Appendix 3A: Schedule E – Notification of Foreign Financial Contributions

[To be completed by notifying parties where the value of the procurement procedure is equal to or greater than the financial thresholds in Article 28 of Regulation (EU) 2022/2560 and where the notifying party has been in receipt of aggregated foreign financial contributions in the three (3) years prior to notification, valued equal to or greater than €4M per third country].

1. Description of the public procurement (Section 1 of Form FS-PP)

2. Information about notifying parties (Section 2 of Form FS-PP)

3. Foreign Financial Contributions – (Section 3 of Form FS-PP)

3.1 For the purposes of this section 3.1, the notifying party(ies) should report foreign financial contributions falling into the scope of Article 5(1), points (a), (b), (c) and (e) of Regulation (EU) 2022/2560, which are amongst the most likely to distort the internal market.

3.1.1. In order to allow the Commission to determine whether a foreign financial contribution has been granted to an undertaking that was ailing within the meaning of Article 5(1)(a) of Regulation (EU) 2022/2560, notifying parties should indicate whether any of the following conditions were met at any point of time in the three years prior to the notification.

3.1.1.1. Is the notifying party a limited liability company, where more than half of its subscribed share capital has disappeared as a result of accumulated losses?

☐ yes ☐ no

3.1.1.2. Is the notifying party a company where at least some members have unlimited liability for the debt of the company, and where more than half of its capital as shown in the company accounts has disappeared as a result of accumulated losses?

☐ yes ☐ no

3.1.1.3. Is the notifying party subject to collective insolvency proceedings or does it fulfil the criteria under its domestic law for being placed in collective insolvency proceedings at the request of its creditors?

☐ yes ☐ no

3.1.1.4. In the case the notifying party in question is not an SME:

3.1.1.4.1. has the notifying party's book debt to equity ratio been greater than 7,5 for the past two years

and

3.1.1.4.2. has the notifying party's EBITDA interest coverage ratio been below 1,0 for the past two years?

☐ yes ☐ no

3.1.1.5. If the reply to any of the questions in sections 3.1.1.1 to 3.1.1.4 was 'yes' in relation to any of the notifying parties, please indicate whether during the period in which the undertaking in question was ailing, it received any foreign financial contributions that may have contributed to restore its long-term viability (including any temporary liquidity assistance designed to support that restoration of viability) or to keep that party afloat for the short time needed to work out a restructuring or liquidation plan.

Notifying party(ies) ☐ yes ☐ no

3.1.1.6. If the reply to any of the questions in sections 3.1.1.1 to 3.1.1.4 was 'yes' in relation to any of the notifying parties, indicate if there is a restructuring plan capable of leading to the long-term viability of that party and if this restructuring plan includes a significant own contribution by the notifying party and provide details of that plan.

3.1.1.7. If the reply to any of the questions in points 3.1.1.1 to 3.1.1.4 was 'yes', please substantiate the answer, including references in the answer to the supporting evidence or documents that are to be provided in annexes (such documents may include, but are not limited to, the notifying party's latest profit and loss account statements with balance sheets, or court decision opening collective insolvency proceedings on the company or documents providing evidence that the criteria for being placed under insolvency proceedings at the request of creditors under national company law are met, etc.).

3.1.2. Has the notifying party been in receipt of a foreign financial contribution in the form of an unlimited guarantee for the debts or liabilities of the undertaking, namely without any limitation as to the amount or the duration of such guarantee (Article 5(1)(b)) of Regulation (EU) 2022/2560.

☐ yes ☐ no

3.1.3 Has the notifying party been in receipt of an export financing measure that is not in line with the OECD Arrangement on officially supported export credits (Article 5(1)(c)) of Regulation (EU) 2022/2560.

☐ yes ☐ no

3.1.4. Has the notifying party been in receipt of a foreign financial contribution enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract (Article 5(1)(e)) of Regulation (EU) 2022/2560.

☐ yes ☐ no

3.2. For each foreign financial contribution equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560, the notifying party must provide the following information and provide supporting documents:

3.2.1. Form of the financial contribution (e.g. loan, tax exemption, capital injection, fiscal incentive, contributions in kind, etc.).

3.2.2. Third country granting the financial contribution. Specify also the granting public authority or entity.

3.2.3. Amount of each financial contribution.

3.2.4. Purpose and economic rationale for granting the financial contribution to the party

3.2.5. Whether there are any conditions attached to the financial contributions as well as its use.

3.2.6. Describe the main elements and characteristics of those financial contributions (e.g. interest rates and duration in the case of a loan).

3.2.7. Explain whether the financial contribution confers a benefit within the meaning of Article 3 of Regulation (EU) 2022/2560 to the undertaking to which the foreign financial contribution has been granted. Please explain why, with reference to the supporting documents provided under Section 6 (below).

3.2.8. Explain whether the financial contribution is limited in law or in fact, within the meaning of Article 3 of Regulation (EU) 2022/2560, to certain undertakings or industries. Please explain why, with reference to the supporting documents provided under Section 6 (below).

3.2.9. Explain if the financial contribution is granted only for operating costs exclusively linked with the public procurement at stake.

3.3 Having regard to foreign financial contributions not falling within the categories set out in Section 3.1 above, notifying parties are required to provide an overview of the foreign financial contributions equal to or in excess of EUR 1 million granted to the notifying parties in the three years prior to the notification that do not fall into any of the categories of Article 5(1), points (a) to (e) of Regulation (EU) 2022/2560. In that regard, notifying parties are required to complete Table 1 below. Notifying parties should follow the instructions provided at Section 8 (Annex II) of Commission Implementing Regulation (EU) 2023/1441.

Table 1

Information to be included in Table 1 below by notifying parties.

(i) Group the different financial contributions per third country and per type, such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation (EU) 2022/2560), or other.

(ii) Include only those countries where the estimated aggregate amount of all financial contributions per country granted in the three years prior to the notification (calculated according to point (iv) below is EUR 4 million or more.

(iii) For each type of financial contribution, provide a brief description of the purpose of the financial contributions and the granting entities.

(iv) Quantify the estimated aggregate amount of financial contributions granted by each third country in the three years prior to the notification in the form of ranges, as specified in the notes to the Table below. For the calculation of this amount, the following considerations are relevant:

(a) Take into account foreign financial contributions falling into the categories of Article 5(1) of Regulation (EU) 2022/2560 and on which information has been provided under Sections 3.1 and 3.2 (above) and;

(b) do not take into account foreign financial contributions excluded according to points (v) and (vi) below

(v) Notifying Parties do not need to include (in the Table below) a description of the following foreign financial contributions:

(a) Deferrals of payment of taxes and/or of social security contributions, tax amnesties and tax holidays as well as normal depreciation and loss-carry forward rules that are of general application. If these measures are limited, for example, to certain sectors, regions or (types of) undertakings, they have to be included.

(b) Application of tax reliefs for avoidance of double taxation in line with the provisions of bilateral or multilateral agreements for avoidance of double taxation as well as unilateral tax reliefs for avoidance of double taxation applied under national tax legislation to the extent they follow the same logic as the provisions of bilateral or multilateral agreements.

(c) Provision/purchase of goods/services (except financial services) at market terms in the ordinary course of business, for example the provision/purchase of goods or services carried out following a competitive, transparent and non-discriminatory tender procedure.

(d) Foreign financial contributions below the individual amount of EUR 1 million.

(vi) The foreign financial contributions that may be relevant for the assessment of each public procurement may depend on a number of factors such as the sectors or activities involved, the type of financial contributions or other specificities of the case. In light of these specificities, the Commission may request additional information where it considers such information necessary for its assessment.

Third Country	Type of Financial Contribution (FC)*	Brief Description of the purpose of the FC and the granting entity**	Total Estimated value of the FC granted***
Country A			
Country B			
Country C			
Country D			

Note: please provide a separate table for each of the notifying parties. Third countries and, where possible, types of contributions, should be ordered by total amount of foreign financial contribution, from the highest to the lowest.

* Identify the financial contributions grouping them by type: such as direct grant, loan/financing instrument/repayable advances, tax advantage, guarantee, risk capital instrument, equity intervention, debt write-off, contributions provided for the non-economic activities of an undertaking (see recital 16 of Regulation 2022/2560), or other. (

** General description of the purpose of the financial contributions included in each type and of the granting entity(ies). For instance, 'tax exemption for the production of product A and R & D activities', 'several loans with State-owned banks for purpose X', 'several financing measures with State investment agencies to cover operating expenses/for R & D activities', 'public capital injection in Company X'.

*** Use the following ranges: 'EUR 45-100 million', 'EUR > 100-500 million', 'EUR > 500-1 000 million', 'more than EUR 1 000 million'

4. Justification for absence of unduly advantageous tender – (Section 4 of Form FS-PP)

4.1 For any of the foreign financial contributions enabling an undertaking to submit an unduly advantageous tender on the basis of which the undertaking could be awarded the relevant contract (Article 5(1)(e) of Regulation (EU) 2022/2560), are there any elements which can be adduced to demonstrate that the tender is not unduly advantageous directly or indirectly due to the financial contribution(s) received, including the elements referred to in Article 69(2) of Directive 2014/24/EU.

In that regard, notifying parties should detail any elements that in their view may demonstrate that their tender is not unduly advantageous.

4.2 The elements may in particular refer to:

4.2.1. The economics of the manufacturing process, of the services provided or of the construction method;

4.2.2. The technical solutions chosen or any exceptionally favourable conditions available to the tenderer for the supply of the products or services or for the execution of the work;

4.2.3. The originality of the work, supplies or services proposed by the tenderer;

4.2.4. Compliance with applicable obligations in the fields of environmental, social and labour law;

4.2.5. Compliance with obligations regarding subcontracting.

5. Possible Positive Effects - (Section 5 of Form FS-PP)

5.1 If applicable, notifying parties should list and substantiate any possible positive effects on the development of the relevant subsidised economic activity on the internal market. Notifying parties should also list and substantiate any other positive effects of the foreign subsidies, such as broader positive effects in relation to the relevant policy objectives, in particular those of the Union, and specify when and where those effects have or are expected to take place. Notifying parties should provide a description of each of those positive effects.

6. Supporting Documentation – (Section 6 of Form FS-PP)

Notifying parties are required to provide the following for each notifying party:

6.1. Copies of all the supporting official documents relating to the financial contributions that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560 pursuant to Section 3.1.

6.2. Copies of the following documents prepared by or for or received by any member of the board of management, the board of directors or the supervisory board:

Analyses, reports, studies surveys, presentations and any comparable documents discussing the purpose, use and economic rationale of the foreign financial contributions that may fall into any of the categories of Article 5(1), points (a) to (c) and (e) of Regulation (EU) 2022/2560.

Provide the same documents prepared by or for or received by the entity granting the foreign financial contribution to the extent that they are in your possession or that they are publicly available.

6.3. An indication of the internet address, if any, at which the most recent annual accounts or reports of the notifying party(ies) are available, or if no such internet address exists, copies of the most recent annual accounts and reports.

6.4. Where the notifying party(ies) provide(s) justifications of the absence of an undue advantage of the tender by filling in Section 4 of this form, they also need to provide documentation for the period covering the three years preceding the notification, substantiating the adduced elements. Such documentation may include, inter alia, as relevant: (a) tax declarations for the period under review, including copies of company tax returns and VAT returns, (b) business plans and market research underlying the decision to participate in the public procurement procedure.

7. Attestation (Section 8 of Form FS-PP)

The notifying party(ies) confirm(s) that, to the best of their knowledge and belief, the information given in this declaration is true, correct, and complete, that true and complete copies of documents required by this Form FS-PP have been supplied, that all estimates are identified as such and are their best estimates of the underlying facts, and that all the opinions expressed are sincere.

The notifying party(ies) confirm that they aware of the provisions of Article 33 of Regulation (EU) 2022/2560 concerning fines and periodic penalty payments.

Date:

[Signatory 1]	**[Signatory 2]**
Name:	Name:
Organisation:	Organisation:
Position:	Position:
Address:	Address:
Phone Number:	Phone Number:
Email:	Email:
Signed:	Signed:

Appendix 4: Declaration as to Personal Circumstances of Tenderer

Re: Request for Tenders for the Provision of Consultancy Services to prepare a Strategic Assessment and Preliminary Business Case in relation to the provision of Irish-language based early-years (Naíonra) facilities in Dún Garbháin on behalf of Croí na nÓg, Naíonra Garbháin, Clais na Lachan, Dún na Mainistreach, Dún Garbháin, Co. Phort Láirge, X35 NP84

NAME: [Click here and insert name]

ADDRESS: [Click here and insert address]

I, [Click here and insert name of Declarant], of [Click here and insert name of entity] do solemnly and sincerely declare that:

1. I am a [insert role of Declarant] of [Click here and insert name of entity] and am authorized by [Click here and insert name of entity] to make this declaration which relates to a tender ("the Tender") submitted by [Click here and insert name of entity] in response to an RFT dated titled [insert description of competition] published by [insert name of contracting authority] ("the Contracting Authority").

2. Neither [Click here and insert name of entity] nor any person who is a member of the administrative, management or supervisory body of [Click here and insert name of entity] nor any person who has powers of representation, decision or control in [Click here and insert name of entity] has:

    a. ever been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
    b. ever been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or the law of the state in [Click here and insert name of entity] is established.
    c. ever been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
    d. ever been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
    e. ever been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
    f. ever been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

3. [Click here and insert name of entity]:

    a. is not in breach and has not breached its obligations relating to the payment of taxes or social security contributions.

b. has carried out the preparation of the Tender independently.

4. [Click here and insert name of entity]:

   a. has, in the performance of all public contracts, complied with applicable obligations in the field of environmental social and labour law that apply at the place where the works are carried out or the services provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).
   b. is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.
   c. is not guilty of grave professional misconduct.
   d. has not entered into agreements with other economic operators aimed at distorting competition.
   e. is not aware of any conflict of interest due to its participation in the Competition;
   f. has not had any prior involvement in the preparation of the Competition;
   g. has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
   h. is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) .
   i. has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition, or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

5. [Click here and insert name of entity] does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);

6. The origin of goods connected to the Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);

7. Any subconsultant, supplier or other entity on whose capacity [Click here and insert name of entity] relies as part of the Tender does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

I understand and acknowledge that the provision of inaccurate or misleading information in this declaration may lead to my business/firm/company/partnership being excluded from participation in this or future tenders, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1938. This declaration is made for the benefit of the Contracting Authority.

_____

Signature of Declarant

Declared before me by _____ who is personally known to me

(or who is identified to me by _____who is personally known to me) or*

at _____ this _____ day of _____ 20__

_____

(signed)
Practising Solicitor/Commissioner for Oaths

Please include such other form of identification used to identify the Declarant as permitted by the Statutory Declarations Act, 1938 (as amended)

Appendix 5: Services Contract

Croí na nÓg (Naíonra Garbháin)

and

[Insert successful Tenderer's full legal name]

AGREEMENT

Relating to the provision of Services pursuant to

Request for Tenders for the provision of Consultancy Services to prepare a Strategic Assessment and Preliminary Business Case in relation to the provision of Irish-language based early-years (Naíonra) facilities in Dún Garbháin on behalf of Croí na nÓg, Naíonra Garbháin, Clais na Lachan, Dún na Mainistreach, Dún Garbháin, Co. Phort Láirge, X35 NP84

THIS AGREEMENT IS MADE ON THE [DATE E.G. 2ND] DAY OF [MONTH] 20[YEAR] BETWEEN:

Croí na nÓg (Naíonra Garbháin), of Naíonra Garbháin, Clais na Lachan, Dún na Mainistreach, Dúngharbhán, Co. Phort Láirge, X35 NP84 ("the Client");

and

[Consultant's full legal name], of [address] ("the Consultant")

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

WHEREAS:

A. By Request for Tender entitled "Insert title of RFT" advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number _____of _____dated insert date of RFT ("the RFT") the Contracting Authority invited tenders from economic operators ("Tenderers") for the provision of the services described in Appendix 1 to the RFT (the "Services"). References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie between [insert date] and [insert date] (the "RFT Clarifications"). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.

B. The Consultant submitted a response to the RFT dated [insert date of Tender] ("the Submission"). References to the Submission shall include any clarifications issued by the Consultant in writing to the Contracting Authority between [insert date] and [insert date] (the "Submission Clarifications"). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:

   i. This Agreement and Schedules A to E attached hereto;

   ii. The RFT;

   iii. The Submission.

2. The Consultant agrees to provide the Services described in Schedule B ("the Services") to the Client in accordance with this Agreement ("Agreement"). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT and the Submission ("the Specification").

3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Consultant the charges as stipulated in Schedule C ("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 Agreement, the Client's Contact is [name of contact person] of [address of contact person]; the Consultant's Contact is [Consultant contact name] of [Consultant contact address].

5. This Agreement shall take effect on the date of this Agreement ("the Effective Date") and shall expire on [Insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties ("the Term").

   Not Used

   The Client reserves the right to extend the Term for a period or periods of up to [Insert Number] months with a maximum of [Insert Number] such extensions permitted subject to its obligations at law

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.

7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.

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 Agreement, this Agreement 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 Agreement.

SIGNED for and on behalf of the Client _____ (being a duly authorised officer)	SIGNED for and on behalf of the Consultant _____
Witness	Witness

Schedule A: Terms and Conditions

1. CONSULTANT'S OBLIGATIONS

A. The Consultant 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 Agreement and in the appointment, monitoring and retention of its agents and Subconsultants. The Consultant shall require its agents and Subconsultants to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Consultant to its agents and Subconsultants under this Agreement.

B. In consideration of the payment of the Charges and subject to clause 3 the Consultant shall:

1. provide the Services in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;

2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Consultant in writing;

3. comply with all local security and health and safety arrangements as notified to it by the Client; 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 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 Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Consultant 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 Agreement.

C. The Consultant is deemed to be the prime Consultant under this Agreement and the Consultant assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime Consultant. The Consultant as prime Consultant under the Submission hereby assumes liability for its Subconsultants and shall ensure that its Subconsultants shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Consultant. Subject to clause 14, the Consultant shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its Subconsultants.

D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subconsultant, the Client reserves the right to require the Consultant to immediately replace such Subconsultant and the Consultant shall comply with such requirement. The Consultant shall include in every sub-contract a right for the Consultant to terminate the sub-contract where any of the

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

E. During this Agreement the Consultant shall be an independent consultant and not the employee of the Client. 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 Consultant are not and shall not hold themselves out to be (and shall not be held out by the Consultant as being) servants or agents of the Client for any purposes whatsoever.

F. The Client acknowledges that the Consultant may from time to time be dependent on the Client to facilitate the Consultant in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Consultant within the timescales and in the manner agreed by it in writing in accordance with clause 10.

G. The Consultant agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement ("OGP") and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.

H. The Consultant 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 Consultant shall indemnify, save harmless and keep the Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

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

i. not to subcontract more than 50% of the total value of the contract to economic operators 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 successful tenderer or by a subconsultants;
iii. to provide to the Client, 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.

J. KEY PERSONNEL

The Consultant undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission ("Key Personnel"), assigned by it to provide the Services shall be

available for the Term of this Agreement. The Consultant acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. In the event that any of the Key Personnel assigned by the Consultant to provide the Services under this Agreement becomes unable to provide the Services for whatever reason then, the Consultant acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The Consultant shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client 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 Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.

B. Discharge of the Charges is subject to:

1. Compliance by the Consultant with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 10A from time to time;

2. The furnishing by the Consultant of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Consultant pre-printed terms and conditions are hereby disallowed;

3. Invoices being submitted to the Client's Contact (as set out in this Agreement 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 Client'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 Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and

4. The Client being in possession of the Consultant's current Tax Clearance Certificate. The Consultant shall comply with all applicable EU and domestic taxation law and requirements.

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 Agreement any sum of money is recoverable from or payable by the Consultant (including any sum which the Consultant is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Consultant under the Agreement or under any other agreement or contract with the Client. 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 Consultant, its employees, servants and agents in the performance of its obligations under this Agreement.

F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Consultant. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Consultant and the Consultant so acknowledges and confirms.

4. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

A. The Consultant 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 Agreement and to provide the Services hereunder;
2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
3. it is entering into this Agreement 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 Consultant;
5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
6. the status of the Consultant, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated [insert date] , which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Consultant, 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 Agreement and for the Client to obtain the benefit of the Services for its business purposes;
8. *Not Used*

   it has inspected the Client's premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;
9. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Consultant undertakes to advise the Client 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 Consultant shall carry out all directions of the Client with regard to compliance with this clause 4A.9; and

10. the Client shall be under no obligation to purchase any minimum number or value of Services.

B. The Consultant undertakes to notify the Client forthwith of any material change to the status of the Consultant with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

5. REMEDIES

Prior to publication please ensure to insert amounts/figures where applicable. When finished, delete these instructions.

A. The Consultant shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client 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 Consultant, its employees, Subconsultants or agents or any of them or as a result of the Consultant's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 5A shall survive termination of this Agreement for any reason.

B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Consultant's indemnity under clause 6(G), 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 Client find itself obliged to order elsewhere in consequence of the failure of the Consultant to deliver Services, the Client shall be entitled to recover from the Consultant any excess prices which may be paid by the Client.

D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement 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. *Not Used*

Save in respect of fraud, personal injury or death or in respect of the Consultant's indemnity under clause 6(G) (for which no limit applies), the limit of the Consultant's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed [insert amount – eg: [number] per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement] regardless of the number of claims.

F. If for any reason the Client is dissatisfied with the performance of the Consultant, a sum may be withheld from any payment otherwise due calculated as follows:

[Insert] ("the Retention Amount") which Retention Amount shall not at any given time exceed [number] per cent of the Charges. In such event the Client shall identify the

particular 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 Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Consultant 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 Client under this Agreement.

G. *Not used*Time of delivery shall be of the essence and if the Consultant fails to deliver the Services within the time period promised or specified in the Specification, the Client may by notice in writing to the Consultant's Contact release itself from any obligation to accept and pay for the Services and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.

H.

Without prejudice to any general right to damages under this Agreement where the Consultant does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Client may, at his discretion, deduct €500 per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of €10,000 (the "Liquidated Damages Threshold").

Where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Client shall be entitled to:

1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
2. without prejudice to sub-clause (1), the Client shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Consultant

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 Agreement and all IPR in any materials, acquired or developed by or for Consultant or Client independently of this Agreement, and any IPR in Consultant'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 Agreement (collectively "the Materials") (or any part or parts thereof) shall vest in the Client and the Consultant so acknowledges and confirms. For the avoidance of doubt the Consultant 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 Client absolutely.

D. The Client grants to the Consultant a royalty-free non-exclusive licence to use the Client's Pre-existing IPR for the Term to the extent necessary to enable the Consultant to fulfil its obligations under this Agreement. 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 Consultant shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.

F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Consultant from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Consultant 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 Consultant 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 Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Consultant hereby indemnifies the Client and shall keep and hold the Client 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 Agreement.

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

(i) procure the necessary rights for the Client 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 Consultant cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client'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 Client as a result of the breach.

H. Upon the termination of this Agreement for whatever reason, the Consultant shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

7. CONFIDENTIALITY

A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("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 Agreement subject to the provisions of this clause 7; or
4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (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 Consultant undertakes to comply with all reasonable directions of the Client 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 Appendix 6 to the RFT ("the 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 Consultant acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Consultant confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of Subconsultants) who are assigned to provide the Services (or any part thereof) under this Agreement. The Consultant further acknowledges that checks may be carried out in relation

to all such personnel by police authorities and the Consultant shall comply with all reasonable directions of the Client arising therefrom.

D. In circumstances where the Client 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 Client receiving a request for information related to this Agreement, the Client shall consult with the Consultant in respect of the request. The Consultant shall 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 Client will consult the Consultant about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority 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 Agreement.

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 Agreement 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 Consultant (or Subconsultant 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 Consultant is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that

payments are properly due and payable for obligations actually fulfilled by the Consultant in accordance with the terms and conditions of this Agreement.

9. TERMINATION

A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving one month written notice to the Consultant. This Agreement may be terminated by the Consultant, without liability for compensation or damages, by serving three months written notice to the Client.

B. Either Party shall have the right (in addition to its rights under clause 9(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:

1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;

2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;

3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Consultant which cannot, in the opinion of the Client, be removed by other means; and

4. in circumstances where the Client becomes aware of any registrable interest on the part of the Consultant.

C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware:

i) that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Consultant;

ii) that the Consultant (on its own or resulting from its sub-consultants, suppliers or entities on which it relies) comes within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

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

E. If requested by the Client, the Consultant shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client ("Employment Information"). The Consultant agrees that the Client 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 Agreement for whatever cause.

10. CONTRACT MANAGEMENT

A. The Client's Contact and the Consultant's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Consultant shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.

B. The Consultant agrees to:

1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Consultant's obligations under this Agreement;
2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
3. comply with all reasonable directions of the Client; and
4. comply with the service levels and performance indicators set out in Schedule D.

C. The Client or its authorised representative may inspect the Consultant's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Consultant shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

11. DISPUTES

A. In the event of any dispute arising out of or relating to this Agreement (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 Consultant contact] within the Consultant and to [insert Client contact] within the Client 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 the Chairman of the Chartered Institute of Arbitrators, Irish Branch 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 Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Consultant shall comply fully with the requirements of the Agreement at all times.

12. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

A. This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

B. This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

13. NOTICES

A. Any notice or other written communication to be given under this Agreement 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 AND SUBCONTRACT

A. Subject to a Party's obligations at law, any assignment to a third party or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.

B. Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, 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. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Client may require information from the Consultant in relation to the status of the proposed subconsultant(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

15. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding of the Parties, and any and all other previous agreements, arrangements and understandings (whether written or oral) between the Parties with regard to the subject matter of this Agreement (save where fraudulently made) are hereby excluded.

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 Agreement shall preclude the Client from purchasing services (or Services) from a third party at any time during the currency of the Agreement.

19. MEDIA

No media releases, public announcements or public disclosures relating to this Agreement or its subject matter, including but not limited to promotional or marketing material, shall be made by the Consultant without the prior written consent of the Client.

20. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

A. The Consultant confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subconsultant nor agent as the case may be has any conflicts in relation to the Services and its obligations undertaken under this Agreement. The Consultant hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.

B. Any registrable interest involving the Consultant (and any Subconsultant or agent as the case may be) and the Client, 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 Client immediately upon such information becoming known to the Consultant

(Subconsultant or agent as the case may be) and the Consultant shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement 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 Consultant 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 Consultant, any Subconsultant, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement 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 Consultant of the amount or value of any such gift, consideration or commission.

21. ACCESS TO PREMISES

A. Any of the Client's premises made available from time to time to the Consultant by the Client in connection with this Agreement, shall be made available to the Consultant on a non-exclusive licence basis and shall be used by the Consultant solely for the purpose of performing its obligations under this Agreement. The Consultant shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

B. The Consultant shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subconsultant or agent) where the Services are being performed for the Client under this Agreement.

22. EQUIPMENT

A. The Consultant shall provide all equipment and materials necessary for the provision of the Services ("Equipment").

B. All Equipment brought onto the Client's premises shall be at the Consultant's own risk and the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Consultant shall provide for the haulage or carriage thereof to the Client'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 Consultant.

C. The Consultant shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.

D. The Consultant shall, at the Client's written request, at its own expense and as soon as reasonably practicable:

i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and

ii. replace such item with a suitable substitute item of Equipment.

E. On completion of the Services the Consultant shall remove the Equipment used by the Consultant to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Consultant is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Consultant or any of its employees or Subconsultants.

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 Client nor the Consultant 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 Agreement, either Party may propose a change or changes to any part or parts of this Agreement.

B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Consultant or the Client proposes the change.

C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").

D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.

E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.

F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.

G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.

H. The Consultant and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client's request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Consultant will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

25. DATA PROTECTION AND SECURITY

A. In this Agreement 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 the Client (including but not limited to his employees, agents, independent consultants and/or Sub-consultants) 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 Client provided under this Agreement 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 Commission 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 Consultant shall comply with all applicable requirements of the Data Protection Laws.

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

D. Without prejudice to the generality of clause 25B, the Consultant shall, in relation to any Personal Data processed in connection with the performance by the Consultant of its obligations under this Agreement:-

(1) process that Personal Data only on the written instructions of the Client;

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, 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 the Client 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);

ii. the data subject has enforceable rights and effective legal remedies;

iii. The Consultant 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 Consultant complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

E. The Consultant shall promptly notify the Client 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 the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

F. The Consultant shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

G. The Consultant shall assist the Client 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 Consultant shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to store the Personal Data.

I. The Consultant shall permit the Client, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Consultant'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 Consultant in any way for the provision of the Services. The Consultant shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.

J. The Consultant shall fully comply with, and implement policies which are communicated or notified to the Consultant by the Client from time to time.

K. The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.

L. The Consultant 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 [insert frequency] 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 Consultant or any Subconsultant promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

M. The Client does not consent to the Consultant appointing any third party processor of Personal Data under this agreement

N. Save for clauses 25B, 25C, 25D(4) and 25E, all the obligations on the Consultant in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.

O. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

26. ADDITIONAL CONDITION(S)

[*Delete and replace with "Not Used" if not applicable:*
This is a free text area to allow the Client to include any additional conditions to the Contract, for example a price review clause. Such additional conditions can be set out here by the Client]

Schedule B: Services: The Specification

[Insert when completing contract]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels

[Insert at RFT stage, if applicable, or when completing contract]

Schedule E: Data Protection

[complete when completing the contract]

Processing, Personal Data and Data Subjects

1. Processing by the Consultant 1.1

   Subject matter of processing 1.2

   Nature of processing

   1.3 Purpose of processing

   1.4 Duration of the processing

2. Types of personal data

3. Categories of data subject

Appendix 6: Confidentiality Agreement

THIS AGREEMENT is made on the [date] day of [month] 20 [year] BETWEEN:

The [insert name of Contracting Authority], of [insert address] (hereinafter "the Contracting Authority") of the one part;
and

[Consultant's legal name: to be completed on signing.], of [address: to be completed on signing.] (hereinafter called "the Consultant") of the other part.

WHEREAS

A. By Request for Tenders dated [insert date] entitled [insert title] (the "RFT") the Contracting Authority invited tenders ("Tenders") for the provision of the Goods/Services described in Appendix 1 to the RFT (the "Goods" "Services") ("the Competition"). The Consultant submitted a response to the RFT dated the [insert date of Tender].
The Consultant has been identified as the preferred bidder in the Competition.

B. For the purposes of the Competition and any subsequent contract awarded thereunder (if any) ("the Contract"), certain confidential information as defined at clause 2 of this Agreement, will be furnished to the Consultant. The Confidential Information is confidential to the Contracting Authority.

NOW IT IS HEREBY AGREED in consideration of the sum of €2.00 (the receipt of which is hereby acknowledged by the Consultant) as follows:

1. The Consultant acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.

2. For the purposes of this Agreement "Confidential Information" means:

   2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Consultant (to include employees, agents, Subconsultants and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and

   2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.

3. For the purposes of this Agreement "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 Commission or other supervisory authority for data protection in Ireland from time to time

4. Save as may be required by law, the Consultant agrees in respect of the Confidential Information:

   4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;

   4.2 not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to any person except:

      I to those employees, agents, Subconsultants and other suppliers on a need to know basis; and/or

      ii to the Consultant's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Consultant

   PROVIDED ALWAYS that the Consultant shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.

5. The obligations in this Agreement will not apply to any Confidential Information:

   i in the Consultant's possession (with full right to disclose) before receiving it from the Contracting Authority; or

   ii which is or becomes public knowledge other than by breach of this clause; or

   iii is independently developed by the Consultant without access to or use of the Confidential Information; or

   iv is lawfully received from a third party (with full right to disclose).

6. The Consultant undertakes:

   6.1 to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);

   6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;

6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Consultant in electronic form. The Consultant will upon request furnish a certificate to that effect should the Contracting Authority 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.

7. The Consultant shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Consultant so acknowledges and confirms.

8. The Consultant shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.

9. The Consultant agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.

10. The Consultant agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Consultant hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:

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

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

"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 Consultant shall comply with all applicable requirements of the Data Protection Laws.

C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller and the Consultant is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Consultant, the duration of the Processing and the types of Personal Data and categories of Data Subject.

D. Without prejudice to the generality of clause 11(B), the Consultant shall, in relation to any Confidential Information which is Personal Data:-

(1) process that Personal Data only on the written instructions of the Contracting Authority;

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Contracting Authority, 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 the Contracting Authority 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);
ii. the data subject has enforceable rights and effective legal remedies;
iii. The Consultant 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 Consultant complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

(5) The Consultant shall promptly notify the Contracting Authority 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 the Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

(6) The Consultant shall without undue delay report in writing to the Contacting Authority any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

(7) The Consultant shall assist the Contracting Authority 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 Consultant shall at the written direction of the Contracting Authority, amend, delete or return Personal Data and copies thereof to the Contracting Authority on termination of this Agreement unless the Consultant is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Consultant to store the Personal Data.

I. The Consultant shall permit the Contracting Authority, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Consultant'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 Consultant in any way for the provision of the services. The Consultant shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review.

J. The Consultant shall fully comply with, and implement policies which are communicated or notified to the Consultant by the Contracting Authority from time to time.

K. The Consultant shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for inspections and contribute to any audits by the Contacting Authority or the Contracting Authority's designated auditor.

L. The Consultant 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 [insert frequency] 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 Consultant or any Subconsultant promptly restore the Personal Data at its own expense or, at the Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.

(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR - DELETE IF NOT IN USE)

M. The Contracting Authority does not consent to the Consultant appointing any third party processor of Personal Data under this agreement.

(OR IF USING A THIRD PARTY PROCESSOR - DELETE IF NOT IN USE)

The Contracting Authority consents to the Consultant appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Consultant confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 11 as between the Contracting Authority and the Consultant. The Consultant shall remain

fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

N. Save for clauses 11B, 11C, 11D(4) and 11E, all the obligations on the Consultant in this clause 11 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

SIGNED for and on behalf of the Contracting Authority _____ (being a duly authorised officer)	SIGNED for and on behalf of the Consultant _____
Witness	Witness

Schedule A to the Confidentiality Agreement: Data Protection

[complete when completing the confidentiality agreement]

Processing, Personal Data and Data Subjects

1. Processing by the Consultant 1.1

   Subject matter of processing 1.2

   Nature of processing

   1.3 Purpose of processing

   1.4 Duration of the processing

2. Types of personal data

3. Categories of data subject

End of Document

APPENDIX 7

Table 2.4. NPF 2025 Amended Core Strategy Table																				
Settlement		Population & Minimum Housing Target			RSES Population Ambition		Land Zoning Requirement to deliver Minimum Housing Target						NPF 2025 housing growth requirements					CCDP current zoned areas		
Settlement Class	Settlement Type	Census 2016 Pop	Census 2016 (%)	Minimum Housing Target Units 2028 (Based on HST/HNDA)	Population 2022 (Based on RSES targets)	Population Ambition 2028 (Based on RSES targets)	Existing Zoning (ha)	Zoned land required for Minimum Housing Target (ha)	Target residential density (dph)	Minimum 50% / 30% Infill lands (ha)(Based on minimum housing target)	Remaining 50% / 70% (non Infill) (ha)(Based on minimum housing target)	Shortfall /Excess of Zoned Land	2022 Census share	Additional Housing Units (July 2025 528 total 3432 to expiry of dev plan july 2028)	Density dph as per ccdp	Additional zoned land required HA	plus Additional Provisional (+50%) HA	R1 Zoned land CCDP HA (Available)	RE Zoned land CCDP HA	SRR Zoned land CCDP HA
1	Regional City																			
	Waterford City & Suburbs	48,216	41.57	3,169	55,299	62,382	254.36	90.6	35	45.3	45.3	163.8	47.1	1616.5	45	35.9	53.8	155	118.65	22.29
2	Key Town																			
	Dungarvan/ Ballinroad	10,388	8.96	330	11,616	11,864	72.61	11.0	30	3.3	7.7	61.6	9	308.9	35	8.8	13.2	37	3.23	104.58

Population Projections & Minimum Housing Target

The **Waterford City and County Development Plan 2022–2028**, the **National Planning Framework (NPF) and the Regional Spatial and Economic Strategy (RSES) provide** official, forward-looking statutory data that highlights the provision for early education in Abbeyside, Dungarvan.

Dungarvan is designated as a **Key Town** under the NPF and national policy mandates that this growth must be underpinned by necessary enabling infrastructure, including pre-schools. According to the City and County Development, overarched by the NPF and RSES, the **Dungarvan/Ballinroad** catchment area is legally projected to expand rapidly up to **July 2028**. The table shows that the population of Dungarvan/Ballinroad is on a mandatory upward trajectory. It grew from **10,388** in 2016 to **11,615** in 2022, with an official "Population Ambition" target of **11,854 by 2028**. The population is actively growing under the National Planning Framework (NPF) targets and will continue to do so up until 2040 and beyond.

The Residential Housing "Boom" (The 308.9 Unit Target)

Under the column *"NPF 2025 housing growth requirements,"* Dungarvan/Ballinroad has an allocated **"Additional Housing Units" target of 308.9 units** leading up to the expiry of the development plan in July 2028.

These 308 new homes are targeted to be built in the immediate area of Naíonra Garbháin by 2028 and this is in addition to the 330 units originally envisaged in the 2022 Development Plan. New housing developments are overwhelmingly occupied by young, growing families with preschool-aged children.

Massively Underutilized Zoned Land (Room for Immediate Influx)

The figures in the final columns (*"CCDP current zoned areas"*), highlight that the area has massive capacity for rapid residential development and this has to be coupled with pre-school infrastructure. Dungarvan/Ballinroad has a massive **104.58 hectares of SRR (Strategic Residential Reserve) Zoned land** and **37 hectares of R1 (Available Residential) Zoned land**. There is currently more than **140 Hectares of land zoned for new residential development** in Dungarvan, with the long-term capacity to deliver circa 5,000 housing units. The local Core Strategy and settlement hierarchy explicitly anticipate a massive increased demand for education provision. There are currently extant permissions and active construction on housing developments totalling **in excess of 200 units adjacent to and within a 10-minute walking distance** of Naíonra Garbháin. This *will* create immediate, additional demand for pre-school places. The intent to extend the Naíonra is a planned response to address this exact statutory need.

The Waterford City and County Council is actively seeking additional lands for zoning in Dungarvan and a " Call for sites suitable for residential development" closed on 5th June. This call is with a view to varying the Development Plan in Q4 2026 for additional zoning of land for residential use. It reinforces the ambition by WCCC for future housing activation in Dungarvan and its status as a key town and a growth centre.

In strict planning terms, failure to meet the growing demand for places in Naíonra Garbháin will result in a deficit in educational provision. This runs entirely contrary to the principles of proper planning, sustainable development, and Section 28 Ministerial Guidelines regarding the integration of infrastructure and land use planning.

Furthermore, we are the **only Irish-medium pre-school in Dungarvan**, and Dungarvan is a designated **Gaeltacht Service Town**. Families also travel from long distances across the region to attend Naíonra Garbháin, an Irish-medium pre-school.

County Development Plan: NPF 2025 Housing Growth Requirements

Dungarvan/Ballinroad has an allocated **"Additional Housing Units" target of 308.9 units** leading up to the expiry of the development plan in July 2028.

Over 308 new homes are strictly zoned and targeted to be built in the immediate area by 2028. New housing developments are overwhelmingly occupied by young, growing families with preschool-aged children.

CCDP Current Zoned Areas

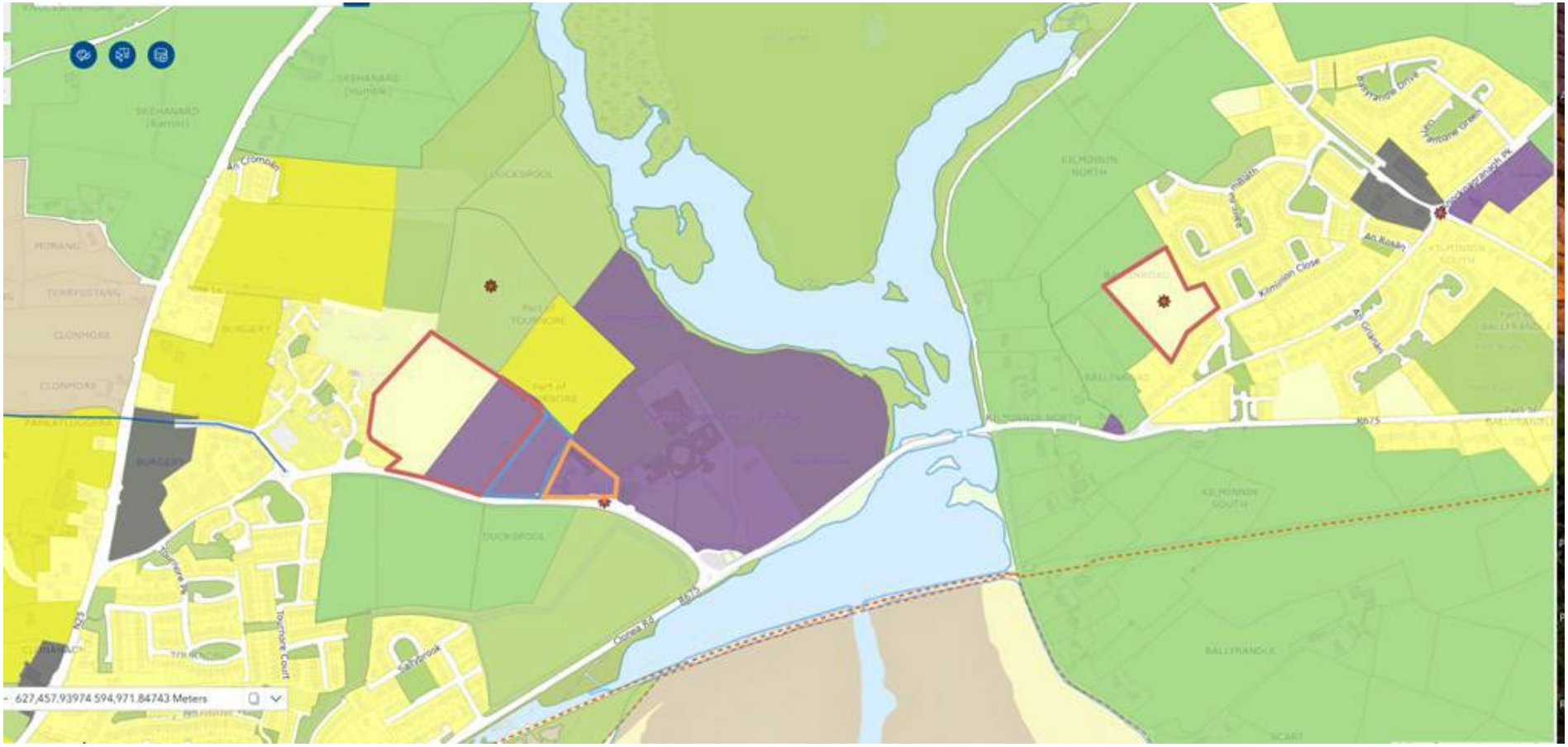
Dungarvan/Ballinroad has a massive **104.58 hectares of SRR (Strategic Residential Reserve) Zoned land** and **37 hectares of R1 (Available Residential) Zoned land**.

The town's infrastructure is legally structured to expand. If the pre-school cannot expand we will be completely illequipped to handle the inevitable surge as these zoned lands are developed.

As outlined in the Waterford County Development Plan, overarched by the State's own **National Development Plan,** Dungarvan/Ballinroad is mandated to grow to nearly 12,000 people with over 308 new housing units being delivered by July 2028.

Lands under construction

Lands purchased by Department of Education

Naíonra Garbháin & Scoil Gharbháin

Undeveloped Residential Zoned Land