

Grangegorman Development Agency

and

[_____]

**Single-Party Framework for Works-Related Technical Services:
Geothermal Engineering Consultancy
Grangegorman Development Agency**

DATED the ____ day of 202____

BETWEEN:

GRANGEGORMAN DEVELOPMENT AGENCY (“GDA”), having its place of business at Park House, North Circular Road, Dublin 7, Ireland

AND

_____ (the “Consultant”) having its principal place of business at

WHEREAS

1. The GDA may require the Consultant to perform Services (as defined below) from time to time pursuant to this Agreement.
2. The Consultant is engaged in the business of providing the Services and has the necessary skill, knowledge and experience in that field.
3. In reliance upon that skill, knowledge and expertise, the GDA may request the Consultant to perform the Services in accordance with the terms and conditions as set out in this Agreement and the relevant Instruction (as defined below).

NOW THEREFORE in consideration of the mutual agreements herein contained the parties hereby agree as follows:

1. Definitions and Interpretation

1.1. The words and expressions below shall have the following meanings unless there is something in the subject matter or context inconsistent with such meanings. Defined terms not otherwise defined in this Agreement shall have the meaning given to them in the Instruction in the form as attached at Appendix D:

“Additional Services” has the meaning given to it in Clause 15 (Additional Services); **“Agreement”** means this agreement and the Schedules;

“Change of Control” means a significant change either directly or indirectly in the ownership, management or legal form of the Consultant which results in a change in its management policies or liability structure, whether through ownership of equity, by contract, or otherwise;

“Collateral Agreement” means the collateral agreement between the Consultant and a third party beneficiary in respect of specific Services which will be substantially in the form set out in Schedule G (Form of Collateral Agreement) or such other form agreed between the parties – NOTE- Collateral Warranties will be in the standard CWMF form;

“Commencement Date” means the date of this Agreement;

“Data Protection Legislation” means:

- a) the Data Protection Acts 1988 to 2018;
- b) the General Data Protection Regulation (Regulation (EU) 2016/679) (“GDPR”);
- c) the European Communities (Electronic Communications Networks & Services) (Privacy & Electronic Communications) Regulations 2011;
- d) the EU ePrivacy Directive 2002/58/EC (as amended) (the “ePrivacy Directive”);
- e) any relevant transposition of those laws, or successor or replacement to those laws (including, when it comes into force, the successor to the ePrivacy Directive); and
- f) all other industry guidelines (whether statutory or non-statutory) or applicable codes of practice and guidance notes issued from time to time by the Data Protection Commissioner relating to the processing of Personal Data or privacy.

“Fee” means the fee agreed between the parties in respect of each Service identified in the relevant Instruction, comprising the fixed fee and/or the Time

Charges as appropriate;

“Force Majeure” shall include any event beyond the reasonable control of a party including act of God, war, riot, civil commotion, malicious damage, strike, lock-out, go slow, accident, fire, flood or storm which could not have been avoided by taking reasonable precautions

“Form of Proposal” means the form issued by the GDA to be completed by the Consultant substantially in the form set out in Schedule C;

“GDA” means the Grangegorman Development Agency;

“Index” means the Harmonised Index of Consumer Prices (HICP);

“Indexation Date” means the second anniversary of the Commencement Date and every anniversary thereafter for the Term;

“Intellectual Property” means all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unauthorised extraction and/or re- utilisation rights, unregistered designs, inventions, know-how or other intellectual property rights subsisting in or relating to the Services;

“Instruction” means the terms and conditions of contract between the GDA and the Consultant in respect of specific Services which will be substantially in the form set out in Schedule D or such other form agreed between the parties;

“Law” means any law applicable in Ireland (without further enactment) and shall include without limitation, common law, statute, statutory instrument, bye-law created under Irish statute, code of practice or code of conduct, rule of court, delegated or subordinate legislation and any form of EU law applicable in Ireland including without limitation, decisions, regulations and directives;

“Other Consultants” means any other consultant appointed by the GDA;

“Procurement Regulations” means the European Union (Award of Public Authority Contracts) Regulations 2016;

“Project Information Memorandum” (PIM) means the descriptive document published as part of the Request for Tenders to establish this Framework Agreement.

“Proposed Team” means the personnel identified in Schedule F (Proposed Team);

Representative means such person as may be nominated by the GDA from time to time;

“Request for Proposal” means a request issued by the GDA to the Consultant for Services under this Agreement substantially in the form set out in Schedule B;

“Services” means the services, which shall, subject to Clause 3, be performed by the Consultant pursuant to the applicable Instruction and this Agreement as set out in Schedule A (The Services);

“Stakeholder” means any party with a direct interest in the Grangegorman Project development and shall include (but not limited to) the Health Service Executive (HSE), the Technological University Dublin (TU Dublin) and the Grangegorman Estate Management Company (GEM), Dublin City Council (DCC), the Department of Health, and the Department of Education and Skills.

“Term” means the duration of this Agreement as set out in Clause 2;

“Time Charges” means the fixed hourly rates set out in Schedule E;

“The Grangegorman Project” means the ongoing development of the Grangegorman campus as described in more detail in the Project Information Memorandum.

“Work Product” means all written output (in whatever format) created by the Consultant and provided to the GDA in relation to any Services (including, without limitation, as found in any records, documents, data or reports).

- 1.2. The headings and the table of contents in this Agreement are inserted only for convenience and shall not affect its construction.
- 1.3. Reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or statutory instrument or as contained in any subsequent re-enactment.
- 1.4. Any reference to the “Consultant” includes its employees, partners, agents and sub- consultants.
- 1.5. Words importing the singular shall include the plural and vice versa.
- 1.6. In the event of any ambiguity or conflict between the contract documents the order of precedence shall be as follows:

- The Instruction;

- This Agreement;
- The Request for Proposal for the particular Services (if applicable);
and
- the Consultant's Form of Proposal for the particular Services (if applicable).

2. Duration of Framework Agreement

Subject to any earlier termination pursuant to Clause 16 (Termination), this Agreement will come into effect on the Commencement Date and will continue in force for a period of four years. Individual contracts awarded under the Framework may in some cases continue beyond the termination of the Framework.

3. Operation of Framework

- 3.1.** The GDA is not obliged under this Agreement to issue any Request for Proposal or award any Instruction for Services to the Consultant, and may procure the Services in other ways. Where a Request for Proposal is issued, the GDA is not obliged to accept the proposal submitted by the Consultant.
- 3.2.** If and when Services are required, the GDA may (but is not obliged to) issue a Request for Proposal to the Consultant for those specific Services. The Consultant will submit in writing a duly completed Form of Proposal and other additional information in accordance with the requirements set out in the applicable Request for Proposal.
- 3.3.** The Consultant hereby acknowledges that any fixed fee that it may propose for any Instruction shall not exceed the tendered Fixed Fee or Hourly Rates and agrees that any proposals that it may submit pursuant to Clause 3.2 will be prepared on this basis. The GDA will consider any proposal received from the Consultant pursuant to Clause 3.2 and reserves the right to enter into discussions with the Consultant in order to clarify and/or amend the proposal received. If the proposal is considered by the GDA to be acceptable, it will issue an Instruction pursuant to Clause 4.
- 3.4.** The GDA and the Consultant agree that a binding contract for the provision of Services by the Consultant shall be created upon the date of execution by the GDA and the Consultant of an Instruction as completed by the GDA and the Consultant.
- 3.5.** The GDA will not be liable to the Consultant for any costs or expenses incurred by it in submitting a proposal regardless of outcome.

4. Instructions

- 4.1.** Instructions for the Services will be issued following the process outlined in Clause 3 and in the form prescribed in Schedule D or other as may be agreed by the Parties.
- 4.2.** Instructions must be signed by an authorised representative of the GDA and the Consultant.

- 4.3.** The Consultant agrees to execute a Collateral Agreement where required by the GDA in respect of any Services.

5. Performance Review, Material Change and Audit of Services

- 5.1.** The GDA, or any person acting on its behalf, may inspect and review the performance by the Consultant of the Services and/or arrange for an independent party to do so. If, as a result of any such inspection or review, the GDA is reasonably of the opinion that the particular Services are or were not being performed in accordance with this Agreement and/or the applicable Instruction (or as otherwise agreed between the parties), the GDA may so inform the Consultant in writing. The Consultant shall immediately take such steps as may be necessary to comply with its obligations within the period stipulated by the GDA. Any notification under this clause shall not constitute a waiver of any term or condition of this Agreement and shall be without prejudice to any of GDA's rights under this Agreement or otherwise.
- 5.2.** The GDA may, at any time during the Term, review the technical, economic and financial ability of the Consultant in order to assess whether the Consultant continues to have the technical, economic and financial ability to perform the Services.
- 5.3.** The GDA may, from time to time, request the Consultant to provide confirmation that no material change in the technical, economic or financial capacity of the Consultant has occurred.
- 5.4.** The GDA may engage auditors, from time to time, to carry out an audit of the books, accounts and other financial statements of the Consultant only in so far as they relate to the Services. To the extent legally permissible and to the extent that such access will not breach any undertaking of confidentiality to a third party or any law, regulation or the requirements of any regulator, the Consultant shall afford access to the auditors to all such records, documents and accounts relevant to the Services as may reasonably be requested.

6. Services

- 6.1.** This Agreement and any Instruction govern the overall relationship between the GDA and the Consultant with respect to the provision of Services.
- 6.2.** The terms of appointment of the Consultant shall consist of the terms of (i) this Agreement; and (ii) any other terms set out in the Instruction, which shall be at the sole discretion of the GDA.
- 6.3.** In respect of Services for which the Consultant has been appointed, the Consultant shall, at all times, act in good faith and exercise the level of skill and

care reasonably expected of a professional service provider regularly undertaking services of the type provided. The Consultant will carry out the Services with the necessary resources and in reasonable time.

- 6.4. If appointed to perform any Services, the Consultant must be available to attend meetings with GDA staff at the GDA's offices in Dublin as and when reasonably required.
- 6.5. If appointed to perform any Services, the Consultant must make available to the GDA all resources necessary to perform the Services, including without limitation adequate personnel.
- 6.6. The Consultant shall liaise with and co-operate with Other Consultants as necessary so that it and the Other Consultants perform their respective services and other obligations in accordance with their respective appointments.
- 6.7. The Consultant shall co-ordinate the overall Services provided by the Consultant and its sub-consultants and at the request of the GDA shall coordinate with the Other Consultants. The Consultant shall take all reasonable steps to ensure that its sub-consultants and the Other Consultants co-operate with each other to assist in such co-ordination.
- 6.8. The GDA's Representative shall, save to the extent to which the GDA may otherwise specify by written notice to the Consultant, have authority to act for the GDA under any clause of this Agreement.
- 6.9. The GDA may from time to time appoint some other person or firm as the GDA's Representative in place of the person or firm so appointed and shall give notice to the Consultant of such appointment without delay.
- 6.10. The Consultant shall comply with those obligations in the fields of environmental, social and labour law that apply at the place where the Services are provided, as established by European Union law, national law, collective agreements or by the international, environmental, social and labour law listed in schedule 7 of the Procurement Regulations.

7. Proposed Team

- 7.1. The Consultant agrees that (i) the Services will be provided by the Proposed Team and (ii) subject to Clause 7.2, no change in the Proposed Team will be made without the prior consent of the GDA.
- 7.2. The consent of the GDA pursuant to Clause 7.1 to removal of a person from the Proposed Team shall not be required if that person becomes unavailable by reason of (i) long term illness or injury, (ii) absence, (iii) cessation of his or her employment with the Consultant or any affiliate or (iv) any law or regulation

requiring removal of such person from the Proposed Team.

- 7.3. Where any member of the Proposed Team is unable to perform the Services for any period, the Consultant shall, at no additional cost to GDA, provide a replacement team member whose qualifications and experience are to the satisfaction of the GDA and correspond as closely as practicable to the qualifications of that person whom they are required to replace.
- 7.4. The Consultant shall no longer utilise for the provision of the Services any person whose performance is deemed unsatisfactory by the GDA and shall provide a replacement whose qualifications and experience are to the satisfaction to the GDA.

8. Payment, Rates and Fees

- 8.1. The Fee for any Services shall be as set out in the relevant Instruction. Subject to Clause 8.2, the Time Charges shall remain fixed for the duration of the Framework.
- 8.2. Insofar as Fees are paid for Services which fall to be performed after the Indexation Date, the Fees may be indexed from the Indexation Date to reflect any increases or decreases in the most recently published Index prior to the date of the invoice as compared to the Index current on the date 12 months prior to the date of the most recently published Index.
- 8.3. To the extent that the Instruction does not contain provisions regarding the payment and Fees for any Services, the following provisions shall apply:
- 8.4. The Fees shall include expenses incurred in the performance of the Services such as travel and accommodation within Ireland, postage/courier, printing/photocopying, administration support and all organisational overheads (but exclude VAT). To the extent that the GDA requires the performance of Services outside Ireland, expenses in respect of such travel (and associated accommodation) will be required to be approved by the GDA in advance and to be separately itemised on invoices.
- 8.5. Unless otherwise agreed between the parties, the Consultant shall maintain and provide records of all Fees incurred in respect of the Services in electronic format (or such other format specified by the GDA). The records maintained by the Consultant shall contain itemised details of all Services undertaken, the applicable rates and the dates and identities of the personnel who carried out such Services. The GDA shall be entitled to inspect the Consultant's fee records relating to the Services upon providing reasonable notice of such inspection to the Consultant.
- 8.6. The Consultant shall be entitled to invoice the GDA for the Services at agreed intervals. Each invoice shall be supported by a detailed breakdown of hours

worked, personnel carrying out such work, positions of such personnel and a description of the services provided. The GDA shall, subject to Clause 8.3.5 and provided the Consultant has performed those Services applicable to that invoice to the satisfaction of the GDA, pay the Consultant the amount demanded within 30 days of receipt of an invoice complying with this clause.

- 8.7.** The GDA may at any time at its sole discretion, reduce the scope or remove certain elements of the Services. The GDA shall notify the Consultant of such reduction or removal prior to the Consultant commencing such Services. The GDA may reduce the Fee to reflect the revised scope of Services. The Consultant may not demand compensation in respect of any reduction or removal of Services unless otherwise agreed in writing by the GDA.
- 8.8.** Where, in any case, the Consultant is liable to make any payment to the GDA under this Agreement or otherwise, the GDA may set off any such payments due to it against any Fees due by the GDA to the Consultant.
- 8.9.** The GDA reserves the right to publish a list of the Fees incurred under this Agreement and/or any Instruction and/or the agreements with the Other Consultants and the respective names of the firms to which they relate and the nature of the engagement in each case

9. Representations and Warranties

- 9.1.** The Consultant represents and warrants to the GDA that:
- a) it has, and shall have for the Term, all necessary power and authority to execute, deliver and perform its obligations under this Agreement;
 - b) the execution, delivery and performance by it of this Agreement has been authorised in accordance with all necessary action on its part;
 - c) each of the obligations of the Consultant under this Agreement constitutes its legally binding obligations;
 - d) it shall perform the Services pursuant to every Instruction in accordance with this Agreement and the relevant Instruction with all independent professional care, skill and judgement to be expected of a professional consultant qualified and experienced in carrying out services of a similar nature, size and scope and in compliance with all applicable laws and applicable professional conduct rules, standards, regulations and laws which apply to the Consultant;
 - e) it shall perform the Services pursuant to every Instruction diligently and in good time and with all necessary resources;
 - f) in performing the Services pursuant to every Instruction, the

Consultant shall not infringe the intellectual property rights of any third party;

- g) all written information furnished by or on the Consultant's behalf to the GDA in connection with or pursuant to this Agreement was true and accurate when given (and continues to be so) in all material respects and there are no other facts or matters of which the Consultant is aware, after due and careful enquiry, the omission of which would have made or would make any such information misleading, inaccurate or untrue in any material respect, and all expressions of expectation, intention, belief and opinion contained therein were honestly made on reasonable grounds after due and careful enquiry;
- h) save as disclosed to the GDA in writing, whether by way of specific disclosure or by way of general disclosure in terms reasonably acceptable to the GDA, the Consultant is not currently the subject of, and has not been the subject of during the three years immediately preceding the date of this Agreement, any litigation by a past or present client;
- i) if the Consultant is a consortium (whether structured as a firm, partnership, joint venture or otherwise), each consortium member comprising the Consultant is jointly and severally liable to the GDA and jointly and severally obliged to comply with and perform the obligations of the Consultant under this Agreement; and
- j) the Consultant is not aware of any material facts or circumstances that have not been disclosed to the GDA which might, if disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Agreement with the Consultant.

9.2. The Consultant repeats these representations and warranties in respect of each Instruction as at the date of such Instruction.

10. Insurance

10.1. The Consultant shall have and maintain all insurances required to be maintained by it pursuant to applicable Law and any Instruction.

10.2. Without prejudice to Clause 10.1, in advance of the awarding of any Services under this Agreement, the Consultant shall provide the GDA with appropriate evidence (including letters of confirmation from its insurance broker) that the Consultant has the following insurance cover with a well-established and reputable insurance office or underwriter of repute:

To be completed in line with Contract/Procurement Documents

- a) Public Liability insurance with a minimum level of indemnity of €6.5 million covering each and every claim or series of claims arising from the same originating cause, unlimited in the period, for the duration of the relevant Instruction;
- b) Employer's Liability insurance with a minimum level of indemnity of €13 million covering each and every claim or series of claims arising from the same originating cause, unlimited in the period, for the duration of the relevant Instruction; and
- c) Professional indemnity insurance with a minimum level of indemnity of €1.25 million covering each and every claim or series of claims arising from the same originating cause, unlimited in the period, for the duration of the relevant Instruction and for a period of six years thereafter. Cover may be provided on an Annual Aggregate basis to a minimum level of €1.5 million; However, where professional indemnity insurance is provided on an Annual Aggregate basis the Contracting Authority will review the situation regarding the availability of professional indemnity insurance on an Each and Every basis on an annual basis.

in each case, without prejudice to any claims notified by the GDA prior to this date.

- d) The Liability Gap shall not be less than the PII level of Cover. In this case to be €1.5 million, then Liability Cap shall not apply to any claim, loss, damage, cost, expense or liability relating to:
 - (i) death, personal injury or illness;
 - (ii) Fraud or fraudulent misrepresentation;
 - (iii) Wilful default;
 - (iv) Gross negligence;
 - (v) Third party property;
 - (vi) Sub-clause 13.26 of the Form of Tender and Schedule. or
 - (vii) Any liability which the Consultant cannot lawfully exclude or limit.

10.3. At any time after the Commencement Date, if requested by the GDA, the Consultant shall provide the GDA with appropriate evidence (including without limitation letters of confirmation from its insurance broker) confirming the levels

and terms of insurance cover maintained by the Consultant. The Consultant shall notify the GDA immediately of any lapse of the insurances or if the insurances cease to be available.

- 10.4.** At the reasonable request of the GDA, the Consultant must increase the agreed insurance limits or obtain additional cover at the GDA's expense.
- 10.5.** The Consultant shall be liable to pay the full amount of any deductibles or excess amounts arising under the insurance policies in respect of each and every claim made. The insurance required to be obtained by the Consultant pursuant to Clauses 10.1 and 10.2 above shall not limit the obligations, liabilities or responsibilities of the Consultant under the terms of this Agreement or otherwise. Any amounts not insured or recovered from the insurers shall be borne by the Consultant in accordance with the obligations, liabilities and responsibilities set out under this Agreement.
- 10.6.** If the Consultant does not on request prove that its insurances are fully in force as required by this Agreement, the GDA may insure and recover the cost from the Consultant.

11. Electronic Communications and Storage of Data

- 11.2.** The Consultant shall use commercially reasonable procedures to check for the then most commonly known viruses before sending information electronically to the GDA or to any other third person on behalf of the GDA while performing the Services.
- 11.3.** During the Term, the parties may from time to time communicate electronically with each other. The Consultant shall ensure that all electronic communications containing commercially sensitive data or personal data is encrypted during transmission unless otherwise agreed in advance by the GDA or its agents.
- 11.4.** The Consultant shall ensure that all electronic documents are password encrypted. Password encryption details to be provided by the GDA or its agents.
- 11.5.** The Consultant agrees that any storage of commercially sensitive or personal data outside of its main network environment shall be on encrypted laptops only and never on USB keys or other removable storage devices unless by specific written agreement with the GDA.

12. Work Product

Unless otherwise stated in any Instruction:

- a) Intellectual Property in all Work Product will remain vested in the

Consultant, but the Consultant hereby grants to the Client an irrevocable, royalty free, and non-exclusive licence to copy and use the Documents for any purpose connected with the Services or the Grangegorman Project. The Consultant shall not be liable for the use by any person of any of the Documents for any purpose other than that for which the same were prepared by or on behalf of the Consultant;

- b) the GDA may at any time use, copy, adapt and modify all and any Work Product;
- c) the Consultant shall do all such things as the GDA may reasonably require for the purpose of vesting in the GDA the rights granted to it under Clause 12(a); and
- d) on completion of Services or any termination of the Agreement or an Instruction for any reason, the Consultant shall, upon written request, deliver to the GDA all Work Product (in such a manner as to be “unlocked”, readily accessible and useable for any reasonable purpose);
- e) subject always to the Consultant’s duties of confidentiality as set out in this Agreement, the Consultant may retain (i) a copy of the Work Product for the purposes of, or as required by, any law, regulation or legal process and for the purposes of its internal compliance procedures; and (ii) copies of any computer records and files created pursuant to automatic archiving and back-up procedures.

13. Conflicts of Interest

- 13.1.** The Consultant confirms that all actual and potential conflict of interests (whether personal, professional, commercial or other interests) will be disclosed in full in any Form of Proposal or otherwise prior to the execution of any Instruction.
- 13.2.** In the event that a Consultant declares a conflict or potential conflict of interest in accordance with clause 13.1, or the GDA otherwise becomes aware of an actual or potential conflict of interest, the GDA may, in its absolute discretion, (i) request further information from the Consultant on the conflict in question and/or (ii) impose conditions on the Consultant which must be agreed in order to perform the Services (which may include appropriate measures to protect the interests of the GDA).
- 13.3.** If appointed to provide any Services, the Consultant shall disclose to the GDA within forty- eight hours of it coming to its attention, any actual or potential conflict of interest which it, or any of its affiliates, or any partner, officer, director or employee of the Consultant may have in performing any Services.
- 13.4.** In the event of any actual or potential conflict of interest (the “conflict”) arising, the

GDA shall, in its absolute discretion, decide on the appropriate course of action. If the GDA considers there to be no conflict or that the conflict is immaterial, it will permit the Consultant to continue to provide the Services. If the GDA considers the conflict to be material, it may, at its sole discretion, instruct the Consultant to cease providing the Services or permit the Consultant to continue providing the Services subject to the Consultant agreeing appropriate safeguards with the GDA and the GDA being satisfied that those safeguards have been put in place

Failure to comply with the GDA's requirements in this regard may lead to termination of any Instruction and/or this Agreement.

14. Tax Clearance

The Consultant must, if requested, provide the GDA with evidence of tax clearance by the Revenue Commissioners, including (where applicable) tax reference number and Tax Clearance Access Number to facilitate electronic verification of tax clearance status. By providing information for electronic verification, the Consultant grants permission to the GDA to use such information in order to verify the Consultant's tax clearance status. The GDA may refuse to pay the Consultant for Services unless at the time for payment it has received from the Consultant current and valid evidence required under this Clause.

15. Additional Services

- 15.1.** The GDA may from time to time extend the scope or vary the Services, at its sole discretion (such extended or varied Services being "Additional Services"). No such extension or variation shall vitiate this Agreement. Additional Services do not include any services necessary, ancillary or incidental to or arising out of the Services. When requested by the GDA in writing the Consultant shall confirm if it agrees to perform the Additional Services which, if the Consultant so agrees, shall be performed in accordance with the terms and conditions of this Agreement, save as otherwise agreed between the parties. The GDA may at its sole discretion request a fixed fee proposal from a Consultant in respect of any Additional Services.
- 15.2.** This Clause is not, nor shall it be relied upon as a promise or representation as to the GDA's decision to extend the scope of or vary the Services nor is it a representation of fact or promise as to the future.
- 15.3.** If the Consultant believes it is being instructed to perform services that are Additional Services, it must notify the GDA thereof in writing (the "Additional Services Request") before proceeding with such services. The Additional Services Request must include:

- a) the precise nature and scope of the services to be provided;
- b) an estimate of the number of hours to undertake such services;
- c) the identity of the Consultant's personnel to undertake such services, and
- d) the proposed fee for undertaking such services.

15.4. Upon receipt of an Additional Services Request, the GDA shall notify the Consultant whether the GDA agrees that such services are Additional Services and set out the bases upon which the GDA consents to the provision of the Additional Services. Such bases may include (without limitation):

- a) details of the Additional Services to be provided;
- b) details of any particular reporting requirements in respect of the provision of the Additional Services; and
- c) the fee which the GDA agrees to pay in respect of the provision of the Additional Services.

15.5. The Consultant shall not:

- a) undertake the Additional Services; or
- b) be entitled to any fees in excess of those notified to the Consultant in accordance with Clause 15.4c),

without the prior written consent of the GDA.

16. Resolution of Disputes

16.1. Any dispute or difference of any kind whatsoever which arises or occurs between the parties in relation to anything or matter arising under, out of, or in connection with this Agreement shall, in the first instance, be referred to a Mediator to be appointed by agreement between the parties and, in the absence of agreement within five working days of the receipt by one party of a written notice to concur in the appointment of a Mediator, by the President of Engineers Ireland.

16.2. In the event that the dispute or difference is not resolved within fifteen working days of the appointment of the Mediator, the dispute or difference shall be referred to an Arbitrator under the terms of the "Arbitration Rules AR-1" document published under the Capital Works Management Framework.

17. Termination

17.1. Either party may terminate this Agreement without cause at any time by notice

in writing to the other party to take effect on the date notified by the terminating party that is at least 30 (thirty) days after the date of the notice.

17.2. The GDA may terminate any Instruction without cause at any time by notice in writing to the Consultant to take effect on the date notified by the GDA in its termination notice.

17.3. The GDA may, without prejudice to any other right or remedy, terminate this Agreement or any Instruction upon serving written notice to the Consultant to take effect on the day of its service or upon such other date as may be specified therein if, in the opinion of the GDA:

- a) the GDA no longer requires the Services for any reason;
- b) the Consultant fails to comply with any material obligation of this Agreement and/or any Instruction and has not corrected the relevant failure within ten days or such other period as stated in the notice issued under Clause 5.1 (Performance Review, Material Change and Audit of Services) requiring it to remedy its failure to perform the relevant obligation;
- c) any of the representations and warranties made or deemed to be made by the Consultant are untrue in any respect;
- d) any proprietor or partner comprising the Consultant, it being a firm or partnership, becomes bankrupt or have any receiver or manager or administrative receiver appointed over any of its assets or carries on business under an examiner or administrator;
- e) the Consultant is found guilty by a competent authority of any fraudulent act or criminal activity or is guilty of gross negligence in the performance of this Agreement or any Instruction;
- f) the Consultant or the performance of the Services is affected by a change in legislation arising from the UK leaving the European Union (Brexit) or otherwise which in the GDA's opinion adversely affects the GDA's interest;
- g) any of the grounds for termination set out in Regulation 73 of the Procurement Regulations apply;
- h) the provisions of Clause 17.3 (Assignment and Sub-Contracting) apply;
or
- i) the provisions of Clause 25.5 (Force Majeure) apply.

17.4. Termination of this Agreement does not affect any Instruction already entered, where such Instruction is not terminated under Clause 16.2 or 16.3.

- 17.5.** On termination of this Agreement and/or any Instruction by the GDA for any reason:
- a) the Consultant shall cease performing all Services (except as instructed in writing by the GDA in the notice terminating the Agreement or, as the case may be, Instruction);
 - b) the GDA may complete the Services (or part thereof) itself, or employ others to do so, and may use or make available to others its rights to materials prepared by the Consultant;
 - c) the Consultant shall be entitled to payment for such Services properly completed in accordance with this Agreement up to the date of termination less any amounts due or payable to the GDA pursuant to this Agreement or arising from such termination or losses incurred by the GDA as a result of such termination. Such payments for Services duly performed shall be the only payment to which the Consultant shall be entitled;
 - d) in the case of a material breach of this Agreement or any Instruction by the Consultant, the GDA may deduct from any amount due or to become due to the Consultant its reasonable estimate of the additional cost the GDA may incur in obtaining the Services from another party because of the breach or termination;
 - e) the provisions of this Clause 16 (Termination) shall be without prejudice to any other rights or remedies which the GDA may have under this Agreement or at law; and
 - f) the GDA shall not be liable to the Consultant for any losses suffered or incurred by the Consultant arising out of or in connection with the termination of this Agreement or any Instruction for any reason.
- 17.6.** The GDA may at any time by notice in writing suspend the Services either in whole or in part with immediate effect. The Consultant shall upon receipt of that notice suspend performing the Services for such time and in such manner as the GDA shall set out in the notice.
- 17.7.** Unless the GDA determines the suspension is necessary by reason of the Consultant's default or breach of this Agreement or any Instruction, the provisions of Clause 16.8 below shall apply.
- 17.8.** If, the GDA suspends performance of any of the Services, in whole or in part, pursuant to Clause 16.6 and the suspension continues for a period of twelve months, the Consultant may at the end of that period issue a written notice to the GDA requiring the GDA to lift the suspension. If the GDA does not lift the suspension within 30 days of receiving the written notice, the Consultant shall

be entitled to terminate the provision of those Services.

18. Assignment and Sub-Contracting

- 18.1.** The Consultant may not transfer or assign directly or indirectly any part of this Agreement and/or any Instruction without the prior written consent of the GDA, which consent may be withheld at the GDA's absolute discretion.
- 18.2.** The Consultant may not sub-contract any element of the Services, without the prior written consent of GDA, which consent may be withheld at the GDA's absolute discretion. If and to the extent that the GDA consents to the Consultant sub-contracting any element of the Services, the Consultant shall remain responsible for performance of the Services (including, without limitation, any sub-contracted elements) and shall procure that any sub-contractor shall adhere to and comply with the terms of this Agreement and any relevant Instruction.
- 18.3.** The Consultant must notify the GDA of a Change of Control. The GDA may, at its absolute discretion, terminate this Agreement with the Consultant if it is of the view that the Change of Control could affect the Consultant's performance of the Services adversely.
- 18.4.** The GDA may transfer or assign all or any part of its rights and obligations under this Agreement and/or any Instruction to any person and shall give prompt notice to the Consultant of such transfer or assignment. The Consultant will do all acts, and execute all documents, necessary to give effect to such transfer or assignment.

19. Waiver

No right or remedy given to either party under or pursuant to any provision of this Agreement will, whether or not exercised and notwithstanding any additional waiver, preclude the exercise by either party of any other right or remedy hereunder, nor will it preclude the exercise by either party of any right or remedy to which it might be otherwise entitled under common law or under statute. No waiver shall be valid unless notified to the other party in writing and signed by an authorised representative of that party.

20. Variations

Variation of this Agreement is valid only if it is in writing and signed by an authorised representative of each party.

21. Severance

Each of the provisions of this Agreement is severable and distinct from the others and if, at any time, one or more of such provisions becomes invalid, illegal

or unenforceable, the validity and legality or enforceability of the remaining provisions will not in any way be affected or impaired thereby.

22. Non-Exclusivity

- 22.1.** For the purposes of this Agreement, the GDA may, at all times, enter into separate contracts for the provision of any or all services the same as or similar to the Services with persons other than the Consultant.
- 22.2.** No guarantee or representation will be deemed to have been made by the GDA in respect of the value or quantity of the Services which may be ordered by the GDA. The Consultant acknowledges and agrees that it has not entered into this Agreement on the basis of any such guarantee or representation.
- 22.3.** Nothing in this Agreement will create an exclusive relationship between the GDA and the Consultant for the provision of the Services.

23. Notices

- 23.1.** Any notice given by the GDA to the Consultant under this Agreement or an Instruction may be given by sending the notice by hand or by registered post addressed to the Consultant at the following address:

[]

- 23.2.** Any notice to be given by the Consultant to the GDA may be given by sending the notice by hand or by registered post addressed to the GDA at the following address:

Chief Executive Officer,
Grangegorman Development Agency
Fourth Floor, Park House
191 North Circular Road Dublin 7
D07 EWW4
Ireland

- 23.3.** Notice by registered post or by hand shall be deemed to have been delivered on the day of delivery.

24. Confidentiality

- 24.1.** Subject to Clause 23.2, the Consultant agrees to keep (and to ensure its employees, personnel, agents and sub-contractors keep) confidential all information, documentation and other matters arising or coming to its attention (whether written or oral and whether disclosed to the Consultant by other means

whether directly or indirectly) in connection with the issue of any Request for Proposal and/or the provision of any Services (the “Confidential Information”) and shall not at any time, for any reason, disclose or permit such information, documentation or other matters to be disclosed to any third party except as permitted hereunder or with the prior written consent of the GDA.

24.2. Clause 23.1 shall not:

- a) apply to the Confidential Information which:
 - (i) is or becomes public knowledge other than as a result of a breach of this Agreement or of any other agreement or confidentiality obligation between the GDA and the Consultant;
 - (ii) was known to the Consultant on a non-confidential basis prior to it being disclosed to or acquired by the Consultant or otherwise coming to the Consultant’s attention, in connection with the Services;
 - (iii) is disclosed to the Consultant on a non-confidential basis by a third party reasonably assumed by the Consultant not to have breached a duty of confidentiality in making such disclosure to the Consultant.
- b) prevent disclosure by the Consultant of any Confidential Information if and solely to the extent that the Consultant is required to do so as a matter of Law and/or the by the laws or regulations of any country with jurisdiction over the affairs of the Consultant or by any requirement or order of any court of competent jurisdiction or other competent judicial, governmental or regulatory body or by the rules of or notice issued by any stock exchange or listing authority PROVIDED THAT except as prohibited by Law, the Consultant shall promptly notify the GDA of the proposed disclosure pursuant to this clause and shall consult with the GDA on the advisability of taking steps to resist or narrow such disclosure, and shall co-operate with the GDA in any attempt it may make to obtain an order or other reliable assurance that any Confidential Information so disclosed will be accorded confidential treatment.

24.3. The Consultant shall ensure that its agents having access to such information, documentation or other matters shall be subject to the same obligations as the Consultant and shall enter into a suitable secrecy agreement in the form approved by the GDA, or, insofar as that is not reasonably practicable, the Consultant shall take all reasonable steps to ensure that its agents are made aware of and perform such obligations.

24.4. The GDA may disclose details of the Agreement and/or any Instruction:

- a) if required to do so by Law, or by order of a Court, tribunal or other competent body;
- b) at the request of any Minister, Department or official of the Irish Government;
- c) to its internal auditor, and to the appointed auditor of the Irish State, the Comptroller and Auditor General;
- d) to any member or officer of the GDA and/or to any director, officer or employee of the GDA or any of its associated agencies; and/or
- e) on a confidential basis to any subcontractors, Stakeholders or agents of the GDA or any of its associated agencies.

25. Data Protection

25.1. To the extent that the Consultant's compliance with the GDA's instructions requires it to act as the GDA's "processor" or "data processor" (as defined in Data Protection Legislation) when providing the Services, it acknowledges and agrees that it shall:

- a) only process such personal data in accordance with applicable Data Protection Legislation and solely as necessary for the performance of its obligations in the provision of the Services only or otherwise in accordance with documented instructions received from the GDA from time to time;
- b) implement such technical and organisational security measures to guard against the loss, destruction, corruption or alteration of personal data as are required to safeguard the personal data from unauthorised or unlawful processing or accidental loss, alteration, disclosure, destruction or damage, and that, having regard to the state of technological development and the cost of implementing any measures, such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful processing or accidental loss, alteration, disclosure, destruction or damage and which shall be in accordance with the requirements of applicable Data Protection Legislation;
- c) take reasonable steps to ensure the reliability of any of its employees, agents and/or sub- contractors who shall have access to the personal data and ensure that each of its employees, agents and subcontractors are made aware of its obligations under this Agreement with regard to the security and protection of the personal data and shall require that they enter into or are otherwise subject to binding confidentiality obligations with the Consultant to maintain the levels of security and protection provided for in this Agreement;

- d) subject to sub-clause (e) and subject to the prior written consent of the GDA, not transfer such personal data outside the European Economic Area, which shall be subject to the Consultant providing an adequate level of protection to any personal data that is transferred, by way of entering into the model form transfer provisions or providing other protections as permitted by applicable Data Protection Legislation;
- e) obtain prior written consent from the GDA before transferring the personal data to any sub-contractor and in all cases any such consent shall be subject to such sub-contractor being bound by the obligations set out in this Agreement and the Consultant shall be fully liable to the GDA in respect of the performance of the sub-contractor's data protection obligations;
- f) inform the GDA, prior to processing the personal data, in the event that the Consultant is required by EU or Irish law to transfer the personal data outside the EEA, of that legal requirement;
- g) promptly and without undue delay notify the GDA about any accidental or unauthorised access or damage to or loss of personal data processed pursuant to the provision of the Services (or where the personal data is otherwise put at risk of unauthorised disclosure or access);
- h) assist the GDA in ensuring compliance with the obligations pursuant to Articles 32 to 36 of the GDPR having regard to the nature of the processing and the information available to the Consultant;
- i) cooperate as reasonably requested by the GDA to enable the GDA to comply with any exercise of rights by a data subject under Chapter III of the GDPR in respect of personal data processed by the Consultant under this Agreement; and
- j) within ten (10) days of receipt by the Consultant of the GDA's written request (which shall include a detailed description of the GDA's reasonable requirements), deliver a written report to the GDA in sufficient detail that the GDA can reasonably determine whether or not any applicable personal data is being or has been processed in compliance with the Data Protection Legislation and the provisions of this Agreement. In addition, the Consultant shall allow for, and contribute to, audits, in order to audit the Consultant's compliance with the obligations under this Agreement.

25.2. In the event that the Consultant provides curricula vitae or other Personal Data of its Personnel to the GDA in the course of providing the Services, the Consultant warrants to the GDA that it has taken all measures required under the Data Protection Legislation to enable the GDA to retain and use such Personal Data for the purpose of assessing Forms of Proposal and/or reviewing the performance of the Services.

25.3. To the extent that the Consultant or the GDA is acting as a “controller” or “data controller” (as defined in Data Protection Legislation) when performing the Services, the parties acknowledge and agree to comply with their respective obligations as controllers as set out in Data Protection Legislation. In the event that the Consultant and the GDA are deemed to be acting as “joint controllers” in any particular case, the parties agree to liaise with each other, at their own cost, so as to ensure that their respective obligations under Data Protection Legislation are met and, in particular, that any applicable rights of data subjects are complied with within the timeframes provided under Data Protection Legislation.

26. Force Majeure

26.1. A party affected by Force Majeure (the “affected party”) shall notify the other party promptly in writing of the nature and extent of the circumstances in question. Both parties shall consult each other and make every reasonable effort to mitigate the effect of such Force Majeure in relation to their obligations under the Agreement and/or any Instruction.

26.2. Neither party will be liable to the other nor deemed in default under this Agreement or any Instruction if and to the extent that such party’s performance of this Agreement is prevented by reason of Force Majeure.

26.3. The Force Majeure shall be deemed to (i) commence when the party declaring Force Majeure notifies the other party of its existence, and (ii) continue as long as the results or effects of the Force Majeure prevent the party performing its obligations under the Agreement or an Instruction. If either party is delayed at any time by Force Majeure, then the delayed party shall notify the other party in writing of such delay within 48 hours.

26.4. The affected party shall notify the other party immediately in writing once the Force Majeure has ended and shall forthwith resume performing its obligations.

26.5. If a Force Majeure continues for more than six months, such that the performance of Services becomes impossible, either party may terminate the Consultant’s appointment by giving notice in writing to the other party. Such termination shall be without prejudice to either party’s accrued rights at the date of termination.

26.6. Notwithstanding any other provisions pertaining to the performance of Services, the affected party shall be deemed not to be in breach of this Agreement or any Instruction or otherwise liable to the other party for any delay in performing or not performing its obligations as a result of a Force Majeure, and provided the affected party has notified the other party in accordance with Clause 25.1, the time for performing the affected obligation shall be extended appropriately.

27. Counterparts

This Agreement and any Instruction may be executed in any number of counterparts, each of which when executed shall be deemed to be an original and all of the counterparts together shall constitute one and the same agreement.

28. Governing Law

This Agreement will be governed by and construed in accordance with the laws of Ireland. Each of the parties hereto submits to the exclusive jurisdiction of the Courts of Ireland.

END

IN WITNESS of which this document has been executed on the date which appears on page 1 above.

Signed for and on behalf of the Grangegorman Development Agency

Authorised Signatory

Witness

Signed for and on behalf of Consultant

Authorised Signatory

Witness

Schedule A

The Services

Schedule A

Geothermal Engineering Consultancy

[illegible]

Schedule B

Request for Proposal

Schedule C

Form of Proposal

Schedule D

Instruction

[illegible]

Proposed Team

[illegible]

Schedule G

List of Documents Included in the Framework Agreement Contract

Instruction
Framework Agreement
Tenderer's response