

Coimisiún na Meán

REQUEST FOR TENDERS

Open Procedure

Request for Tenders for the Provision of Consultancy Services to Support the Three-Year Appraisal of Public Service Media (2028–2030)

Deadline for receipt of Tenders:	17 th November 2026 at 15:00
Deadline for queries:	2 nd November 2026 at 15:00
All queries must be submitted via the eTenders messaging function.	
Responses to clarifications will be posted on www.etenders.gov.ie	
Tenders must be submitted electronically through www.etenders.gov.ie only. Tenders submitted by email, post, hand delivery or any other means will not be accepted.	

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1. INTRODUCTION

1.1 Information about Coimisiún na Meán

Coimisiún na Meán (“The Commission” or “An Coimisiún”) is Ireland's independent media regulator and development agency, established on 15 March 2023 under the Online Safety and Media Regulation Act 2022, succeeding the Broadcasting Authority of Ireland (BAI).

The Commission is responsible for developing and regulating a thriving, diverse, creative, safe and trusted media landscape in Ireland. Its remit spans the regulation of broadcasters, video-on-demand services and certain online services, while also supporting the sustainable development of the Irish media sector through funding, research, policy development and sectoral initiatives.

The Commission exercises a broad range of statutory functions under Irish and European legislation. These include the implementation and enforcement of the Online Safety Framework established under the Online Safety and Media Regulation Act 2022, regulation under the revised Audiovisual Media Services Directive (AVMSD), and responsibilities under the EU Digital Services Act, including acting as Ireland's Digital Services Coordinator.

Coimisiún na Meán also administers media funding schemes, promotes media plurality and innovation, supports public service media, advances media literacy, and works to foster equality, diversity, inclusion and sustainability across the media sector. It has statutory responsibilities in relation to the Irish language and collaborates with national and international partners to support a safe and trusted media environment.

Coimisiún na Meán is led by an Executive Chairperson and four Commissioners, who collectively comprise the Commission and are responsible for the strategic direction and governance of the organisation.

As part of its statutory functions, the Commission undertakes periodic appraisals of the funding and performance of public service media organisations, including RTÉ and TG4. These appraisals support the Commission's assessment of public service media funding requirements, performance commitments and the effective use of public resources, in accordance with the applicable statutory framework.

2. SCOPE OF CONTRACT

The Commission is seeking to appoint a suitably qualified service provider to support the three-year appraisal of the funding and performance of Public Service Media organisations (“PSMs”), RTÉ and TG4, for the period 2028–2030.

The appraisal will be undertaken in accordance with the Commission's Statement of Procedure and Methodology.

The Services will comprise the provision of expert financial, economic and regulatory analysis and evaluation to support the assessment of funding requirements, available resources, financial forecasts, costs, performance commitments and intended outputs for the 2028–2030 appraisal period.

The Services will also include the preparation of appraisal reports, findings and recommendations to support the Commission in fulfilling its statutory and regulatory responsibilities in relation to the three-year appraisal process.

The successful Tenderer will be required to provide the services described in Appendix 1 – Specification of Services and in accordance with the terms and conditions set out in this Request for Tenders and the Contract.

The envisaged duration of the Contract is approximately six (6) months from the Commencement Date, with an option exercisable by the Commission, at its sole discretion, to extend the Contract for up to two (2) further periods of one (1) month each.

The Contract duration is aligned with the statutory deadline of 30 June 2027 for completion of the three-year appraisal process. In the event that this statutory deadline is amended or extended by Government or another competent authority, the Commission may review the Contract timeline and, where necessary, exercise the extension options provided for under the Contract.

Any extension shall be subject to continuing operational requirements, satisfactory performance, budget availability and compliance with applicable procurement law. The total Contract duration, including extensions, shall not exceed eight (8) months.

While the Commission has no baseline for this requirement and therefore it is difficult to estimate a contract value at this stage, the absolute maximum expenditure is capped at €150,000. This should not be interpreted as an estimate of the value of the contract, rather it is a budgetary value which cannot be exceeded. Tenders received with a value greater than €150,000 will be deemed to be non-compliant and will be eliminated from the competition.

This public procurement competition is being conducted by way of an Open Procedure in accordance with the Commission's applicable procurement requirements and relevant public procurement legislation.

The Commission reserves the right to procure related, additional or similar services outside the scope of this Contract where it is entitled to do so in accordance with applicable procurement law.

3. BUDGET, PAYMENT AND COSTS

The maximum budget available for the Contract is €150,000 exclusive of VAT, inclusive of all services, expenses and any extension periods provided for under the Contract.

This amount represents the maximum financial allocation available and should not be interpreted as an estimate of the anticipated Contract value or a commitment by the Commission to expend the full amount.

Tenders exceeding €150,000 exclusive of VAT will be deemed non-compliant and eliminated from the competition.

Payment shall be made in accordance with the Terms and Conditions of Supply of Services set out in Appendix 2, following receipt of valid invoices and subject to the satisfactory delivery of the Services.

The payment arrangements, including any applicable milestones or deliverables, shall be agreed with the successful Tenderer prior to Contract commencement and documented in the Contract.

The Commission will not be responsible for any errors, omissions or miscalculations in pricing submitted by Tenderers.

4. INSTRUCTIONS TO TENDERERS

4.1 Tender Documents - Ambiguity, Discrepancy, Error, Omission

If a Tenderer considers that it is missing any document or information which would prevent the submission of a comprehensive Tender, the Tenderer should notify the Commission via the eTenders messaging function as soon as possible.

Tenderers shall immediately notify the Commission if they become aware of any ambiguity, discrepancy, error or omission in the Request for Tenders. Upon receipt of such notification, the Commission shall issue a written clarification or ruling, which shall be communicated to all Tenderers via eTenders and shall form part of the Request for Tenders.

4.2 Deadline for receipt of tenders

The deadline for receipt of Tenders is **17th November 2026 at 15:00**.

4.3 Queries

All queries relating to this competition must be submitted through the **eTenders** messaging function.

The deadline for receipt of queries is **2 November 2026 at 15:00**.

The Commission will endeavour to respond to queries received before this deadline. Clarification questions and responses will be anonymised, where appropriate, and made available to all Tenderers through eTenders to ensure transparency and equal treatment.

Tenderers are responsible for monitoring eTenders for clarifications, updates and additional information issued in connection with this competition.

4.4 Submission of tenders

Tenders must be submitted electronically via www.etenders.gov.ie.

Tenders submitted by any other means, including hard copy, email or fax, will not be considered. Late Tenders will not be accepted.

4.4.1 *Format for submission of tenders*

Tender submissions must be completed using the **Tender Response Document**.

Tenderers should note that page limits apply to certain qualitative award criteria, as specified in the Tender Response Document.

The format of the Tender Response Document must be complied with, and each requirement must be responded to in the order set out in the document.

The Tender Response Document is provided in Word format to facilitate completion by Tenderers.

Tenderers must complete all relevant sections and adhere to any page limits specified for individual award criteria. Additional pages may be inserted only where expressly permitted.

Responses to award criteria must be included within the designated sections of the Tender Response Document. Separate appendices or supporting documents shall not be considered as part of the qualitative evaluation unless expressly requested or permitted in the Tender Response Document.

4.5 Qualification of tenders

Qualifications, conditions or caveats attached to a Tender may be regarded as a counteroffer and may result in the Tender being deemed non-compliant and rejected.

4.6 Modifications to tenders prior to the closing date for receipt of tenders

Tenderers may modify or withdraw their Tender at any time prior to the deadline for receipt of Tenders by submitting a revised Tender via eTenders.

The most recent valid submission received via eTenders by the deadline will be deemed to be the Tenderer's final Tender. No modifications will be accepted after the deadline.

4.7 Extension of tender period

The Commission reserves the right, at its sole discretion, to extend the deadline for receipt of Tenders by issuing a notice to Tenderers via eTenders prior to the original closing date.

4.8 Cost of preparation of tender

The Commission will not be liable for any costs incurred by Tenderers in the preparation or submission of Tenders or in relation to any associated activities. Tenderers are responsible for ensuring that they fully understand the requirements of this Request for Tenders and for any costs incurred in attending clarification or other meetings, where required.

4.9 Tender Validity Period

Tenders shall remain valid for a period of **six (6) months** from the deadline for receipt of Tenders.

4.10 Currency

Tender prices may be submitted in Euro only. All invoices and payments will be in Euro only.

4.11 Confidentiality

This Request for Tenders is issued solely for the purpose of obtaining Tenders for the services described herein and does not confer any right to use the documentation for any other purpose.

Tenderers shall treat all information supplied in connection with this competition as confidential. The Commission will use reasonable endeavours to treat confidential information received from Tenderers as confidential, subject to its obligations under applicable law, including the Freedom of Information Acts.

4.12 Conflict of interest

Tenderers must disclose any actual, potential or perceived conflict of interest that may arise in connection with their participation in this competition or the performance of the Services.

This includes, but is not limited to, any financial, commercial, professional or other relationship with the Commission, RTÉ, TG4 or any other relevant party that could reasonably be perceived to affect the Tenderer's independence, impartiality or ability to perform the Services.

Tenderers must disclose any relevant conflicts in their Tender submission and must immediately notify the Commission should any additional conflict arise or become known during the procurement process or subsequent performance of the Contract.

The Commission reserves the right to seek further information regarding any disclosed conflict and to determine whether appropriate measures can be implemented to manage or mitigate the conflict.

Failure to disclose a relevant conflict of interest, or where a conflict cannot be adequately managed, may result in exclusion from the competition or other appropriate action in accordance with applicable procurement law.

4.13 Freedom of Information Act

Each of the parties will undertake to use their reasonable endeavours to hold confidential any confidential information received from the other party, subject to The Commission's obligations under law, including (if applicable) the provisions of the Freedom of Information Act 2014. The tenderer will agree that, should it wish any confidential information supplied by it to The Commission not to be disclosed, because of its commercial sensitivity, it will, when supplying such information, identify same and specify the reasons for its sensitivity. The Commission will consult with the tenderer about such sensitive information before making a decision regarding release of such information under the Freedom of Information Act 2014. However, The Commission will give no undertaking or assurance that such information will not be released under the provisions of the Freedom of Information Act 2014 and the final decision on whether or not to release such information rests with The Commission or as set out in the Freedom of Information Act 2014.

4.14 Data protection

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

The Commission will be a data controller (where Data Controller has the meaning given to it under the Data Protection Laws) in respect of any Personal Data (where

Personal Data has the meaning given to it 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 data provided by it in its Tender, is required to confirm in the statement required in the Form of Tender in Tender Response Document that all Data Subjects (where Data Subject has the meaning given to it 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 Commission and the assessment panel for the purposes of the participation of the Tenderer in this Competition or that the Tenderer has a legal basis for providing such Personal Data to The Commission for the purposes of its participation in this Competition.

Note to tenderers: If providing personal data, please provide ALL personal data in a separate appendix to the main body of your tender submission.

4.15 Tax Clearance Certificate

It will be a condition for the award of contract that the tenderer can demonstrate tax clearance throughout the lifetime of the contract. See Irish Revenue web site www.revenue.ie.

4.16 Irish Legislation

Tenderers should be aware that Irish national legislation applies in matters such as employment, working hours, official secrets, data protection, and health and safety. All relevant aspects of such legislation must be observed at all times by the successful service providers.

Tenderers must also have regard to statutory terms relating to minimum pay and to legally binding industrial or sectoral agreements in preparing tenders and delivering services under a contract.

4.17 Determination of responsiveness

After the official opening of tenders, The Commission or its staff or agents will determine whether each tender is substantially responsive to the requirements of the request for tenders.

If a material deviation exists that limits in any substantial way The Commission's rights or the tenderer's obligations under the contract, the tender shall be rejected.

4.18 Clarification of tenders

The Commission reserves the right to seek clarification from Tenderers in respect of information submitted as part of their Tender, where appropriate and in accordance with the principles of transparency, equal treatment and applicable procurement law.

Any clarification sought shall not permit a Tenderer to materially amend its Tender or submit a new or substantially revised offer after the tender submission deadline.

4.19 Consortia and Prime/Subcontractors

Where a group of undertakings submit a tender in response to this RFT, The Commission will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the contract only ("Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor and/or consortium members.

4.20 Correction of errors

The Commission may examine Tenders for arithmetical errors. Where there is a discrepancy between figures and words, the amount in words shall prevail. Where there is a discrepancy between a unit rate and an extended total, the unit rate shall prevail unless the Commission determines that a manifest error has been made. Any correction will be notified to the Tenderer for confirmation. Where a Tenderer does not accept the correction, the Commission may reject the Tender.

4.21 Interference

Any effort by the tenderer to unduly influence The Commission, relevant The Commission personnel or any other relevant persons or bodies in the process of examination, clarification, evaluation and comparison of tenders and in decisions concerning the award of contract shall have their tender rejected. In accordance with Section 38 of the Ethics in Public Office Act 1995 any money, gift or other consideration from a person holding or seeking to obtain a contract will be deemed to have been paid or given corruptly unless the contrary is proved.

4.22 Inducements to purchase

The Commission reserves the right to exclude a Tenderer from this competition where it determines, in accordance with applicable law, that the Tenderer, or any person acting on its behalf, has offered, given or agreed to give any gift, payment or other consideration intended to improperly influence the procurement process or the award of the Contract.

Tenderers must not engage in collusive tendering, bid-rigging or any other anti-competitive conduct prohibited under applicable competition law. Any suspected misconduct may be referred to the appropriate authorities.

4.23 "Or Equivalent"

Please note in relation to this tender document; where reference is made to a particular make, source, process, trademark, type or patent that this is not to be regarded as a de facto requirement. In all such cases it should be understood that the reference in question is accompanied by the words "or equivalent".

4.24 Notification of tender evaluations

All tenderers will be informed of the outcome of their tender following tender evaluation and subsequent clarifications (if any), as well as of any decisions reached regarding the award of this contract.

4.25 Award to runner-up

If for any reason it is not possible to conclude the contract with the designated successful tenderer emerging from this competitive process; or if having concluded the contract The Commission considers that the successful tenderer has not met, or cannot meet its obligations; The Commission reserves the right to award the next highest scoring tenderer the contract on the basis of the same terms at any time during the tender validity period. This shall be without prejudice to the right of The Commission to cancel this competitive process and/or initiate a new contract award procedure at its sole discretion.

4.26 Payment

The Commission operates in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012 as amended.

4.27 Terms and Conditions

A copy of The Commission's Terms and Conditions is available in Appendix 2. Tenderers must submit their Tenders on the basis of the Terms and Conditions applicable at the date of Tender submission. The Commission intends to enter into contracts for services based on these Terms and Conditions (the "Contract").

4.28 Law

Both The Commission and the successful tenderer shall comply with Irish law and the jurisdiction of the Irish courts, which will govern the contract.

5. EVALUATION OF TENDERS

5.1 Selection Criteria

Tenderers will be assessed on a **pass/fail** basis against the Selection Criteria set out in this Section. Tenderers must satisfy all applicable minimum requirements to proceed to evaluation under the Award Criteria.

Tenderers may self-declare compliance with the Selection Criteria at the tender submission stage where expressly permitted in the Tender Response Document.

The Commission reserves the right to request supporting evidence at any stage of the procurement process and will verify the required evidence prior to Contract award.

Where supporting evidence is requested, Tenderers must provide the relevant documentation within five (5) working days of the request, unless otherwise specified by the Commission. Failure to provide satisfactory evidence within the required timeframe may result in elimination from the competition.

5.1.1 Confirmation of Eligibility

Tenderers must provide the following information in the Tender Response Document:

- Full legal name, registered address and contact details of the Tenderer;
- Details of any proposed consortium, partnership or subcontracting arrangements, including the identity of each participating organisation;
- A description of the roles and responsibilities of each consortium member or subcontractor in delivering the Services; and
- The name, position, telephone number and email address of the nominated representative authorised to act on behalf of the Tenderer or Prime Contractor, as applicable.

5.1.2 Economic and Financial Standing

Tenderers must declare in the Tender Response Document that they satisfy the economic and financial standing requirements set out below and that they are capable of providing the supporting evidence upon request and without delay.

Insurance	
Requirement	• Employers Liability Insurance (€13 m) • Public Liability Insurance (€6.5m) • Professional Indemnity Insurance (€1m)
Evidence	Tenderers must confirm in the Tender Response Document that they hold, or will obtain prior to Contract commencement, the minimum insurance cover specified above.

	Tenderers may be required to provide supporting evidence, including insurance certificates or written confirmation from an insurer or broker demonstrating that the required levels of cover are held or can be obtained. The successful Tenderer must provide satisfactory evidence of the required insurance cover prior to Contract commencement and maintain the required cover throughout the Contract period, subject to the applicable Contract terms.
Minimum standard	Evidence from insurer in relation to minimum levels of cover required.

Turnover	
Requirement	Tenderers must demonstrate an average annual turnover of at least €120,000 over their three (3) most recently completed financial years.
Evidence	Tenderers must provide details of their annual turnover for each of the three (3) most recently completed financial years in the relevant section of the Tender Response Document. Supporting evidence may include audited financial statements, financial accounts or other appropriate financial documentation. Where expressly permitted in the Tender Response Document, Tenderers may initially submit a completed Self-Declaration confirming compliance with this requirement. Supporting evidence must be provided upon request by the Commission.

	Where a Tenderer has been trading for fewer than three financial years, the Commission may consider appropriate alternative evidence of economic and financial standing, in accordance with applicable procurement law.
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Tax clearance	
Requirement	Tenderers will be required to produce a tax clearance access number and tax reference number so that The Commission can verify their tax clearance before the contract is awarded and at any time thereafter.
Evidence	Tenderers must provide a tax clearance access number and tax reference number from the Irish Revenue Commissioners using the table provided in the Tender Response Document OR if you do not have in your possession the evidence required under this eligibility criterion when submitting your tender proposals, you may, in the interim, complete the Form of Self-Declaration provided in the Tender Response Document.

5.1.3 Technical and Professional Ability

Previous experience	
Requirement	Tenderers must demonstrate relevant technical and professional experience by providing details of at least two (2) comparable projects or contracts completed within the five (5) years preceding the tender submission deadline.

	The projects must demonstrate experience relevant to the nature, scope and complexity of the Services described in Appendix 1 – Specification of Services.
Evidence	For each project or contract submitted, Tenderers must provide the following information in the Tender Response Document: • Name of the client organisation; • Title and brief description of the project or contract; • Contract commencement and completion dates; • Approximate contract value; • Description of the services delivered and their relevance to the requirements of this RFT; • Details of the principal deliverables and outcomes achieved; and • Name, position, organisation, email address and telephone number of a client representative who may be contacted for reference verification. Only completed projects or contracts will be accepted for the purposes of satisfying this Selection Criterion. The Commission reserves the right to contact the nominated client representatives to verify the information provided. Tenderers must demonstrate that the projects submitted satisfy the minimum requirements of this Selection Criterion. Failure to demonstrate the required relevant experience may result in elimination from the competition.

5.1.4 *Declarations*

Tenderers must complete and sign the following declarations in the Tender Response Document:

- a. Declaration of Bona Fides
- b. Declaration re. Statutory Obligations

5.1.5 *Resource allocation*

Tenderers must identify the key personnel proposed to deliver the Services and complete the Resource Allocation Template provided in the Tender Response Document.

A curriculum vitae (CV) must be provided for each nominated key individual, demonstrating their qualifications, professional experience and relevant expertise.

Tenderers must confirm that the nominated personnel will be available to undertake the roles and responsibilities assigned to them for the duration of the Contract.

Any proposed replacement of key personnel following Contract award shall be subject to the Commission's prior written approval and must demonstrate equivalent or superior qualifications, experience and expertise.

5.1.6 *Form of Tender*

Tenderers must complete and sign the Form of Tender and fully complete the Pricing Schedule contained in the Tender Response Document.

The Pricing Schedule must include all costs associated with delivering the Services, including any applicable extension periods, in accordance with the requirements of this RFT.

5.2 **Award / assessment criteria**

The Contract will be awarded to the Tenderer submitting the Most Economically Advantageous Tender (MEAT), determined in accordance with the Award Criteria and weightings set out below.

In responding to each qualitative Award Criterion, Tenderers must have regard to and directly address the requirements set out in Appendix 1 – Specification of Services. Responses should demonstrate how the proposed approach, resources and commitments will satisfy the relevant requirements of the Specification,

including but not limited to the matters expressly identified under each Award Criterion.

Tenderers must provide sufficient detail to enable the Commission to evaluate their proposals against the published Award Criteria. Generic statements or unsupported assertions of capability may receive lower marks where they do not adequately demonstrate how the requirements will be met.

The Commission will evaluate Tenders solely against the published Award Criteria and associated weightings, subject to satisfaction of the applicable Selection Criteria and minimum qualifying thresholds.

Criterion	%	Minimum score required ¹
Methodology and Approach for Delivery Tenderers must demonstrate a clear understanding of the requirements set out in Appendix 1 – Specification of Services and provide a comprehensive and practical methodology for delivering the three-year appraisal of RTE and TG4. Responses should include, but are not limited to: • An understanding of the objectives, scope and requirements of the appraisal, including the relevant statutory and regulatory framework and the Commission's Statement of Procedure and Methodology.² • The proposed methodology for undertaking the financial, economic, regulatory and performance analysis required under Appendix 1. • The proposed approach to gathering, reviewing, validating and analysing relevant information, including financial forecasts, funding requirements, performance commitments and intended outputs.	35	21

² We acknowledge that the full Statement of P&M will not be available at time of tendering, but the public consultation document linked in Appendix 1 - Specification of Services contains an advanced draft version that should be considered.

• A detailed project plan setting out the proposed stages of delivery, key activities, milestones, deliverables and anticipated timelines. • The proposed approach to project management, quality assurance, stakeholder engagement and reporting to the Commission. • Identification of key delivery risks, assumptions and dependencies, together with proposed mitigation measures. • The proposed approach to ensuring that the required appraisal outputs are delivered within the agreed scope, timeframe and budget. Tenderers will be assessed on the clarity, robustness, practicality and suitability of their proposed methodology and its ability to deliver the requirements set out in Appendix 1.		
Quality and balance of resources provided Tenderers must demonstrate that the proposed project team possesses the qualifications, professional experience, specialist expertise and capacity necessary to deliver the Services described in Appendix 1 – Specification of Services. Responses should include, but are not limited to: • Identification of the key personnel and subject-matter experts proposed to deliver the Services, including their respective roles and responsibilities. • Details of the relevant qualifications, professional experience and specialist expertise of each nominated individual. • Demonstration of an appropriate balance of financial, economic, regulatory, analytical and public service media expertise across the proposed team. • Evidence of the nominated personnel's relevant knowledge and experience of the Irish public service media landscape, including RTÉ and TG4. • Details of the proposed allocation of personnel, including their availability, anticipated time commitment and capacity to deliver their assigned responsibilities.	35	21

• An explanation of how the proposed combination of skills, experience and resources will support the effective delivery of the Services. Irish Language Capability Having regard to the Commission's obligations under the Official Languages Acts 2003 and 2021, it would be advantageous for the proposed project team to include at least one member with proficiency in the Irish language. Tenderers should identify any nominated personnel with Irish-language proficiency, indicating their level of proficiency and how this capability could support the delivery of the Services, particularly in the context of TG4 and Irish-language public service media. Irish-language proficiency is desirable and will be considered positively as part of the overall assessment of the quality and balance of resources. It is not a mandatory requirement, and Tenderers will not be excluded solely on the basis that their proposed team does not include an Irish-language speaker. Tenderers must complete the Resource Allocation Template and provide CVs for all nominated key personnel. Tenderers will be assessed on the suitability, relevant expertise, capacity and overall balance of the proposed resources to deliver the Services set out in Appendix 1.		
Ultimate cost Tenderers must complete the Pricing Schedule in the Tender Response Document, providing a fixed, all-inclusive price for the delivery of the Services described in Appendix 1 – Specification of Services. The total tendered price must include all personnel costs, expenses, administration, travel, subsistence and any other costs necessary for the satisfactory delivery of the Services, including costs associated with any extension periods provided for under the Contract. All prices must be submitted in Euro (€), exclusive of VAT.	25	N/A

The lowest-priced valid Tender will receive the maximum marks available under this criterion. All other valid Tenders will be scored proportionately in accordance with the formula set out in Section 5.3.		
Environmental, Social and Sustainability Considerations Tenderers must outline how relevant environmental, social and sustainability considerations will be incorporated into the delivery of the Services described in Appendix 1 – Specification of Services. Responses should include, but are not limited to: • Measures to minimise the environmental impact of contract delivery, including travel, meetings and document production. • The proposed use of digital collaboration and electronic reporting to reduce unnecessary resource consumption. • Relevant social and sustainability practices directly associated with the delivery of the Services. Tenderers will be assessed on the relevance, practicality and proportionality of the proposed measures and their application to the delivery of this Contract.	5	N/A
Total	100%	-

Tenderers must achieve a minimum score of 60% of the marks available under each of the following qualitative Award Criteria:

- Methodology and Approach for Delivery – minimum 21 out of 35 marks.
- Quality and Balance of Resources – minimum 21 out of 35 marks.

Tenderers that fail to achieve the minimum qualifying score under either of these criteria will be eliminated from the competition and will not proceed to financial evaluation.

No minimum qualifying threshold applies to the Environmental, Social and Sustainability Considerations criterion.

5.3 Calculation of ‘Ultimate Cost’

For the purposes of evaluating Ultimate Cost, the Commission will use the total tendered price provided in the Pricing Schedule of the Tender Response Document, exclusive of VAT and inclusive of all applicable costs and extension periods.

The lowest-priced valid Tender that satisfies the applicable Selection Criteria and minimum qualifying thresholds will receive the maximum marks available under this criterion.

All other qualifying Tenders will be scored using the following formula:

Cost Score = (Lowest Valid Tender Price ÷ Tender Price Being Evaluated) × 25

Scores will be calculated to two decimal places.

The total tendered price must not exceed the maximum available budget of €150,000 exclusive of VAT.

The Commission does not bind itself to accept the most economically advantageous tender or any tender, and reserves the right to accept or reject in whole or in part any or all tenders received, and, in particular, to source the requirement with more than one service provider.

5.4 Verification / clarification meetings

The Commission reserves the right to invite Tenderers to attend verification or clarification meetings where considered necessary to clarify or verify information contained in their Tender submissions.

Any such meetings will be conducted in accordance with the principles of transparency, equal treatment and applicable procurement law.

Clarification meetings will not constitute a separately scored stage of the evaluation process and will not provide Tenderers with an opportunity to materially amend, supplement or improve their Tender submissions.

Where clarification meetings are required, the Commission will communicate the relevant arrangements to the Tenderers concerned. The Commission may request the attendance of nominated key personnel where their participation is necessary to clarify aspects of the Tender submission.

APPENDIX 1 – SPECIFICATION OF SERVICES

INTRODUCTION

[The Broadcasting Act 2009 \(as amended\)](#) (the “2009 Act”) establishes the regulatory framework for broadcasting, audiovisual on-demand media services and online safety in Ireland.

Under the 2009 Act, Coimisiún na Meán (“An Coimisiún”) has a number of statutory functions in relation to the funding, performance and operations of Ireland’s public service media providers (“PSM providers”), RTÉ and TG4, including their fulfilment of the principal objects (“objects”) set out in legislation.

[The Broadcasting \(Amendment\) Bill 2026](#) (the “Bill”) proposes significant reforms to the funding and performance oversight arrangements for RTÉ and TG4.

The Bill supports the implementation of Article 5 of [the European Media Freedom Act](#) (“EMFA”), which requires Member States to ensure that public service media providers are provided with adequate, sustainable and predictable financial resources. It also gives effect to certain recommendations of the [Future of Media Commission](#) (“FOMC”), where these are consistent with the Government decision of 24 July 2024 concerning the future funding of public service media.

Section 44 of the Bill proposes to insert new sections 112A to 112H into the 2009 Act. These provisions establish a three-year appraisal process for the funding and performance of RTÉ and TG4, together with separate yearly funding and performance reviews and yearly funding compliance reviews.

The Oireachtas is currently considering the Bill.³ An Coimisiún is aware that amendments may be made to the relevant provisions during the legislative process. However, as a practical matter, if An Coimisiún is to be in a position to deliver the first three-year appraisal by 30 June 2027, the procurement of consultants must necessarily commence before enactment.

Tenderers should note that the legislative provisions, associated requirements and statutory timelines may be subject to amendment during the legislative process and should ensure that their proposed approach allows for reasonable flexibility to accommodate such changes.

PSM PROVIDERS

RTÉ and TG4 are required to provide free-to-air services which are available, in so far as it is reasonably practicable, to the whole community on the island of Ireland and have the character of a public service.

RTÉ operates on a dual-funding model of public funding (TV licence and additional Exchequer contribution) and commercial income. RTÉ has a broad remit, with responsibility for provision of radio and television services in both English and Irish. RTÉ is required to be responsive to the interests and concerns of the whole community within the island of Ireland, and to have special regard for elements that distinguish that culture and, in particular, the Irish language.

TG4 is primarily funded through a direct Exchequer grant, with some commercial income. TG4 has responsibility for the provision of a television service whose range of programming is primarily in the Irish language. TG4’s

³ The current Bill status and the full text is available at <https://www.oireachtas.ie/en/bills/bill/2026/54/>

programming reflects the varied elements which make up the culture of the whole of the island of Ireland with special regard for elements that distinguish that culture and, in particular, the Gaeltacht (Irish speaking) regions.

The principal objects, functions and statutory obligations of RTÉ and TG4 are set out in sections 113 to 116 and sections 117 to 119 of the Act, respectively.

PREVIOUS FUNDING AND PERFORMANCE REVIEWS

Under the existing regulatory regime, the funding and performance of RTÉ and TG4 have been assessed through five-year funding reviews and annual reviews of performance and public funding.

Previous review reports, recommendations and relevant supporting materials will be made available, where relevant, as contextual and evidential inputs only.⁴

The three-year appraisal process established by the Bill replaces the previous five-year review framework.

THREE-YEAR APPRAISAL PROCESS

Proposed section 112A requires An Coimisiún, every three years, to carry out an appraisal of the funding and performance of RTÉ and TG4 and to submit a report to the Minister for Culture, Communications and Sport (the “Minister”).

The appraisal must be carried out in accordance with the adopted Statement of Procedure and Methodology (the “Statement of P&M”) provided for in section 112B. The Statement of P&M, which is adopted by An Coimisiún following consultation, sets out the procedure and methodology for assessing funding requirements and determining performance commitments, intended outputs, performance indicators and metrics.

Under section 112C, RTÉ and TG4 must each make a submission to An Coimisiún, in accordance with the Statement of P&M and in the form and manner specified by An Coimisiún, which must set out:

- proposals for its performance commitments and intended outputs for the appraisal years and the performance indicators and metrics to be applied to them;
- projected input costs, cost structure and current and capital expenditure to meet those costs for each appraisal year, including how these relate to the proposed performance commitments and intended outputs;
- projected resources for each appraisal year, other than public funding under section 123 of the 2009 Act; and
- any other information required by the Statement of P&M or by An Coimisiún.

Under section 112D, An Coimisiún must:

⁴ The reports, regulator recommendations and the Government’s subsequent response are visible on the Department of Culture, Communications and Sport’s website. See <https://www.gov.ie/en/department-of-culture-communications-and-sport/publications/coimisiún-na-meán-funding-annual-reviews/> and <https://www.gov.ie/en/department-of-culture-communications-and-sport/publications/coimisiún-na-meán-funding-five-year-reviews/>

- assess the current and capital expenditure necessary in each appraisal year to enable each PSM provider to fulfil its public service objects and to safeguard its editorial independence;
- assess the level of resources, other than public funding under section 123, that will be available to meet that expenditure;
- assess the required levels of public funding under section 123 to meet the necessary current and capital expenditure;
- review the proposed performance commitments and intended outputs and the related costs, cost structure and expenditure;
- determine the performance commitments and intended outputs that will apply for the appraisal years and the performance indicators and metrics to be applied to them; and
- carry out any other assessments relating to the funding and performance of the PSM provider that the Minister may specify by notice in writing to An Coimisiún.

In carrying out the appraisals, An Coimisiún must take account of:

- the net expenditure path⁵ recommended by the European Council under Article 17(1) of Regulation (EU) 2024/1263 of the European Parliament and of the Council of 29 April 2024 on the effective coordination of economic policies and on multilateral budgetary surveillance and repealing Council Regulation (EC) No 1466/97;
- the application of the law of the European Union governing State aid;
- the submissions from RTÉ and TG4 under section 112C;
- such other matters as the Minister may specify in writing to An Coimisiún; and
- any other matter that An Coimisiún considers relevant.

Under section 112E, An Coimisiún must then prepare and submit a report to the Minister. The report must:

- set out An Coimisiún's findings from the appraisal;
- recommend the levels of public funding required for current and capital expenditure in each appraisal year to enable the relevant PSM provider to fulfil its public service objects and safeguard its editorial independence;
- state the performance commitments and intended outputs determined by An Coimisiún for the appraisal years, and the performance indicators and metrics to be applied to them; and
- address any other matters specified by the Minister.

The report must be submitted to the Minister by 30 June 2027. Under the Bill as initiated, the first three-year appraisal will cover the period 2028-2030.

⁵ The Net Expenditure Path can be found in the Government's [Medium-Term Fiscal and Structural Plan](#) (Dept. of Finance, December 2025) – see Table A8, p.61
See also [EU COUNCIL RECOMMENDATION C/2026/1812 \(March 2026\)](#)

As PSM submissions are due within three months of the adoption of the Statement of P&M, An Coimisiún will have a limited period to complete the appraisal and prepare its report.

Under S112F, within six months of An Coimisiún's report, the PSM providers are required to finalise and submit their three-year Statement of Strategy.

YEARLY REVIEWS

The annual funding and performance review and annual funding compliance review under sections 112G and 112H are separate statutory processes and are outside the scope of this contract. However, the outputs of this procurement may inform their future operation, as the annual funding and performance review must have regard to the relevant three-year appraisal and adopted Statement of P&M.

COIMISIÚN NA MEÁN'S PSM FRAMEWORK

An Coimisiún is developing a PSM Framework to support its evolving statutory role and provide an evidence base on audience wants and needs. Relevant outputs from this work, including audience research, will inform the appraisal process and will be made available to the successful tenderer.

CURRENT POSITION

An Coimisiún is currently consulting on the draft Statement of P&M. The proposed approach distinguishes between three categories of funding: business-as-usual ("BAU") funding, one-off funding and augmentation funding.

- BAU funding represents the baseline funding required to sustain the existing PSM offer. Barring exceptional circumstances, it sets the minimum level of funding that An Coimisiún will recommend. BAU funding uses an inflation-less-efficiencies approach (HICP-X), adjusted to reflect commercial income.
- One-off funding is intended for material, time-limited purposes and does not form part of BAU funding in the next appraisal cycle.
- Augmentation funding supports material and ongoing improvements to the existing PSM offer that cannot reasonably be funded through the redeployment of existing resources. As increased funding may become an ongoing commitment, requests for augmentation funding carry the highest burden of proof and are subject to enhanced scrutiny.

Performance commitments are central to the proposed approach, linking funding to performance and delivery of public value. PSM providers will submit performance commitments alongside their financial forecasts, with enhanced performance commitments required where augmentation funding is sought. Coimisiún na Meán will determine the final performance commitments, taking account of audience needs.

In preparing their submissions, tenderers should refer to the draft Statement of P&M and associated consultation document for full details of the proposed appraisal approach.⁶

Following consideration of the submissions received, An Coimisiún will finalise and adopt the Statement of P&M and provide a copy to the Minister by 31 January 2027. The adopted Statement of P&M may differ from the draft

⁶ <https://www.cnam.ie/consultation-opens-on-draft-statement-of-procedure-and-methodology-for-appraisal-of-public-service-media/>

published for consultation and, in the event of any inconsistency, the adopted Statement of P&M shall prevail. Tenderers should ensure that their proposed methodology is sufficiently flexible to accommodate any amendments arising from the consultation and finalisation process.

Supporting guidelines and templates have also been developed to support consistent implementation of the Statement of P&M. These will be provided to the successful tenderer and to RTÉ and TG4.

SCOPE

The appointed consultant will provide specialist economic, financial, analytical and advisory services to support An Coimisiún in carrying out the three-year appraisal for 2028 to 2030.

The consultant will undertake the required analysis in accordance with the Statement of P&M as adopted by An Coimisiún, any supporting guidance and templates issued by An Coimisiún, and the applicable legislative and regulatory frameworks.

BAU funding

Analyse the following information provided by the PSM provider:

- Financial statements for the previous two financial years (2025 and 2026 for the initial appraisal period) and budget financial information for 2027.
- A schedule setting out the PSM provider's application of the HICP-X methodology to its BAU funding.
- Forecast financial statements for the appraisal period (2028 to 2030) based on BAU funding.
- Proposed performance commitments and intended outputs for the appraisal period.
- Strategic narrative material.
- Discussion of efficiency.
- Notification of any planned applications for expansion funding⁷ under sections 103 and 104 of the 2009 Act.
- Any statement of non-compliance with statutory objects, where provided.

In undertaking this analysis, consider, among other matters:

- Whether there is any evidence that existing funding is insufficient to enable the PSM provider to fulfil its public service objects.
- Whether the HICP-X methodology has been correctly applied.
- Whether there is evidence that funding generated through the HICP-X methodology would be insufficient to safeguard editorial independence.
- The credibility, sustainability and consistency of the financial forecasts.

⁷ Expansion funding relates to new services approved under section 103 and 104 of the 2009 Act or through other approval processes and sits outside the three-year appraisal process.

- Consistency between the financial forecasts, strategic narrative and proposed performance commitments.
- The projected balance sheet position and financial sustainability.
- Consistency with applicable State aid requirements, including any evidence of overcompensation.

If any of the above areas suggest a concern with HICP-X funding, consider what adjustments to such income may be necessary to support business-as-usual.

Analyse the proposed BAU performance commitments and intended outputs, considering, among other things:

- Compliance with the performance commitment guidelines set out in the adopted Statement of P&M.
- Consistency with the strategic narrative.
- Appropriateness and level of ambition, taking account of recent performance.
- Whether any additional spotlight performance commitments⁸ may be necessary.

One-off funding

Where a PSM provider applies for one-off funding, analyse the following information provided:

- The level and nature of public funds sought and how they would be spread over the three-year period.
- The financial overlay showing the incremental impact of the proposal on the BAU financial forecasts.
- The narrative setting out the purpose of the expenditure, how the expenditure supports that purpose and how the proposal satisfies the criteria for one-off funding.
- The non-financial benefits of the purpose, including any proposed performance commitment uplifts or spotlight performance commitments associated with the request.

In undertaking this analysis, consider, among other matters:

- Whether the proposal is genuinely time-limited in nature.
- Whether the expenditure could reasonably be accommodated within BAU funding.
- Whether the proposed funding is proportionate to the purpose identified.
- Whether any associated performance commitment uplifts are proportionate and appropriate.

Beyond these tests, evaluation of the merits of the request will be situational, adapted to its nature and scale.

Augmentation funding

Where a PSM provider applies for augmentation funding, analyse the following information provided:

- The level and nature of public funds sought and how they would ramp up during the three-year period.

⁸ A 'spotlight' performance commitment is a distinct category of performance commitment which may be used to illuminate the performance of a particular initiative or an area of concern, and is more focused than the more strategic performance commitments.

- The calculation of the current value of the request in accordance with the adopted Statement of P&M.
- Financial overlays showing the incremental effect of the proposal on the BAU forecasts, including any associated commercial income impacts.
- Proposed enhanced performance commitments and any associated spotlight performance commitments.
- Supporting narrative material explaining:
 - the basis for the proposed performance improvements;
 - the proposed use of funds; and
 - whether expenditure is likely to create long-term funding commitments or other forms of lock-in.
- Analysis supporting the conclusion that redeployment of existing resources would be insufficient.
- Details of any relevant internal approval processes supporting the proposal.

In undertaking this analysis, consider, among other matters:

- Whether the proposal is appropriately categorised as augmentation funding rather than expansion funding.
- Whether the proposed uplift in performance commitments is commensurate with the funding requested and whether the uplift is material.
- Whether the proposal addresses areas of priority identified through An Coimisiún's assessment of audience needs and, if not, whether the PSM has persuasively argued the case for a higher priority to be given to the funding request.
- The PSM provider's track record in delivering previous performance commitments.
- The appropriateness and ambition of any spotlight performance commitments.
- Whether the funding request is consistent with the calculated current value.
- Consistency with applicable State aid requirements, including whether there is evidence of overcompensation.

Contextual review

In undertaking the above analyses, have regard to:

- The net expenditure path recommended under Article 17(1) of Regulation (EU) 2024/1263.
- Any relevant Government policy or guidance relating to public service media funding.
- Article 5 of the European Media Freedom Act.
- Any other legislative, policy or regulatory considerations identified by An Coimisiún.

The successful tenderer will support An Coimisiún throughout the appraisal process. Final statutory findings, funding recommendations, performance commitments, intended outputs, performance indicators and metrics remain matters for determination by An Coimisiún.

Following completion of the project, the successful tenderer will participate in a debrief with Coimisiún na Meán to discuss lessons learned, opportunities for process improvement and recommendations for future appraisal cycles.

METHODOLOGY AND INPUTS

There is an expectation that the successful tenderer will seek to minimise the regulatory burden associated with the appraisal process by ensuring that:

- relevant background information is reviewed prior to engagement with RTÉ and TG4;
- information requests are proportionate to the requirements of the appraisal;
- information requests are clear, specify the required format, and are consolidated where possible;
- clarification requests are made in a timely manner; and
- any material additional information requirements are agreed with An Coimisiún in advance.

Key elements of the appraisal are expected to be based on desk-based analysis. Relevant inputs may include:

- submissions made by RTÉ and TG4 under section 112C;
- supporting documentation provided by RTÉ and TG4;
- audience research generated through An Coimisiún's PSM Framework and other relevant evidence;
- relevant financial, strategic and corporate documentation;
- applicable legislative, policy and regulatory materials;
- supporting guidelines and templates issued by An Coimisiún; and
- any other information source agreed with An Coimisiún.

Inputs may be provided on a phased basis throughout the appraisal process. Tenderers should demonstrate how they will manage analysis and reporting in a phased delivery environment.

In undertaking the work, the successful tenderer will have regard to audience research and other evidence provided by An Coimisiún relating to audience wants, needs, consumption patterns and perceptions of PSM. Such evidence must be taken into account when assessing proposed funding, performance commitments, intended outputs and the delivery of public value.

As set out in the Statement of P&M, the process includes an informal pre-submission discussion stage alongside the mandated appraisal and report. The successful tenderer will be expected to support An Coimisiún engagement and to engage directly with the PSM providers across all statutory and informal stages. This may include:

- initial engagement meetings;
- pre-submission discussion meetings;
- requests for further information or clarification;

- meetings to discuss issues arising from the submissions; and
- ongoing engagement, where required, throughout the appraisal process.

The successful tenderer will also be expected to engage regularly with An Coimisiún throughout and to meet An Coimisiún at key stages of the appraisal process to discuss emerging findings, key issues and draft outputs.

Tenderers should clearly demonstrate their proposed approach to delivering the required analysis, stakeholder engagement, project management and reporting outputs, and how they will support the efficient and effective delivery of the appraisal process, in accordance with the Statement of P&M, and any supporting guidance and templates issued by An Coimisiún, and the applicable legislative and regulatory frameworks.

In preparing their tenders, tenderers should also have regard, inter alia, to the following:

- the draft statement of procedure and methodology, the consultation document and any subsequently adopted statement of procedure and methodology;
- the provisions of the Broadcasting Act 2009 and the Broadcasting (Amendment) Bill 2026;
- the public service objects, functions and statutory obligations of RTÉ and TG4;
- the provisions of the European Media Freedom Act;
- the provisions of the Audiovisual Media Services Directive;
- the application of Articles 106 and 107 of the Treaty on the Functioning of the European Union and relevant State aid requirements;
- the net expenditure path recommended under Article 17(1) of Regulation (EU) 2024/1263;
- relevant corporate, financial and strategic documentation of RTÉ and TG4;
- previous statutory reports, recommendations and associated documentation; and
- audience research and other evidence generated through An Coimisiún's PSM Framework and related work programmes.

PROJECT TIMELINE

The successful tenderer will deliver the project in accordance with the statutory timetable for the three-year appraisal process and any detailed project timetable agreed with Coimisiún na Meán.

Subject to the timing of contract award and adoption of the Statement of P&M, the project is expected to commence in early 2027. For procurement planning purposes, it is currently anticipated that the Statement of P&M will be adopted by 31 January 2027, that submissions from the PSM providers will be due within three months of its adoption, and that the appraisal reports must be submitted to the Minister by 30 June 2027.

Tenderers must demonstrate how they will resource and manage the project to deliver all required draft and final outputs in sufficient time to enable Coimisiún na Meán to meet the statutory deadline. They must also demonstrate their capacity to accommodate changes to the detailed timetable arising from the enactment or commencement of the relevant legislation, the finalisation or adoption of the Statement of P&M, or directions from An Coimisiún.

PROJECT DELIVERABLES

The successful tenderer will provide a detailed project plan setting out the proposed approach, timelines, project phases, key milestones and reporting arrangements.

The successful tenderer will prepare draft and final appraisal reports, including executive summaries and supporting analysis, and will provide such draft iterations as are reasonably required to complete the appraisal process.

For tendering and pricing purposes, tenderers should assume, at a minimum, the following review cycle:

- A first draft report for review by the Coimisiún na Meán PSM Team.
- A second draft report for review by Coimisiún na Meán.
- A third draft report for review by the Coimisiún na Meán PSM Team.
- A redacted version of the third draft report for each PSM provider, with redactions agreed by Coimisiún na Meán.
- A final draft report for review by Coimisiún na Meán.
- A final report (clean version).
- A final redacted report, where required and with redactions agreed by Coimisiún na Meán.
- Presentation of emerging and/or final findings, supporting analysis and advice to the Commissioners and relevant An Coimisiún staff. It is envisaged that the second draft report would be delivered to Coimisiún na Meán by early May 2027 with draft findings to be presented to An Coimisiún in mid-May, or at such stages as may be agreed.

All materials must be provided in editable electronic format.

The report must present the analysis required to support An Coimisiún in meeting the requirements of section 112E, using a structure and format directed by An Coimisiún. The report and analysis therein will support and inform An Coimisiún's own findings, determinations and recommendations, in meeting requirements under Section 112E.

The successful tenderer will also be required to provide An Coimisiún with copies of all documents provided by stakeholders, including RTÉ and TG4, in connection with the appraisal.

The successful tenderer will provide information on lessons learned in carrying out the project and on recommendations for future appraisals in order to ensure efficiencies in this process and to reduce unnecessary administrative burden to broadcasters.

PROJECT MANAGER

Coimisiún na Meán will require the appointed company to nominate a dedicated project manager who will act as the main point of contact with An Coimisiún for the duration of the project. The project manager must have the authority to deal with all matters relating to the contract and be responsible for the satisfactory delivery of all project deliverables. The project manager will be expected to participate in regular progress meetings with An Coimisiún and with PSMs throughout the project.

Coimisiún na Meán will require regular progress updates, in a format and at intervals agreed in advance, including:

- information on the personnel allocated to the project;

- progress since the commencement of the project;
- engagement with stakeholders, including PSM providers;
- issues, risks and challenges encountered, together with any measures or support required to maintain delivery within agreed timeframes and budget;
- anticipated or emerging risks to project completion; and
- updates on project timelines and deliverables.

In addition, Coimisiún na Meán may request informal updates by video conference, telephone or email during the course of the project.

PARTNERSHIP OR SUBCONTRACTING ARRANGEMENTS

Tenderers may propose to deliver the services either independently or in partnership with other individuals or organisations, where appropriate. Where a tender involves more than one party, the tenderer must clearly describe the roles and responsibilities of each party and the arrangements for the management and delivery of the project.

APPENDIX 2 –THE COMMISSION TERMS AND CONDITIONS OF SUPPLY OF SERVICES

COIMISIÚN NA MEÁN TERMS AND CONDITIONS OF SUPPLY OF SERVICES

These Terms and Conditions shall apply to the Contract between The Commission and the Supplier and, save for the provisions of Schedule E (if the Particulars of Contract indicate that Schedule E applies), shall not be deemed to be amended or excluded in whole or part save by written agreement duly executed by the Supplier and The Commission and making express provision for such amendment or exclusion. Any rights or remedies of The Commission otherwise or elsewhere provided for in the Tender Documents shall be deemed to be in addition to and not to limit the rights and entitlements of The Commission pursuant to these Terms and Conditions. Any terms or conditions of the Supplier (including any terms and conditions contained in Schedule D) whether contained in quotations, invoices or otherwise (including those implied by law, trade custom, practice, or course of dealing), conflicting with or purporting to amend or exclude these Terms and Conditions shall be deemed not to apply. By entering this Contract, the Supplier waives any right it might otherwise have to rely on any term endorsed upon, delivered with, or contained in any the documents of the Supplier that is inconsistent with these terms.

Definitions

Capitalised terms not defined in these Terms and Conditions shall have the meaning given to them in the Particulars of Contract.

“The Commission Background IPR” means all Intellectual Property Rights owned by or licensed to The Commission before the date of this Contract or created by The Commission independently of this

Contract, including Intellectual Property Rights in all documents, specifications, products, information, items and materials in any form (whether owned by The Commission or a third party).

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

“Business Day” shall mean any day other than Saturday, Sunday or any other day which is a public holiday in Ireland between the hours of 9.00 and 17.30.

“Change Control Notice” has the meaning given to it in clause 6.1.3.

“Compliant Systems” means that the performance and functionality of the systems, machinery, hardware, software, and products will be consistent and uninterrupted regardless of the date and time on which they are being used or operated and regardless of any currency which they use or to which they refer where use of or reference to that currency is required by law or by the terms of this Contract.

“Confidential Information” means all information relating to the affairs of business of both parties.

“Customer Information” means all information, data, records, material, programs, databases, e-mails, accounts information and all other information of The Commission which is to be located and/or stored on the Servers as may be part of the provision of Services.

“Data Protection Legislation” means all applicable laws and regulations relating to the processing of personal data and

privacy including the Data Protection Act 2018 the General Data Protection Regulation 2016/679 (the “**GDPR**”), the European Communities (Electronic Communications, Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (S.I. 336/2011), and any statutory instrument, order, rule or regulation made thereunder, as from time to time amended, extended, re-enacted or consolidated. The terms “data controller”, “data processor”, “process”, “personal data” and “personal data breach” shall have the meanings given to those terms in the GDPR.

“**Disclosing Party**” has the meaning given to it in clause 10.3.

“**Force Majeure**” means an event or circumstance or combination of events and/or circumstances not within the reasonable control of either or both The Commission and/or the Supplier (the “**Affected Party**”) which has the effect of delaying or preventing the Affected Party from complying with its obligations under this Contract including but not limited to acts of God, war, out-break of disease (but shall not include COVID-19), 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 Affected Party’s places of business.

“**GDPR**” has the meaning given to it in Data Protection Legislation.

“**Intellectual Property Rights**” means patents, utility models, rights to inventions, copyright and related rights, moral rights, trade marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off

or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

“**Impact Assessment**” has the meaning given to it in clause 6.1.3.

“**Laws**” has the meaning given to it in clause 5.9.

“**Probationary Period**” means the first six (6) month period of the Term (if the Term exceeds six (6) months).

“**Project Specific IPR**” means all Intellectual Property Rights in items created by the Supplier (or by a third party on behalf of the Supplier) specifically for the purposes of this Contract (including without limitation in respect of any materials, documents or other deliverable) and updates and amendments to same, together with all Intellectual Property Rights otherwise arising as a result of the performance of the Supplier’s obligations under this Contract, but does not include the Supplier Background IPR.

“**Receiving Party**” has the meaning given to it in clause 10.3

“**Servers**” means the server(s) on which the Customer Information will be located and/or stored in the course of providing the Services which for the avoidance of doubt may be virtual servers in a multi tenancy environment.

"Supplier Personnel" shall mean any personnel, officers, contractors and agents employed or engaged by Supplier in relation to the supply of any part of the Services hereunder.

"Supplier Background IPR" means all Intellectual Property Rights owned by or licensed to the Supplier before the date of the Contract, including those subsisting in the Supplier's standard development tools, program components or standard code used in computer programming or in physical or electronic media containing the Supplier's know-how or generic business methodologies, together with Intellectual Property Rights created by the Supplier independently of this Contract.

"Tender Documents" shall include the following:

- (a) any request for proposal or invitation to tender for the provision

of goods and/or services made by The Commission to the Supplier;

- (b) any tender or other response to such request for proposal or invitation to tender, as clarified or amplified in writing between The Commission and the Supplier prior to written acceptance by The Commission thereof;
- (c) additional tender documents including specifications, price schedules, form of tender and European Single Procurement Document (together with any declarations provided as part of its tender); and,
- (d) the Supplier's submission contained at Schedule D.

1. General Terms

- 1.1 This Contract takes legal effect on and from the Effective Date and continues in full force and effect for the Term unless earlier terminated in accordance with this Contract.
- 1.2 If the Particulars of Contract indicate An Coimisiún may extend the Term of the Contract, An Coimisiún (on ten (10) Business Days' notice to the Supplier) may unilaterally extend the contract on the basis specified in the Particulars of Contract (or other such terms agreed between the parties) and references to the Term shall include any such extensions.
- 1.3 The Supplier undertakes to perform the Services from the Effective Date until expiry of the Term to the highest professional standards at all times and in compliance with the terms of this Contract.
- 1.4 The Supplier shall accept sole responsibility for acquiring any permits or licences necessary for its performance of the Contract.
- 1.5 An Coimisiún shall not be responsible under any circumstances for any loss or damage suffered by the Supplier or its servants or agents in the performance of the Contract, nor entertain any claim relating to such damage.

2. Probationary Period

- 2.1 Without prejudice to any other rights of An Coimisiún pursuant to this Contract, An Coimisiún may terminate this Contract for any reason or no reason during the Probationary Period on five (5) Business Days' notice to the Supplier.
- 2.2 During this Probationary Period, the performance and suitability of the Supplier to perform the Services will be monitored. At the end of the Probationary Period the Supplier will be informed in writing if it has:
 - 2.2.1 successfully completed the Probationary Period;
 - 2.2.2 failed to complete the Probationary Period (and will be subsequently terminated in accordance with clause 2.1); or
 - 2.2.3 failed to complete the Probationary Period to An Coimisiún's satisfaction, whereby the Supplier's Probationary Period will be extended by the lesser of two months and the remainder of the Term.

- 2.3 If An Coimisiún fails to contact the Supplier at the end of the Probationary Period, the Supplier shall be deemed to have successfully completed the Probationary Period.

3. Payment Terms

- 3.1 Prior to the performance of any Services under this Contract it shall be the responsibility of the Supplier to procure the issue from An Coimisiún of a valid written purchase order for the relevant Services and the Services may be supplied only following issue of such written purchase order by An Coimisiún to the Supplier.
- 3.2 The Supplier shall invoice An Coimisiún in accordance with the provisions of Schedule B.
- 3.3 In accordance with the Late Payments in Commercial Transactions Regulations 2012, payment will be made within 30 (thirty) days of receipt of a valid, complete and accurate invoice provided in accordance with clause 3.2, delivered by the Supplier to An Coimisiún 's Finance Department, quoting a valid purchase order number. Each invoice shall include such supporting information reasonably required by An Coimisiún to verify the accuracy of the invoice, including the information specified in Schedule B.
- 3.4 Payment will not be made to a Supplier who has failed to demonstrate its tax clearance status.
- 3.5 An Coimisiún shall withhold tax as required by the Taxes Consolidation Act 1997 (as amended) and the Revenue Commissioners in respect of payments made by public bodies for professional services.
- 3.6 The charges for the Services are as set out in Schedule B and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by An Coimisiún, the charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services. Any and all taxes applicable to the provision of the Services under and in accordance with this Contract will be the sole responsibility of the Supplier and the Supplier so acknowledges and confirms.
- 3.7 Wherever under this Contract any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to An Coimisiún in respect of any breach of this Contract), An Coimisiún may deduct, with prior notice to the Supplier, that sum from any sum then due, or which at any later time may become due to the Supplier by An Coimisiún under this Contract.

4. Warranties

- 4.1 The Supplier warrants, represents and undertakes that, subject to the remaining provisions of this clause 4:
- 4.1.1 it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Contract and to provide

the Services hereunder;

- 4.1.2 it has taken all and any action necessary to ensure that it has the power to execute and enter the Contract;
- 4.1.3 it owns, has obtained or is able to obtain, all relevant titles and licences that are necessary to allow it carry out its obligations and responsibilities under this Contract;
- 4.1.4 it has not and will not in the supply of the Services under this Contract at any time infringe the intellectual or other property rights of any third party;
- 4.1.5 it is entering into this Contract with a full understanding of its material terms and risks and is capable of assuming those risks;
- 4.1.6 An Coimisiún has delivered or made available to the Supplier all of the information and documents that the Supplier considers necessary or relevant for the performance of its obligations under this Contract;
- 4.1.7 it has made and shall make its own enquiries as to the accuracy of the information referred to in clause 4.1.6;
- 4.1.8 the status of the Supplier, as declared in its European Single Procurement Document response included within the Tender Documents, has not changed and none of the circumstances listed in Regulation 57 of the 2016 Regulations apply to the Supplier;
- 4.1.9 it will provide the Services in accordance with the Terms and Conditions of this Contract;
- 4.1.10 it will provide the Services with all reasonable due diligence, skill and care, and that all persons engaged by the Supplier in connection with the provision of the Services shall be competent, appropriately qualified and experienced having regard to the Services being provided and in accordance with the standards which fall within the upper quartile in the relevant industry for the provision of comparable services which are substantially similar to the Services or the relevant part of them, having regard to factors such as the nature and size of the parties, the KPIs specified in this Contract (if any), the Term, the pricing structure and any other relevant factors;
- 4.1.11 following a written request to that effect by An Coimisiún, the Supplier will procure the immediate removal of any member of the Supplier's personnel and the replacement by another suitably qualified member of the Supplier's personnel. An Coimisiún agrees to act reasonably and in good faith in relation to any such request;

- 4.1.12 it has acquainted itself with and shall comply with all relevant legal and/or regulatory statutes, bylaws, regulations and requirements of any government, local or other competent authority and best industry practice including but not limited to those relating to tax, health, safety and the environment, employment, and those made known by An Coimisiún to the Supplier in this Contract, the Tender Documents (if applicable) or otherwise in connection with the Services;
 - 4.1.13 any materials, software, facilities and equipment used for or incorporated into the Services shall be fit for their intended purpose, of best quality and free from defects in workmanship, installation and design;
 - 4.1.14 it retains and maintains the insurances required by this Contract;
 - 4.1.15 it will maintain the confidentiality and integrity of any Customer Information or Confidential Information acquired or accessed by the Supplier and/or Supplier Personnel in the course of providing the Services; and
 - 4.1.16 the Services shall not infringe any patent, trademark, registered design, copyright or other right of any third party.
- 4.2 The warranties and remedies provided for in this clause 4 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by An Coimisiún of all or part of the Services in respect of such warranties and remedies.
- 4.3 The Supplier undertakes to notify An Coimisiún forthwith of any material change to the status of the Supplier with regard to the warranties, representations and undertakings as set out in this clause 4 and to comply with all reasonable directions of An Coimisiún with regard thereto which may include termination of this Contract.

5. Supply of Services

- 5.1 The Services shall be supplied to the satisfaction of An Coimisiún in strict conformity with this Contract (in particular the standard specified in clause 4.1.10) and the Specification of Services set out in Schedule A, except as may otherwise be agreed in writing by An Coimisiún. The Supplier will provide such reports, if any, as are detailed in Schedule A promptly.
- 5.2 The Supplier shall at all times allocate sufficient resources to provide the Services

in accordance with the terms of the Contract and shall ensure that any personnel engaged in the provision of any of the Services shall, if required by An Coimisiún, attend such meetings with An Coimisiún as and when reasonably required.

- 5.3 The Supplier shall during the Term perform the Services and shall take all appropriate steps having regard to its obligations under the Contract to ensure that all matters are dealt with to ensure performance of the Services as provided for in the Contract and to achieve the timely, efficient and economic performance of its obligations under the Contract in a manner and to the standards and within the time stipulated in the Contract.
- 5.4 If An Coimisiún is not satisfied with the standard of any part of the Services provided, An Coimisiún, at its absolute discretion, may either:
- 5.4.1 require the Supplier, within a specified period and at no charge, to re-perform and/or re-execute the relevant Services to its satisfaction; or
- 5.4.2 perform and/or execute all or part of the relevant Services by using its own personnel or by engaging a third party to do so and all costs and expenses incurred by An Coimisiún in such regard will be deducted from any sums due or to become due to the Supplier under this Contract or will be recoverable from the Supplier by The Commission as a debt free from counterclaim, set-off or similar.
- 5.5 Without prejudice to any other rights of The Commission under the Contract, The Commission may terminate this Contract with immediate effect if the Supplier does not comply with any requirement under clause 5.4 within the time specified or if The Commission is not satisfied with the standard of any such remedial Services undertaken by the Supplier.
- 5.6 The Supplier will prioritise its obligation under this Contract in relation to the other business activities of the Supplier to ensure that it can comply with its covenants and obligations in the manner contemplated by this Contract.
- 5.7 The Supplier acknowledges that it does not have any exclusive right to provide the Services, or Services similar or identical to the Services, to The Commission, and that there is no guarantee of any value, volume or frequency of Services unless otherwise specified.
- 5.8 The Supplier acknowledges and agrees that The Commission is deemed to have fully relied on the Supplier's skill, expertise and experience in providing the Services. The Supplier further acknowledges and agrees that The Commission may require the Supplier to interact with other suppliers of The Commission and the Supplier shall provide such reasonable co-operation and information regarding the Services as The Commission may reasonably require without further payment.

- 5.9 The Supplier shall comply with all relevant standards and codes (including inter alia voluntary codes) and all applicable laws, ordinances, statutes,

orders, rules and regulations of any governmental or other applicable authority having jurisdiction (hereafter “Laws”) in its performance of the Services and production and provision of the Services hereunder and shall ensure that the Services are in compliance with such Laws and without prejudice to the generality of the foregoing shall ensure that the production, creation and transmission of all materials supplied or generated pursuant to the Contract shall be designed and implemented in strict compliance with those Laws and shall obtain and pay for, at its own cost all licences and permits necessary for the performance of Services under the Contract.

- 5.10 Nothing in this Contract shall prohibit or be deemed to prohibit the Supplier from providing services similar to the Services to any other third party, providing that the provision of Services to any such third party shall not interfere or adversely affect the provision of the Services to The Commission.

6. Change Control Procedure

- 6.1 Both parties agree that any request for change to the scope of the Services will be processed in writing according to the following Change Control Procedure:

6.1.1 at any time during the Term of this Contract, either party may propose a change or changes to any part or parts of this Contract;

6.1.2 the Change Control Procedure set out in this clause 6 will apply to all changes irrespective of whether the Supplier or The Commission proposes the change save that clause 6.1.6 shall not apply where The Commission requests a change to the Services;

6.1.3 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 and the supply of Services (where known) and an estimate of the effort and cost required to prepare an impact assessment (“Impact Assessment”);

6.1.4 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 a tender submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the parties;

6.1.5 on approval of an Impact Assessment or where the change is proposed by The Commission, this Contract and/or the

schedules should be updated and revised as appropriate and in writing;

6.1.6 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 Contract; and

6.1.7 the Supplier and The Commission will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented.

7. Intellectual, Industrial and Commercial Property Rights

7.1 In relation to The Commission Background IPR:

7.1.1 The Commission and its licensors shall retain ownership of all The Commission Background IPR; and

7.1.2 where The Commission provides The Commission Background IPR to the Supplier in connection with the Services, The Commission grants to the Supplier a fully paid-up, non-exclusive, royalty-free, non-transferable licence to use, copy and modify all The Commission Background IPR for the term of the Contract solely as required for the purpose of providing the Services to The Commission.

7.2 In relation to the Supplier Background IPR:

7.2.1 the Supplier and its licensors shall retain ownership of the Supplier Background IPR;

7.2.2 the Supplier grants to The Commission a fully paid-up, worldwide, non-exclusive, royalty-free, perpetual and irrevocable licence to use, copy and modify any Supplier Background IPR supplied by or on behalf of the Supplier in connection with the provision of the Services, to the extent required in order to allow The Commission to utilise the Services and the deliverables, including as required in order to make use of the Project Specific IPR and to otherwise enjoy the benefits of the Contract; and

7.2.3 The Commission may sub-license the rights granted in clause 7.2.2 to any replacement supplier for the purpose of The Commission's receipt of services similar to the Services and to any other public body that takes over some or all of the functions performed by The Commission, for the purpose of carrying out those functions.

- 7.3 If The Commission has chosen the “Licence” option in the Particulars of Contract, the following provisions shall apply in relation to the Project Specific IPR:
- 7.3.1 the Supplier shall retain ownership of the Project Specific IPR;
- 7.3.2 the Supplier grants to the Commission, a fully paid-up, worldwide, non-exclusive, royalty-free perpetual and irrevocable licence to copy and modify the Project Specific IPR for the purpose of receiving and using the Services and the deliverables and to otherwise enjoy the benefits of the Contract; and
- 7.3.3 The Commission may sub-license the rights granted in clause 7.3.2 to any replacement supplier for the purpose of the Commission's receipt of services similar to the Services and to any other public body that takes over some or all of the functions performed by The Commission for the purpose of carrying out those functions.
- 7.4 If The Commission has chosen the “Ownership” option in the Particulars of Contract, the following provisions shall apply in relation to the Project Specific IPR:
- 7.4.1 the Supplier assigns the Project Specific IPR to the Commission, with full title guarantee and free from all third party rights;
- 7.4.2 the Supplier shall obtain waivers of all moral rights in the Project Specific IPR to which any individual is now or may be at any future time entitled under the Copyright and Related Rights Act, 2000 or any similar provisions of law in any jurisdiction; and
- the Supplier shall, promptly at the Commission's request, do (or procure to be done) all such further acts and things and the execution of all such other documents as The Commission may from time to time require for the purpose of securing for the Commission all right, title and interest in and to the Project Specific IPR assigned to the Commission in accordance with clause 7.4.1.
- 7.5 The provisions of this clause will continue to apply notwithstanding the termination of this Contract for any reason and notwithstanding the completion of the Services.
- 7.6 Save as expressly set out in this clause 7, all pre-existing Intellectual Property Rights shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- 7.7 The Supplier shall indemnify The Commission in full against all liabilities, costs, expenses, damages and losses (calculated on a full indemnity basis)

suffered or incurred by the Commission arising out of, or in connection with, the receipt, use or supply of the Services, including the use of the Project Specific IPR and the Supplier Background IPR.

7.8 If as a result of any such action or infringement detailed in clause 7.7 The Commission is unable to lawfully use or benefit from the Services, or if such action or claim is likely to be made or is initiated, the Supplier will either procure for The Commission the right to continue to use and benefit from the Services in accordance with the Contract, or replace or modify the Services, with services of comparable quality, serviceability and capability at no cost to The Commission, so that it becomes non-infringing.

7.9 The Supplier shall at the request and reasonable expense of The Commission provide such assistance as The Commission may require in obtaining, maintaining, defending and/or enforcing The Commission's rights in respect of the Services, including without limitation the execution of all necessary documents.

8. Compliant Systems/Machinery/Products

The Supplier guarantees and undertakes that all systems, machinery, hardware, software and products supplied or used in the performance of this Contract are or will, when supplied or used, be Compliant Systems.

9. Liability, indemnity and insurance

9.1 The Supplier shall be liable to The Commission for any losses, actions, proceedings, costs, expenses, damages, claims and liabilities incurred by The Commission arising out of:

9.1.1 any injury, including fatal injury and disease, to Supplier or The Commission personnel or third parties, or loss or damage to the property of third parties which is caused or contributed to by the negligence, error, omission, breach of statutory duty, breach of contract or other default of the Supplier, its employees, servants or agents; and

9.1.2 any assertion against The Commission that any member or former member of Supplier Personnel is or was an employee or worker of The Commission including without limitation, any liability for income tax or Pay Related Social Insurance contributions of Supplier Personnel, or any interest or penalties thereon or any claim for breach of contract, unfair dismissal, a statutory or other redundancy payment, unlawful deductions from wages, equal pay, sex, race or disability discrimination, a protective award or any other claim.

9.2 The Supplier hereby agrees to fully and effectively indemnify, hold harmless and keep

so indemnified on demand The Commission from and against any

liabilities whatever suffered or incurred by The Commission arising out of and/or in connection with the negligence, default, act, or omission of the Supplier and/or its personnel, sub-contractors or agents. This indemnity survives the termination or expiration of this Contract for whatever reason.

- 9.3 The Supplier will, at its sole cost and expense, effect and maintain for the benefit of The Commission for the Term, and such further period as may be required or ought prudently to be effected and maintained after the expiration or termination of this Contract, insurance cover with reputable insurers to cover its liabilities that may arise under or in connection with this Contract including:

9.3.1 public liability insurance (if required by The Commission in the Particulars of Contract) that at a minimum achieves the levels and type required in the Particulars of Contract;

9.3.2 employer's liability insurance (if required by The Commission in the Particulars of Contract) that at a minimum achieves the levels and type required in the Particulars of Contract; and

9.3.3 professional indemnity insurance (if required by The Commission in the Particulars of Contract) that at a minimum achieves the levels and type required in the Particulars of Contract (which professional indemnity insurance will be kept in place for at least six (6) years from the expiration or termination of the Contract).

- 9.4 The policies of insurance referred to in clause 9.3 will be shown by the Supplier to The Commission whenever The Commission requests, together with satisfactory evidence of payment of premiums.

- 9.5 Where the Supplier or any sub-contractor fails to insure any risk as required by The Commission, in accordance with the Contract, The Commission may insure the risk in question and deduct the amount of the premiums from any monies due to the Supplier.

10. Confidentiality

- 10.1 This Contract (including any negotiations relating thereto, the subject matter, terms, or performance of this Contract) and the Confidential Information of both parties shall be treated as proprietary and confidential. Both parties undertake to treat as confidential, and to cause their employees, agents and sub-contractors to treat as confidential, any and all Confidential Information of the other party which may come into its own possession or into the possession of any of their employees, agents or sub-contractors as a result of or in connection with the provision of the Services. The parties shall use the Confidential Information solely for the purposes of fulfilling their obligations under this Contract and shall not, subject to clause 10.3, at any time during or after expiry or termination of this Contract, disclose the said

Confidential Information whether directly or indirectly to any third party without the prior written consent of the other party nor copy the said Confidential Information unless specifically permitted to do so by the other party. The parties undertake to make all relevant employees, agents and sub-contractors aware of this term and to take all steps necessary to ensure compliance with the obligations under this clause.

10.2 In protecting such Confidential Information, each party shall employ the highest standard of care, which shall in no event be less than the standard of care it employs in protecting its own confidential information.

10.3 Except with the prior written consent of the party from which it is received (the "Disclosing Party"), no party will disclose the other party's Confidential Information or any part thereof to any third party other than its own employees, agents or sub-contractors and then only to the extent that such disclosure is necessary for the performance of its obligations under this Contract, in which case, the party that has received the Confidential Information (the "Receiving Party") will take all reasonable steps to ensure that such information is treated as confidential by the person to whom it is disclosed, including requiring such person to enter into an appropriate confidentiality agreement with the Receiving Party. This paragraph and clauses herein will not apply to:

10.3.1 information required by the law of any jurisdiction to which the disclosure is subject, provided that the Receiving Party has taken all practicable legal steps to prevent such disclosure and has where practicable consulted with the other party on the manner and timing of the disclosure;

10.3.2 information disclosed to the professional advisers or auditors of the party under obligations of confidence no less stringent than those assumed by the Receiving Party hereunder (which the Receiving Party undertakes to enforce);

10.3.3 information lawfully in the possession of the recipient before the disclosure under this Contract took place;

10.3.4 information that has come into the public domain through no fault of that party or breach of confidentiality;

10.3.5 information that the other party has given prior written approval to such disclosure;

10.3.6 information lawfully obtained from a third party who is free to disclose it; or

10.3.7 information which is received or obtained by the Receiving Party without

restriction on disclosure from a source free to disclose it

other than the Disclosing Party or an agent of the Disclosing Party.

10.4 The restrictions contained in this clause 10 shall continue to apply after the termination of this Contract.

11. On-site Services

To the extent that all or any part of the Services are to be provided at or on or involve any entry to The Commission owned or controlled property then the Supplier shall comply with the following:

- 11.1.1 prior to commencing the Services, the Supplier and any sub-contractors shall have obtained all necessary information relating to the property including (without limitation) any local conditions and the facilities at the property and any other information relevant to the Services to be provided under and in accordance with this Contract;
- 11.1.2 when on The Commission property the Supplier and any sub-contractor shall comply strictly with all of The Commission's regulations relating to the property in question and any other requirements The Commission might have in relation to the Supplier's entry onto or presence at the property including but not limited to, health and safety, prevention of fire, use of facilities and security arrangements;
- 11.1.3 the Supplier shall ensure that all personnel are dressed in a manner appropriate to the location and the work to be performed. This may include the requirement to wear safety clothing if so specified by The Commission; and
- 11.1.4 if and to the extent required by The Commission, the Supplier shall undergo induction training in relation to the regulations and requirements referred to above before entering on to the relevant property.

12. Data Protection

- 12.1 Any capitalised terms used in this clause or related defined terms that are not defined in this Contract will have the meaning given to them in the Data Protection Legislation.
- 12.2 Each party shall comply with the data protection principles specified in Data Protection Legislation that are applicable to it in connection with the Services or the obligations of each party under this Contract.

- 12.3 If The Commission has indicated within the Particulars of Contract that a Data Processing Agreement is required, the Parties shall comply with the provisions of the Data Processing Agreement Addendum in Schedule E.
- 12.4 Notwithstanding any other provision of this Contract the Supplier will indemnify and keep indemnified The Commission against all losses, fines, damages, liabilities, legal fees, court costs and expenses, claims whatsoever and howsoever arising incurred or suffered by The Commission in connection with any breach of this clause 12 (Data Protection and Security) and/or breach of Data Protection Legislation by the Supplier and/or its sub-processors.

13. Freedom of Information

- 13.1 The Commission is subject to the provisions of the Freedom of Information Act 2014 (as amended) and, accordingly, information furnished to The Commission by the Supplier may be subject to the provisions of the Freedom of Information Act. If the Supplier considers any of the information supplied by it to The Commission pursuant to this Contract should not be disclosed because of its sensitivity it should, when providing the information, identify same and specify the reasons for its sensitivity. It shall not be sufficient for the Supplier to furnish The Commission with a general statement of confidentiality in respect of all information furnished to The Commission.
- 13.2 The Supplier acknowledges that The Commission may be obliged under the Freedom of Information Act 2014 to disclose information regardless of any representations made by the Supplier.

14. Publicity

- 14.1 The Supplier may only list or advertise The Commission's name on a reference list or utilise The Commission's name for purposes of advertisement or sales with the prior written permission of The Commission.
- 14.2 The Supplier acknowledges that The Commission may be required to publish the value of the Contract and/or details regarding the Supplier on eTenders, the Official Journal of the European Union or other similar publications and systems.

15. Audit

- 15.1 The Commission or its authorised representatives shall have the right to audit all costs, rates and expenses relating to the Contract and the provision of the Services.

- 15.2 The Supplier shall maintain all records relevant to the Contract for the Term and for at least three (3) years after the termination of the Contract howsoever terminated (including the expiry of the Term).
- 15.3 The Supplier will maintain the aforesaid records either physically or by electronic media and The Commission or its authorised representatives shall have the right to reproduce and retain copies of any of the aforesaid records.

16. Termination at will

The Commission may terminate this Contract or cancel its order for any Services in whole or in part with thirty (30) days prior written notice for any reason.

17. Termination for cause or on insolvency

- 17.1 The Commission may immediately terminate this Contract without liability for compensation or damages (in addition to any other rights it may have under this Contract and any other rights it has at law) on the happening of any of the following:
- 17.1.1 a material breach or persistent breach of the Contract by the Supplier which is not remedied within fifteen (15) days (if capable of remedy);
 - 17.1.2 if the Supplier 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;
 - 17.1.3 in circumstances where The Commission becomes aware of any conflict of interest on the part of the Supplier which cannot, in the opinion of The Commission, be removed by other means;
 - 17.1.4 in circumstances where The Commission becomes aware of any registrable interest on the part of the Supplier;
 - 17.1.5 any of the exclusion grounds set out in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 apply to the Supplier;
 - 17.1.6 the Supplier (or its subcontractor(s), if any) falls 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);

17.1.7 the Supplier brings (or is likely to bring) The Commission into disrepute;

- 17.1.8 any of the circumstances of Regulation 73 of the European Union (Award of Public Authority Contracts) Regulations 2016 apply in the opinion of The Commission; or
- 17.1.9 the Supplier is unable to provide the Services for any reason for a period in excess of five (5) Business Days.

18. Consequences of termination

- 18.1 On any termination of this Contract, howsoever occasioned, the Supplier shall promptly return to The Commission all of The Commission's product, samples and data in its possession or under its control and delete any and all of The Commission's data and information, (confidential or otherwise), from its systems and, if and to the extent requested by The Commission, fully and promptly co-operate with The Commission and provide reasonable assistance to ensure the smooth transfer of the provision of the Services from the Supplier to a new service provider.
- 18.2 Unless The Commission expressly agrees otherwise, such return shall be completed within one (1) calendar month of the termination of this Contract.
- 18.3 On termination of this Contract, the Supplier will refund to The Commission any Charges already paid to the Supplier under the terms of this Contract for Services to be delivered but which have not or cannot then be so delivered for reasons of termination of this Contract.
- 18.4 On termination of the Contract under clause 18.1, The Commission shall be entitled to set-off or otherwise recover the costs of a replacement service provider for the Services and any retendering costs in addition to any other right it may have under this Contract or at law.

19. Dispute Resolution

- 19.1 Without prejudice to any party's right to terminate, the parties shall try to settle quickly and amicably any dispute arising out of or in connection with this Contract, including any question regarding its existence, validity or termination.
- 19.2 The dispute shall, in the first instance, be discussed by the parties in an attempt to reach an amicable solution. If such attempt fails within 48 hours from the first written notice by one party to the other party that a dispute exists, the matter may be submitted by either party in writing to the highest ranking directors or senior personnel of the Supplier and The Commission who have responsibility for the provision or use of the Services to which the dispute relates. Such directors or senior personnel shall consult with the goal of attaining a solution satisfactory to both parties

within 48 hours of submission.

- 19.3 If no satisfactory solution is attained pursuant to the process outlined at clause 20.2 the parties will have the option to terminate the Contract.
- 19.4 The operation of this clause shall not prevent The Commission from taking any formal action or proceedings at any time.

20. Force Majeure

- 20.1 Neither party shall be liable for any breach of its obligations under this Contract resulting from the circumstances of Force Majeure.
- 20.2 Each party shall use its reasonable endeavours to give notice to the other upon becoming aware of an event of Force Majeure which materially affects its ability to perform its obligations, such notice to contain details of the circumstances giving rise to the event of Force Majeure.
- 20.3 The party unable to perform its obligations by reason of the event of Force Majeure shall be excused performance in accordance with this clause 21.
- 20.4 In the event that the Force Majeure continues for a period of more than thirty (30) calendar days The Commission may terminate the Contract at fourteen (14) days' notice to the Supplier.
- 20.5 In the event the Supplier is unable to perform its obligations by reason of the event of Force Majeure The Commission shall be relieved from any obligation to make payments under this Contract.

21. Assignment and Sub-contracting

- 21.1 This Contract shall not be assigned or transferred or sub-contracted in whole or in part by the Supplier without the prior written consent of The Commission.
- 21.2 All sub-contract documents and sub-supplier selection shall be subject to written approval by The Commission prior to award of each sub-contract. No such approval shall create any contractual relationship between The Commission and any sub-supplier.
- 21.3 The Supplier shall be fully responsible for those elements performed by its sub-suppliers and for the acts and omissions of all its sub-suppliers to the same extent as it is for the acts and omissions of persons directly employed by it.
- 21.4 The Supplier shall maintain all sub-contract records and documentation, including without limitation, correspondence between the Supplier and its sub-suppliers and

shall preserve such documents for three (3) years after termination of the Contract or such other period as The Commission may request. The Supplier shall make such records and documentation available

to The Commission as part of The Commission's rights of audit under the Contract.

22. Waiver

- 22.1 No delay or omission by either party in exercising any right, power or remedy provided by law or under this Contract shall:
- 22.1.1 affect that right, power or remedy; or
- 22.1.2 operate as a waiver of it.
- 22.2 The single or partial exercise of any right, power or remedy provided by law or under this Contract shall not preclude any other or further exercise of it or the exercise of any other right, power or remedy.
- 22.3 No waiver of any right, power or remedy provided by law or under this Contract shall take effect unless it is in writing and signed by authorised representatives of the party giving the waiver.

23. Supplier Personnel

- 23.1 The Commission and the Supplier acknowledge that the arrangements described in this Contract are such that no contractual relationship will exist either expressly or impliedly between any Supplier Personnel and The Commission.
- 23.2 The Supplier shall ensure that all Supplier Personnel shall adhere to any and all health and safety rules and regulations and other requirements of The Commission notified to it from time to time.
- 23.3 The Supplier shall ensure that all Supplier Personnel shall adhere to any and all monitoring procedures and any other monitoring requirements of The Commission notified to it from time to time.
- 23.4 The Supplier shall ensure that all Supplier Personnel shall irrevocably and with full title guarantee assign any and all right, title and interest in the products of their services and all related rights and properties hereunder to the Supplier to hold absolutely throughout the world in perpetuity.
- 23.5 The Supplier shall indemnify, keep indemnified and hold harmless, The Commission and its officers, employees, contractors and agents from and against all proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and demands in respect of, caused by, or arising from any default or breach of Supplier Personnel of the obligations set out in clauses 24.2 to 24.4 above.

23.6 In the event that The Commission has reasonable grounds for dissatisfaction with the manner in which the Services are being carried out, they may

require the Supplier to replace the Supplier Personnel involved PROVIDED that The Commission shall be entitled:

23.6.1 in the event that the Supplier is unable to provide a substitute which The Commission, acting reasonably, finds acceptable; or

23.6.2 in the event that The Commission, acting reasonably, is not satisfied with two consecutive substitutes;

to terminate this Contract.

23.7 The Supplier agrees that the Supplier Personnel will accept all local security arrangements deemed reasonably necessary by The Commission provided such security arrangements are advised to the Supplier in writing in advance.

23.8 The Supplier agrees that the Supplier Personnel will comply with project control/reporting arrangements deemed necessary by The Commission provided that such project control/reporting arrangements are advised to the Supplier in writing in advance.

23.9 The Supplier is acting solely as an independent contractor and is not an agent of The Commission, nothing in this Contract shall render the Supplier an employee, worker, agent or partner of The Commission and the Supplier shall not hold itself out as such.

23.10 This Contract constitutes a contract for the provision of services and not a contract of employment and accordingly the Supplier shall be fully responsible for and shall indemnify The Commission for and in respect of:

23.10.1 any income tax, national insurance and/or social security contributions and any other liability, deduction, contribution, assessment or claim arising from or made in connection with the performance of the Services, where such recovery is not prohibited by law. The Supplier shall further indemnify The Commission against all reasonable costs, expenses and any penalty, fine or interest incurred or payable by The Commission in connection with or in consequence of any such liability, deduction, contribution, assessment or claim; and

23.10.2 any liability for any employment-related claim or any claim based on employment status (including reasonable costs and expenses) brought by the Supplier or any agent, employee or sub-supplier of the Supplier against The Commission arising out of or in connection with the Services.

23.11 The Commission may at its option satisfy such indemnity (in whole or in part) by way

of deduction from any payments due to the Supplier.

24. Transfer

The Supplier agrees that in the event that it is not successful in re-tendering (or in the event of it not re-tendering) for the provision of any new services at the expiry, early termination or non-renewal of the Contract, it will liaise, consult and co-operate in all reasonable respects with any new service provider in order to facilitate a smooth handover, including without limitation returning any and all property in the possession of the Supplier, its employees or agents.

25. No Partnership

Nothing contained in this Contract and no actions taken by the parties under this Contract shall constitute a partnership, joint venture, association or other co-operative entity between the parties or authorise either party to represent the other or to contract on behalf of the other party.

26. Notices

26.1 Any notice under this Contract shall be delivered personally or by courier, or by registered post or recorded delivery or by email (save for any notice required under clauses 2.1, 17 or 18) in accordance with the provisions of this clause 27.

26.2 Notices given to the Supplier shall be delivered to the Supplier Contract identified in The Commission in the Particulars of Contract. Notices given to the Supplier shall be delivered to the Supplier Contract identified in The Commission in the Particulars of Contract.

26.3 All notices shall be deemed to have been served as follows:

26.3.1 if personally delivered or by courier, at the time of delivery (provided that the time of delivery took place on a Business Day, otherwise they shall be deemed to have been delivered at 9am on the following Business Day);

26.3.2 if posted by registered post or recorded delivery, 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); or

26.3.3 if communicated by email, on the next Business Day following transmission.

26.4 A party may change its notice details on giving notice to the other party of change in accordance with this clause 27. The notice shall only be effective on the date falling three (3) clear Business Days after the notification has been received or such later

date as may be specified in the notice. Notices delivered personally, by courier, registered post or recorded delivery shall be delivered to the registered offices of The Commission and Supplier as

noted in the Particulars of Contract unless otherwise notified under this clause 27.4.

27. Severability & Counterparts

- 27.1 Any provision of this Contract, which is held to be void, illegal or unenforceable shall to the extent of such invalidity be deemed severable and the offending provisions excluded, and the remaining provisions of this Contract will be unaffected by such severance and shall continue to be valid and enforceable to the fullest extent of the law.
- 27.2 This Contract may be executed in any number of counterparts, each of which shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.
- 27.3 Transmission of an executed counterpart of this Contract (but for the avoidance of doubt, not just a signature page) by email (in PDF, JPEG or other agreed format) shall take effect as the transmission of an executed "*wet-ink*" counterpart of this Contract. If this method is adopted, without prejudice to the validity of the Contract thus made, each party shall on request provide the other with "*wet-ink*" hard copy originals of their counterpart.

28. Jurisdiction

The Contract shall be governed by and interpreted in accordance with the laws of Ireland and shall be subject to the jurisdiction of the Irish courts.