Single-Party Framework Agreement

Terms and Conditions

For the Provision of:	
Contracting Authority:	
Framework Member:	
Date:	

Note: This document is an indication of the form of agreement which the Contracting Authority intends to conclude with the successful economic operator arising from this competitive process. Economic Operators are not required to submit a signed copy of these terms as part of their tender but should indicate any objections which they may have to these terms in the body of their tender. Delete this text box prior to issue.

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Subject to contract / contract denied

Framework Agreement with a Framework Member in a Single-Party Framework for [insert description of Services/Supplies].

Parties

[insert name of Contracting Authority] of [insert address of Contracting Authority]

(Hereinafter referred to as the 'Contracting Authority)

AND

[insert legal name of Framework Member] of [insert address of Framework Member]

(Hereinafter referred to as the "Framework Member")

Background

The Contracting Authority has conducted a tender competition in accordance with Irish Government Guidelines and/or Directive 2014/24/EU and all applicable procurement rules for the establishment of a framework agreement (within the meaning of the aforesaid directive) with a single Framework Member. The tender competition under the [insert] procedure was advertised

- on the eTenders website on [insert date] with an RFT ID [insert ref]] (the 'Contract Notice')
- in the Official Journal of the European Union on [insert date] with a reference number of [e.g. YEAR/S xxx-yyyyyy]

Definitions

"**Call Off Contract**" means any contract awarded on foot of this framework agreement;

"**Call Off Request**" means the request issued by the Contracting Authority to a Framework Member instructing that Framework Member, to provide the required Services/Supplies;

"**Commencement Date**" means the date on which the framework agreement/contract comes into force.

"**Competitive Procedure**" means the process leading to the establishment of this Framework Agreement and/or award of a Contract on foot of this Framework Agreement;

"**Contract**" means a contract which falls within the scope of this Framework Agreement and for which the Contracting Authority conducts a Competitive Procedure under the terms of this Agreement;

"**Framework Agreement**" means these terms and conditions, including any Schedules hereto;

"**Framework Member**" means the economic operator formally appointed to the Framework Agreement on foot of a Competitive Procedure;

"**Framework Period**" means the period in years set out in Clause 2.2;

"**Party**" means the Contracting Authority and/or the Framework Member;

"**Request for Tender**" means the document issued by the Contracting Authority on [insert date], with the aim of establishing the framework agreement;

"**Other Conditions**" means for example Contract Terms and Conditions, Special Terms and Conditions and/or Service Level Agreement as may be appropriate;

"**Supplementary Request for Tender**" means an invitation from the Contracting Authority for the Framework Member to respond to a specific requirement which was not specifically covered under the original Request to Tender, but does fall within the Scope of the Framework Agreement;

"**Supplementary Tender**" means the submission of the Framework Member in response to a Supplementary Request for Tender;

"**Tender**" means the submission by the Framework Member in response to the Request for Tender, together with any clarifications, additions or amendments accepted by the Contracting Authority.

1 Appointment of Framework Member

1.1 The Framework Member accepts its appointment to provide Services/Supplies, if instructed to do so from time to time by the Contracting Authority, under the terms and conditions of this Framework Agreement.

1.2 This Framework Agreement sets out, amongst others, the award procedure for Services/Supplies which may be required by the Contracting Authority, the main terms and conditions for any Call-Off Contract, and the obligations of the Framework Member during and after the Framework Period.

1.3 Membership of this Framework does not entitle the Framework Member to be consulted in respect of, or awarded any contract during, the Framework Period. The Contracting Authority may at its sole discretion choose not to enter any contracts falling within the scope of this Framework Agreement, or to terminate the Agreement in accordance with Section 8.

1.4 While this Framework Agreement will in general form the basis for the award of contracts during the Framework Period, the Contracting Authority reserves the right to operate outside the terms of the Framework Agreement, for example if it considers that it is not achieving value-for-money or the nature of the contract would benefit from a separate competitive process.

2 Period of Framework Agreement

2.1 The Framework Agreement shall take effect on the [insert date] (Commencement Date).

2.2 The The Framework Agreement will be for a period of [insert number] years. (Note: check period of framework as specified in notice including options for extensions if used].

For the avoidance of doubt, the Contracting Authority confirms that the period of any Contracts awarded under this Framework Agreement may extend beyond the date of expiry of the agreement.

3 Scope of Framework Agreement

3.1 This Framework Agreement relates to the provision of [insert description of Supplies/Services from published contract notice including initial contract / other contracts likely to arise over the life of the framework agreement].

3.2 The scope of Supplies/Services which may be awarded under this framework includes:

3.2.1 The initial contract as described in the Request for Tender, upon which the Framework Member will be chosen, due to the fact that the initial contract is representative of the framework as a whole.

3.2.2 Additional Call-Off Contracts within the scope of the Framework Agreement may comprise some or all elements of the Supplies/Services as described in the detailed specification, being additional requirements which may arise.

3.3 The maximum value of the framework over the life of the framework is [insert value] and [insert value].

It should be emphasized that this value is not a guarantee of any spend over the life of the Framework Agreement.

4 Procedure for the Award of Call-Off Contracts

4.1 Contracts awarded under the framework may be by direct appointment to the Framework Member.

4.2 Where the terms of the original tender competition did not specifically address the needs relating to a specific contract which falls within the scope of the framework the Contracting Authority will invite a Supplementary Tender from the Framework Member.

4.3 On each occasion that a Contract is awarded to a Framework Member pursuant to this Clause, the Contracting Authority and the successful Framework Member shall enter into a contract in accordance with the Terms and Conditions as detailed in Schedule 4, as well as any Special Terms and Conditions that will be set out in the invitation to provide a Supplementary Tender. The Call-Off Contract shall be within the scope of Contracts defined for the Framework Agreement.

5 Notification of the Award of a Call-Off Contract

When the Contracting Authority has made an award decision pursuant to Clause 4, the Contracting Authority will issue a notification in writing to the Framework Member.

6 Fixed Conditions for Contracts

6.1 Prices

The maximum price chargeable by the Framework Member during the initial [insert number] years of the Framework Agreement is as set out in Schedule 1. Price changes, if applicable, will be in line with the Consumer Price Index or by any method agreed between the various parties.

6.2 Contract Manager

The Framework Member must nominate a contract manager to liaise with the Contracting Authority to ensure the successful operation of this Framework Agreement.

6.3 Personnel

The resources nominated by the Framework Member must be those used in the award of any contract under the framework and as detailed in Schedule 2.

Regarding personnel assigned to deliver services under the framework, where the successful Framework Member proposes to replace a nominated person, the proposed replacement person must be of equal or better qualifications and expertise than that of the original nominated person(s). Any replacements must be notified in writing to the Contracting Authority and must be agreed by the Contracting Authority prior to their commencement of any work under the Framework Agreement.

6.4 Service Level Agreement

Contracts under this framework agreement may be subject to the application of a Service Level Agreement which will outline the Key Performance Indicators applicable to the contract. The applicable Service Level Agreement is contained in Schedule xx.

7 Obligation of Framework Member

7.1 Conflict of Interest

The Framework Member is required to inform the Contracting Authority of any conflict of interest of which it becomes aware during the period of the Framework Agreement. Any registrable interest involving the Framework Member and the Contracting Authority or employees of the Contracting Authority or their relatives must be communicated to the Contracting Authority immediately.

7.2 Interference and Inducement to Purchase

Any effort by the Framework Member to unduly influence the Contracting Authority, relevant agency 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. The presumptions (including as to any gift, consideration or advantage) and other provisions under the Criminal Justice Act 2018 (Ireland), and all other measures for the time being governing the subject-matter in any applicable jurisdiction, shall be applicable.

7.3 Insurances

Each Framework Member is required to maintain, at a minimum, the levels and forms of insurance set out in the tender documents and as detailed in Schedule 3 of this Framework Agreement.

7.4 Tax Clearance

The Framework Member shall maintain a tax clearance status as declared by the Irish Revenue Commissioners throughout the Framework Period and the period of any Contract being executed under the Framework Agreement (whichever is longer).

7.5 Assignment

The Framework Member shall not assign the benefit of its appointment under this Framework Agreement, or under any Contract, or any part thereof, unless with the prior written agreement of the Contracting Authority.

7.6 Data Protection

The Framework Member must operate fully in compliance with all relevant Data Protection legislation and the Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller and the Framework Member is the Data Processor in respect of Data which is Personal Data.

7.6.1 In this Agreement the following terms shall have the meanings respectively ascribed to them:

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

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

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

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

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

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

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

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

7.6.2 The Framework Member shall comply with all applicable requirements of the Data Protection Laws.

7.6.3 The Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority is the Data Controller and the Framework Member is the Data Processor in respect of Data which is Personal Data. Schedule 5 sets out the scope, nature and purpose of Processing by the Framework Member, the duration of the Processing and the types of Personal Data and categories of Data Subject.

7.6.4 The Framework Member shall, in relation to any Personal Data processed in connection with the performance by the Framework Member of its obligations under this Agreement:

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

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Contracting Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled;

i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

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

iii. the Framework Member complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and iv. The Framework Member complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

7.6.5 The Framework Member shall promptly notify the Contracting Authority if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

7.6.6 The Framework Member shall without undue delay report in writing to the Contracting Authority any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

7.6.7 The Framework Member shall assist the Contracting Authority in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.

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

7.6.9 The Framework Member shall permit the Contracting Authority, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Framework Member's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Framework Member in any way for the provision of the Services. The Framework Member shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review.

7.6.10 The Framework Member shall fully comply with and implement policies which are communicated or notified to the Framework Member by the Contracting Authority from time to time.

7.6.11 The Framework Member shall maintain complete and accurate records and information to demonstrate its compliance with this clause 7 and allow for inspections and contribute to any audits by the Contracting Authority or the Contracting Authority's designated auditor.

7.6.12 The Framework Member shall:

(1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

(2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and

(3) in such an event and if attributable to any default by the Framework Member or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.

7.6.13 The Contracting Authority consents to the Framework Member appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Framework Member confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 7 as between the Contracting Authority and the Framework Member, the Framework Member shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 7.

7.6.14 Save for clauses 7.6.2, 7.6.3, 7.6.4(4) and 7.6.5, all the obligations on the Framework Member in this clause 7 relating to the processing of Personal Data shall apply to the processing of all Data.

7.6.15 The provisions of this clause 7 shall survive termination and or expiry of this Agreement for any reason.

7.7 Confidentiality / Freedom of Information

7.7.1 The Framework Member must not disclose to anyone information that the Contracting Authority notifies the Framework Member is confidential except as necessary to perform the Framework Member's obligations under this Framework Agreement or a Call-Off Contract or to comply with the law.

7.7.2 The Framework Member undertakes to comply with all reasonable directions of the Contracting Authority with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement as set out.

7.7.3 The Framework Member acknowledges that the Contracting Authority is subject to the Freedom of Information Act 2014, as amended. In the event of the Contracting Authority receiving a request for information related to this Framework Agreement, the Contracting Authority shall consult with the Framework Member in respect of the request. The Framework Member shall identify any information that is not to be disclosed on grounds of commercial sensitivity and shall state the reasons for this sensitivity. The Contracting Authority will consult the Framework Member about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the Irish courts.

7.8 Audit

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

7.9 Publicity

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

7.10 Performance Review

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

7.11 Sustainability

The Framework Member is responsible for implementing the environmental measures, where applicable, detailed in the specifications and in its response to the award criteria, which form part of the contract terms. The contractor is required to report on the environmental measures taken on a quarterly basis.

8 Termination

8.1 This Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving three (3) months written notice to the Framework Member. This Agreement may be terminated by the Framework Member, without liability for compensation or damages, by serving six (6) months written notice to the Contracting Authority.

8.2 Without prejudice to any other rights or remedies to which it may be entitled, the Contracting Authority shall be entitled to terminate the Framework forthwith and without liability by giving notice at any time if:

8.2.1 The Framework Member commits a material breach of any term or condition of this Framework Agreement, or a Contract concluded under the Framework Agreement;

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

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

8.2.4 The Framework Member is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014 or any analogous provision of law;

8.2.5 An order is made, or an effective resolution is passed for the winding up of the Framework Member's company other than for the purpose of restructuring the terms of which have been agreed by the Contracting Authority;

8.2.6 A petition is presented, or an order is made, or a resolution passed, or any analogous proceedings or action is taken for the appointment of an examiner, administrator, receiver, trustee or any similar officer over the Framework Member's company;

8.2.7 An encumbrancer takes possession, or a receiver is appointed, of any of the property or assets of the Framework Member;

8.2.8 The Contracting Authority reasonably believes that any of the events mentioned above is about to occur in relation to the Framework Member and notifies the Framework Member;

8.2.9 The Framework Member has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this agreement or the relevant Contract;

8.2.10 Any representation made by the Framework Member in connection with this Agreement or a Contract shall in the opinion of the Contracting Authority prove to be untrue or incorrect in a material respect as of the date when made.

8.3 The Contracting Authority also reserves the right to terminate the framework agreement in the following circumstances:

8.3.1 Where improved value for money in terms of cost and/or quality is available through an alternative public procurement process established by the sector or at Government level.

8.3.2 Where the business needs of the organisation have changed, and the framework no longer meets those needs and/or where the budget available for the requirements defined by the framework agreement has substantially altered (increased or decreased).

8.4 In circumstances outlined in Section 8.2, the Contracting Authority reserves the right to terminate this Agreement by providing fourteen (14) days' notice in writing to the Framework Member. The Framework Member shall have no claim for damages or otherwise against the Contracting Authority as a result of the Contracting Authority terminating this Framework Agreement in accordance with this Clause.

8.5 Termination of the Framework Agreement pursuant to Clause 8.1, 8.2 and Clause 8.3 shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

8.6 For the avoidance of doubt, termination of this Framework Agreement shall not affect the validity of any Contract entered into by the Contracting Authority and any provider of the service pursuant to that Framework Agreement.

8.7 It shall be the sole responsibility of the Framework Member to fulfil its obligations under the Framework Agreement and any and all Contracts awarded thereunder. Failure to comply with this requirement may result in the termination of the Framework Agreement and / or any Contract associated with the Framework Agreement, at the absolute discretion of the Contracting Authority.

9 Notices

9.1 The address, email and telephone numbers of the parties for the purpose of the giving of notices under this Agreement are as follows:

The Contracting Authority

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address: [insert email]

Tel: [insert number]

The Framework Member

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address: [insert email]

Tel: [insert number]

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

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

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

9.2.3 if transmitted electronically on receipt of 'read receipt' or equivalent.

9.3 All notices to the Contracting Authority or the Framework Member from the other party under this Agreement or the relevant Contract shall be in writing and sent to the appropriate address set out above.

9.4 All notices, documents and communications provided under this Agreement or the relevant Contract shall be in the English language.

SIGNED:

On behalf of the CONTRACTING AUTHORITY

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

On behalf of the Framework Member

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

Schedules to this Agreement

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

1: The RFT

2: The Submission (TRD)

3: Insurances – evidence of insurances in place as per levels required for the framework

4: Proposed Contract Terms and Conditions

5: Data Protection

Schedule 1: RFT

[from the Framework Member's tender response]

Schedule 2: Submission - TRD

[from the Framework Member's tender response]

Schedule 3: Insurances

[evidence of insurances in place as per levels required for the framework]

Schedule 4: Proposed Contract Terms and Conditions

Schedule 5: Data Protection

1 Processing by the Contractor

1.1 Subject matter of processing

1.2 Nature of processing

1.3 Purpose of processing

1.4 Duration of the processing

2 Types of personnel data

3 Categories of data subject