ARTS COUNCIL

and

[***Insert name of successful Tenderer***]

Provision of Film Advisor and Assessment Service

Note:

1) **Description of services requirements are outlined in Schedule 1.**

2) **This document will be completed and finalised with the successful Tenderer.**

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THIS AGREEMENT is made on [•] 20[•]

BETWEEN:

(1) **ARTS COUNCIL**, a statutory corporation established under the laws of Ireland pursuant to an Act of the Oireachtas, and having its principal office at 70 Merrion Square, Dublin D02 NY52, Ireland (the "**Authority**"); and

(2) [[*insert company name*], a company incorporated under the laws of [*insert country of incorporation*] with registration number [*insert company registration number*] and having its registered office at [*insert registered address*]][1] / [[*insert individual name*], of [*insert address*]][2] (the "**Consultant**").

RECITALS

A. The Authority requires the provision to it of the Services.

B. The Authority has conducted a public tender competition in connection with such provision of the Services.

C. The Consultant is engaged in the business of providing consultancy services of the type contemplated by the Services and has the necessary skill, knowledge, expertise and experience in those services.

D. The Consultant has tendered for the provision of the Services and has been selected by the Authority as the successful Tenderer.

NOW IT IS AGREED AS FOLLOWS

1. **Definitions and Interpretation**

1.1 Definitions

In this Agreement (including the Recitals), except where the context requires otherwise:

"**Additional Services**" means consultancy services other than the Services, instructed by the Authority in accordance with Clause 3.4(b);

"**Affected Employees**" means employees of the Consultant or employees of any Sub-Consultant (including any person claiming to be an employee or former employee of the Consultant or any Sub-Consultant) to whom the Transfer Regulations apply;

"**Affected Party**" has the meaning given to it in Clause 14.2 (Effect of Force Majeure);

"**Commencement Date**" means the date of this Agreement;

"**Confidential Information**" means all information and knowledge received by the Consultant in the course of performing the Services or in connection with the award of the Agreement which is the property of the Authority or is in the control or possession of the Authority (whether or not the subject of a separate non-disclosure or confidentiality agreement

[1] Use this wording where the Consultant is a company.

[2] Use this wording where the Consultant is an individual.

between the Authority and any third party), whether verbal, written or existing, stored or communicated in any form or medium, together with all copies thereof, however and whenever made, and includes data, documents, reports, analysis, tests, specifications, charts, plans, drawings, models, ideas, schemes, correspondence, communications, lists, manuals, computer programs, software, technology, techniques, methods, processes, services, routines, systems, procedures, practices, operations, modes of operation, apparatus, equipment, business opportunities, financial information, and/or know-how and trade or other secrets, but excluding information or knowledge which:

(a) is or hereafter becomes part of the public domain through no fault of the Consultant or its Personnel;

(b) is, legally and as a matter of right, in the Consultant's possession as of the date of this Agreement and not the subject of another non-disclosure or confidentiality agreement between the Authority and the Consultant;

(c) has been or is hereafter furnished or made known to the Consultant, legally and as a matter of right, by third parties without any restriction on use or disclosure; and

(d) is *bona fide* independently developed by the Consultant, provided that such information or knowledge has been developed entirely without reference to, or consideration of, the information or knowledge referred to in Clause 8 (Confidentiality);

"**Employment Liabilities**" means costs (including the cost of wages, salaries and other remuneration or benefits), expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, liabilities, expenses (including legal expenses on an indemnity basis), in each case howsoever arising;

"**Expiry Date**" means the completion of the scope of services as set out in Schedule 1;

"**Fee**" means the fixed fee amount set out in Schedule 2;

"**Force Majeure**" shall, in relation to either party, include any event beyond the reasonable control of that party including an act of God, war, riot, civil commotion, malicious damage, national official strike or lock-out, public health emergency, accident, fire, flood or storm and which could not have been avoided by taking reasonable precautions;

"**Index**" means the Harmonised Index of Consumer Prices for Ireland published from time to time by the Central Statistics Office (or any successor or replacement thereto);

"**Intellectual Property**" means all current and future legal and/or equitable interests in registered or unregistered trademarks, service marks, patents, registered designs, utility models, applications for any of the foregoing, copyrights, unauthorised extraction and/or re-utilisation rights, unregistered designs, inventions, know-how or other intellectual property rights subsisting in all records, documents, data, working papers, financial models, methodologies, underlying programmes for the production of the foregoing and such other data brought into being for the purposes of the performance of the Services;

"**Key Personnel**" has the meaning given to it in Clause 5.1 (Key Personnel);

"**Laws**" means any law applicable in Ireland (without further enactment) and shall include common law, statute, statutory instrument, bye-law created under Irish statute, code of

practice or code of conduct, rule of court, registered employment agreement, delegated or subordinate legislation and any form of EU law applicable in Ireland including decisions, regulations and directives;

"**Materials**" has the meaning given to it in Clause 10;

"**Other Consultants**" means consultants or other parties who may be providing services to the Authority from time to time;

"**Personnel**" mean employees, partners or Sub-Consultants engaged by the Consultant in the performance of the Services;

"**Quality Submission**" means the Consultant's quality submission, as set out in Schedule 3 of this Agreement;

"**Services**" means the services described in Schedule 1 and any services ancillary, incidental or necessary thereto;

"**Sub-Consultant**" means any person to whom the performance of any of the Services has been sub-contracted in accordance with Clause 7 (Assignment, Sub-Contracting and Novation);

"**Transfer Regulations**" means the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003; and

"**Working Day**" means a day other than a Saturday or Sunday in Ireland on which banks are generally open for business in Dublin.

1.2 Interpretation

In this Agreement:

(a) the headings and the table of contents in this Agreement are inserted only for convenience and shall not affect its construction;

(b) any reference to this Agreement includes reference to the Schedules hereto;

(c) reference to any statute, enactment, order, regulation or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or statutory instrument or as contained in any subsequent re-enactment;

(d) any reference to the Consultant shall include its servants, agents and Sub-Consultants, except where the context otherwise requires;

(e) any reference to a person will be construed so as to include any individual, firm, company, government, state or agency of a state, local authority or government body or any joint venture, association or partnership (whether or not having separate legal personality) and a reference to a person (including a party to this Agreement) includes a reference to that person's legal personal representatives, successors and assigns;

(f) any reference to Services shall include Additional Services except where the context otherwise requires;

(g) words importing the singular shall include the plural and vice versa; words importing any gender shall include every gender;

(h) the word "**including**" shall be construed as meaning including without limitation;

(i) the rule known as the *ejusdem generis* rule shall not apply to the interpretation of this Agreement and accordingly general words, including those introduced by "**other**" shall not be given a restrictive meaning by reason of the fact that they are preceded by words indicating a particular class of acts, matters or things and general words shall not be given a restrictive meaning by reason of the fact that they are followed by particular examples intended to be embraced by general words; and

(j) the words in this Agreement shall bear their natural meaning.

1.3 Ambiguities

In the case of any ambiguity or discrepancy between the provisions in this Agreement (excluding for this purpose, the Schedules) and the provisions of any Schedule, the provisions of this Agreement (excluding for this purpose, the Schedules) shall prevail, except to the extent that the application of the provisions of any Schedule will, in the opinion of the Authority, give rise to a higher standard of service than that contemplated by this Agreement in which case, the provisions of such Schedule shall apply.

2. Duration

2.1 This Agreement shall come into force on the Commencement Date and shall continue in force until the Expiry Date of **DD/MM/YY**, unless terminated earlier in accordance with Clause 15 (Termination), or extended in accordance with Clause 2.2.

2.2 The Authority shall have the right, at any time before the Expiry Date and at its absolute discretion, to extend the duration of the Agreement for a period or periods of up to **12 months** with a maximum of **01** such extensions.

3. Obligations of the Parties

3.1 Consultant obligations

The Consultant agrees that it will at all times during the term of this Agreement:

(a) act in good faith and with the level of skill, care, diligence, efficiency and professional conduct reasonably to be expected of a professional adviser with the qualifications and experience suitable for the Services (on which the Authority relies);

(b) conform to, and comply with, such directions as are given by the Authority from time to time in relation to the Services;

(c) proceed with the performance of any Services only when instructed to do so by the Authority;

(d) when instructed to proceed with the performance of any Services, perform and progress the Services regularly and shall comply with any timeframes for performance instructed by the Authority;

(e) integrate, co-ordinate and co-operate with any Other Consultants as necessary in respect of the performance of the Services so that it and the Other Consultants can perform their respective services and other obligations in accordance with their respective appointments;

(f) provide and perform the Services in accordance with this Agreement and all applicable Laws and take all reasonable steps to ensure that all matters necessary to achieve the successful delivery of the Services are addressed properly and promptly;

(g) not adopt any strategy or make any decisions which are material to the Services without consulting with, and obtaining the prior consent of, the Authority;

(h) keep the Authority fully informed of the status of the Services, including its progress in relation to the Services;

(i) attend meetings with the Authority at such intervals as are required by the Authority;

(j) attend meetings with any Other Consultants or any other third parties (together with, or in the absence of, the Authority) as required by the Authority (acting reasonably);

(k) make reports and supply information to the Authority in accordance with its requirements and as requested from time to time; and

(l) keep detailed records of all acts and things done by it in relation to the performance of the Services and at the Authority's request make such records available for inspection by the Authority at any time.

3.2 Joint and several obligations

[Each person comprising the Consultant shall be:

(a) jointly and severally liable to the Authority in connection with this Agreement and the Services; and

(b) jointly and severally obliged to comply with and perform the obligations of the Consultant pursuant to this Agreement.][3]

3.3 Authority obligations

The Authority will supply to the Consultant within a reasonable time information and access to documentation in the possession of the Authority necessary for the performance of the Services and will give such assistance as is reasonable in the performance by the Consultant of the Services.

3.4 Consultant acknowledgment

The Consultant agrees and acknowledges that:

[3] If the successful Tenderer is not a partnership, this sub-clause should be deleted.

(a) the Authority may, at its discretion, reduce the scope of the Services or omit certain elements of the Services (including, for the avoidance of doubt, any element that cannot be achieved as a result of any public health restrictions for the time being in force), and the Consultant shall not be entitled to any payment whatsoever in respect of any reduction or omission of the Services;

(b) the Authority may require the performance of Additional Services, and the Consultant may only proceed with such services with the specific written approval of the Authority by way of purchase order or otherwise (and payment for the proper performance of such Additional Services shall be made in accordance with the provisions of Clause 6.1(b)). Any Additional Services performed without the written approval of the Authority shall be performed at the Consultant's own expense;

(c) any Services within the scope of this Agreement may also be performed directly by the Authority and/or may be procured by the Authority from another consultant; and

(d) if the Authority is not satisfied with the standard of any part of the Services undertaken by the Consultant, and requires the Consultant to rectify any deficiency or defect in the Services, the required remedial services shall be carried out by the Consultant at its own expense and it shall not be entitled to any fee or other payment in respect of time spent on such remedial services.

4. **Status of the Consultant and Tax Liabilities**

4.1 Provision of services to other persons

Subject to Clause 9 (Conflict of Interest), nothing in this Agreement shall preclude the Consultant from providing similar or any other consultancy services to any other person or firm except where the Authority considers such provision may create a conflict of interest, in which case the Consultant may not provide the services without first obtaining the prior written consent of the Authority, not to be unreasonably withheld.

4.2 Responsibility for employees' liabilities

(a) It is agreed and acknowledged that:

(i) the Consultant is fully responsible for, and the Authority has no responsibility for or to, the Consultant's employees, servants or agents; and

(ii) without prejudice to the generality of Clause 4.2(a)(i), the Consultant's employees, servants or agents shall not be entitled to any overtime payments, sick/holiday pay, pension, bonus or other additional or fringe benefits from the Authority and it is agreed that the Consultant shall be responsible for all income tax liabilities, PRSI contributions and levies in respect of its fees or those of its employees, servants or agents (including, for the avoidance of doubt, all PAYE deductions for tax and universal social charge contributions from the remuneration which it pays to employees who are Personnel).

(b) The Consultant shall indemnify and keep indemnified the Authority against any claim (including but not limited to a claim for income tax, PRSI, youth employment levy, universal social charge and any interest and penalties thereon) which may be made against the Authority by the Revenue Commissioners, the Department of Social Protection or any third party, or any order or award made by any tribunal or court,

arising out of a determination that the Consultant's employees, servants or agents are employees of the Authority, together with all costs and expenses incurred by the Authority in connection with or arising out of any such claim, order or award.

4.3 No partnership

Nothing in this Agreement shall constitute a partnership or joint venture nor establish a relationship of agency between the parties or a relationship of employment between the Authority and the Consultant's servants or agents.

4.4 No authority

The Consultant shall have no power or authority to enter into any agreement, contract or commitment for or on behalf or in the name of the Authority in connection with, or pursuant to, the provision of the Services or otherwise without the prior specific consent in writing of the Authority.

5. Key Personnel

5.1 Key Personnel

The Consultant shall employ, at its own expense, a sufficient number of competent personnel having appropriate qualifications and experience and shall ensure that such personnel (including in particular, but without prejudice to the generality of this Clause 5.1, the persons identified in the Consultant's Quality Submission set out in Schedule 3 (the "**Key Personnel**")) each devote as much time and attention to the Services as is necessary for the proper performance of the Services on the terms and conditions set out in this Agreement.

5.2 Changes to Key Personnel

(a) Subject to Clauses 5.2(b) and (c), once assigned to the Services, the Consultant shall make no change to the Key Personnel without the prior approval of the Authority, which shall not be unreasonably withheld.

(b) Should any of the Key Personnel leave the employment of the Consultant or any Sub-Consultant (if applicable), or become incapacitated, during the currency of this Agreement, or should the Authority request a change in Key Personnel, the Consultant shall submit to the Authority the name and curriculum vitae of a proposed substitute. The proposed substitute shall attend an interview and/or presentation with the Authority should this be required. The Authority may (acting reasonably) refuse to accept any proposed substitute and in such a case, the Consultant shall submit to the Authority further names and curricula vitae of other proposed substitute personnel.

(c) Should the Authority (acting reasonably) become dissatisfied with the performance of any of the Key Personnel, the Authority shall request the Consultant to immediately remove the said person(s) from the Services and replace him/her in accordance with the procedures set out in Clause 5.2(b) and the Consultant shall comply with such request.

6. Payment

6.1 Basis of payment

(a) The Fee shall be the full remuneration for the full and proper performance of the Consultant's obligations under this Agreement and covers the entire cost of the provision of the Services by the Consultant. Pursuant to Clause 3.4, any reduction to the scope of service, whether as a result of public health restrictions or otherwise, will lead to a commensurate reduction in the Fee.

(b) Where a change instructed in accordance with Clause 3.4(b) involves the performance of Additional Services, payment for such Additional Services shall be made by, at the discretion of the Authority:

(i) agreeing a lump sum fee which is in proportion to the increase in Services required; and/or

(ii) paying the Consultant by reference to the actual time spent on the Additional Services at the rates set out in Schedule 2,

and the details of the Additional Services and the fee payable shall be set out in the purchase order or other written instruction issued by the Authority as set out in Clause 3.4(b) above.

(c) The Consultant shall, on a monthly basis (or such other period as may be requested by the Authority), notify the Authority of the time spent in carrying out any Additional Services over the course of that month and shall produce any such record, back-up or other evidence relating to the time spent as the Authority may require. Any additional sum payable for the proper performance of Additional Services shall be included in the next invoice submitted by the Consultant in accordance with Clause 6.3 (Payment) and shall identify the applicable purchase order number or other written instruction issued by the Authority as set out in Clause 3.4(b) above.

(d) If the Authority exercises the option to extend the duration of the Agreement set out in Clause 2.2, the Fee and rates may be adjusted by the percentage increase or decrease (if any) of the Index figure current at the Expiry Date compared with the Index figure on the Commencement Date.

6.2 Records

The Consultant shall maintain records of all fees incurred in respect of the Services in electronic format (or such other format specified by the Authority). The records maintained by the Consultant shall contain details of all Services undertaken, the dates and identities of the Personnel who carried out such Services and the identities of the personnel of the Authority who authorised the carrying out of such Services. The Authority shall be entitled to inspect the Consultant's fee records upon providing notice of such inspection to the Consultant.

6.3 Payment

(a) Invoices shall be submitted to the Authority on a monthly basis, on the last day of each month.

(b) Invoices for payment should be addressed to the Accounts Department, Arts Council, 70 Merrion Square, Dublin D02 NY52 and sent preferably by email to accountspayable@artscouncil.ie quoting Purchase Order number insert Purchase Order number. Please also copy **Jennifer Lawless - jennifer.lawless@artscouncil.ie**.

(c) Payment of any sums due (including all legally demandable VAT, at the rate for the time being properly chargeable in respect of the supply of goods and services by the Consultant under this Agreement) shall be made in euro, on a [on the last Working Day of the month following the month of the invoice date][4], provided all monies specified in the Consultant's invoice raised are due and the invoices are valid VAT invoices and are correctly addressed. The Consultant will be responsible for any VAT due in respect of fees received under this Agreement.

(d) The Authority shall be entitled to make deductions from the payments specified in this Agreement where it is required by law or otherwise entitled to make such deductions. In particular, Professional Services Withholding Tax, if applicable will be deducted at source as directed by the Revenue Commissioner from the Consultant's payment and remitted to the Revenue, if the Consultant is providing professional services.

(e) Payment of any monies under this Agreement does not give rise to an inference that the Consultant has fulfilled its obligations to the satisfaction of the Authority or is entitled to any such payment.

6.4 Right of set-off

Where, in any case, the Consultant is liable to make any payment to the Authority under this Agreement or otherwise, the Authority may set off any such payments due to it against any fees due by the Authority to the Consultant on this or any other contract between the parties.

6.5 Current Tax Clearance Certificate

The Consultant shall not be entitled to any payment if at any time in response to a request from the Authority the Consultant does not provide a valid Tax Clearance Certificate or log-in access to the Consultant's current Tax Clearance Certificate on the website of the Revenue Commissioners of Ireland confirming suitability on tax grounds.

7. **Assignment, Sub-Contracting and Novation**

7.1 Consultant

The Consultant:

(a) shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatsoever, any part of this Agreement; and

(b) shall not subcontract any element of the Services,

without the prior written consent of the Authority, which consent may be withheld at the Authority's absolute discretion and may be conditional, among other things, upon the Authority's approval of the contract to be entered into and the production of required collateral agreements.

7.2 Replacement of Sub-Consultant

[4] This clause should be reviewed and the appropriate payment period applicable to the particular Services being procured should be inserted.

If it is necessary to replace or supplement a Sub-Consultant, the Consultant shall submit to the Authority details of the proposed replacement or additional Sub-Consultant (such details to include, experience, scope of Services to be sub-contracted and intended commencement date) and, subject to the Authority's consent, shall so replace or supplement the Sub-Consultant.

7.3 Responsibility for Sub-Consultants

(a) The Consultant shall manage, monitor and co-ordinate the performance by any Sub-Consultant of their respective obligations and shall supervise the progress of the Services on a day-to-day basis using best endeavours to ensure that all Sub-Consultants fulfil their respective obligations with the level of skill, care, diligence, efficiency and professional conduct reasonably to be expected of a consultant with the qualifications and experience suitable for the element of the Services being sub-contracted.

(b) The responsibility or liability of the Consultant under this Agreement shall not be reduced or diminished as a result of the sub-contracting of any of the Services and the Consultant shall be liable for the acts and omissions of its Sub-Consultants, if any, as if they were its own

7.4 Authority

The Authority may transfer, assign or novate all or any part of the terms and conditions of this Agreement to any public sector body and shall give prompt notice to the Consultant of such transfer, assignment or novation. The Consultant agrees to do all acts, and execute all documents, necessary to give effect to such transfer, assignment or novation.

8. **Confidentiality**

8.1 Confidential

The Consultant agrees and acknowledges that it will keep, and it will ensure that its Personnel shall keep, Confidential Information confidential, and shall not at any time for any reason whatsoever disclose or permit Confidential Information to be disclosed to any third party except as permitted hereunder to enable the Consultant to carry out its duties and obligations under the Agreement.

8.2 Permitted disclosure

The Consultant may disclose Confidential Information:

(a) if and to the extent required by law or for the purpose of any judicial inquiry or proceedings;

(b) if and to the extent required by any securities exchange or regulatory or governmental body to which it is subject wherever situated, including (amongst other bodies) the Public Accounts Committee, any other Oireachtas Committee, and/or the Irish Stock Exchange, whether or not the requirement to disclose the Confidential Information has the force of law;

(c) if and to the extent necessary or desirable to enable a determination to be made under Clause 18 (Dispute Resolution);

(d) to its professional advisers, auditors and bankers;

(e) if any to the extent that it is necessary to carry out its Services hereunder; or

(f) if and to the extent the Authority has given prior written consent to the disclosure.

9. **Conflict of Interest**

9.1 No conflict

The Consultant shall ensure that no conflict of interest arises in respect of its performance of the Services under this Agreement. For the avoidance of doubt, the Contracting Authority considers that a Conflict of Interest arises or may potentially arise where the Contractor, Subcontractor, or individual employee(s) or agent(s) of a Contractor or Subcontractor(s) provide services to an organisation or entity which is funded by the Contracting Authority

9.2 Disclosure

The Consultant shall disclose to the Authority, within 48 (forty-eight) hours of it coming to its attention, any conflict of interest or potential conflict of interest which it, any of its affiliates or any of its Sub-Consultants may have in performing the Services.

9.3 Authority rights

In the event of any conflict or potential conflict of interest arising, the Consultant agrees and acknowledges that it is a matter for the Authority to decide the appropriate action to be taken (including termination of contract) in accordance with the terms of this Agreement.

9.4 Consultant warranty

The Consultant hereby expressly agrees and warrants that for the duration of this Agreement neither the Consultant nor any of its Sub-Consultants shall, unless otherwise agreed in advance with the Authority, provide any advice to any person other than in accordance with this Agreement in connection with any matter connected with the Services.

9.5 Third parties

The Consultant shall ensure that its Personnel comply with this Clause 9 as if they were a party to this Agreement.

10. **Intellectual Property and Right to Use Materials**

Vest in Authority

Intellectual Property arising out of or relating to the work performed by the Consultant and/or any Sub-Consultant as part of the Services including without limitation, all records, documents, data, financial models, methodologies or such other materials ("**Materials**") will vest solely in the Authority. The Authority, however, recognises that pre-existing intellectual property rights used by the Consultant for the creation of Materials will vest solely in the Consultant.

10.1 Nothing in this Agreement will restrict either party from using, developing or sharing knowledge, experience and skills of general application with third parties gained through either party's performance of its obligations under this Agreement.

10.2 Consultant obligations

The Consultant hereby:

(a) undertakes to notify and disclose to the Authority in writing full details of all Intellectual Property to which this Clause 10 applies forthwith upon the production, invention or discovery of the same, and promptly whenever requested by the Authority and in any event upon the termination or expiry of this Agreement deliver up to the Authority all correspondence and other documents, papers, and records and all copies thereof in its possession, custody or power relating to any Intellectual Property;

(b) undertakes to hold on trust for the benefit of the Authority any Intellectual Property to the extent that the same may not be, and until the same is, vested absolutely in the Authority;

(c) assigns by way of present assignment of future copyright all copyright in all Intellectual Property to which this Clause 10 applies;

(d) acknowledges that no further remuneration or compensation is or may become due to it in respect of, or in connection with, the performance of its obligations under this Clause 10;

(e) undertakes at its own expense to execute all documents, make such applications, give such assistance and do such acts and things as may in the opinion of the Authority be necessary or desirable for the purpose of vesting in the Authority the rights granted to it under this Clause 10 and otherwise to protect and maintain the Intellectual Property;

(f) irrevocably appoints the Authority or its nominee as its attorney to execute and sign as the Authority's act and deed in its name and on its behalf all documents as the Authority may consider requisite for enjoyments of its rights granted pursuant to this Clause 10; and

(g) to the extent that by law any Intellectual Property or the rights therein do not, or are not permitted to or cannot, vest in or belong to the Authority, the Consultant agrees immediately upon the same coming into existence to offer to the Authority a right of first refusal to acquire the same on arms length terms to be agreed between the parties and in the absence of agreement within 30 (thirty) days of such offer to be decided upon by an arbitrator to be appointed by the President for the time being of the Law Society of Ireland (whose decision shall be final and binding on the parties and whose costs shall be borne equally by the parties).

10.3 Delivery of documents and Materials

On completion of the Services or any part of the Services or any termination of this Agreement for any reason, the Consultant shall upon written request deliver to the Authority all documents (in such a manner as to be "**unlocked**", readily accessible and useable for any reasonable purpose) and all Materials whatsoever purchased or created by the Consultant and/or its Sub-Consultant for the purpose of the Services or any part of the Services. The Consultant acknowledges that it has no lien on any such documents or Materials for any payment due to it by the Authority.

10.4 Indemnity

The Consultant shall indemnify the Authority in respect of any loss, damage or liability whatsoever arising from any infringement of any third party's intellectual property rights due to the use by the Authority in good faith of any information, documents or materials obtained from the Consultant and/or Personnel.

11. **Data Protection**

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

''**Data Controller''** means the Authority.

''Data Processor'' means the Consultant.

"**Personal Data**" and "**Data Processing**", and "**Breach**" have the meanings given to them in Data Protection Laws.

The Data Controller and the Data Processor acknowledge that the Data Processor may have access to certain Personal Data to the extent that the performance by the Data Processor of its obligations under this Agreement involves the processing of Personal Data on behalf of the Data Controller, the Data Processor agrees;

(a) To process the Personal Data only to the extent, and in such a manner, as is necessary for the purposes specified in this Agreement and in accordance with the Data Controller's documented instructions unless otherwise required to do so by applicable Laws and shall not process the personal data for any other purpose other than those expressly stated herein;

(b) To implement and maintain appropriate technical and organisational security measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32 of the GDPR.;

(c) To not transfer Personal Data to countries outside the EU and/or the EEA without the Data Controller's prior written consent. If Personal Data processed under this Agreement is transferred from a country within the EEA to a country outside the EEA, the Data Processor shall ensure that the Personal Data is adequately protected in accordance with the Data Protection Laws, specifically Article 28(3) of the GDPR;

(d) To notify the Data Controller without undue delay and within 24 hours upon becoming aware of a Personal Data Breach, any event or incident which puts the Personal Data at risk, any legally binding request for disclosure of the Personal Data by law enforcement, or any accidental or unauthorised access to the Personal Data. The Data Processor shall not inform any third party of any Personal Data Breach without first obtaining the Data Controller's consent except when required to do so by applicable Data Protection Law;

(e) To ensure that access to any Personal Data is strictly limited to those individuals who need to access such data for the purposes of the performance of the Data Processor's obligations pursuant to this Agreement;

(f) To ensure that its employees, agents or contractors and any employees, agents or contractors of any Sub-processor, who may have access to Personal Data shall comply with the Data Protection Laws in the context of that individual's duties to the Data Processor or the relevant Sub-processor;

(g) To submit its Data Processing facilities for audit and inspection, by or on behalf of the Data Controller, of the Data Processing activities covered by this Agreement. The Data Controller agrees that any such audit or inspections shall be carried out under a duty of confidentiality and with reasonable notice and during regular business hours;

(h) At the choice of the Data Controller, to delete or return any Personal Data as the Data Controller may request from time and time or upon expiration or termination of this Agreement delete existing copies unless applicable Laws require storage of the data;

(i) To provide reasonable co-operation and assistance to the Data Controller in respect of

(i) requests from data subjects in respect of access to or the rectification, erasure, restriction, blocking or deletion of Personal Data;

(ii) the investigation of any security incident and the notification to the Data Protection Commission and data subjects in respect of such a security incident;

(iii) the preparation of data protection impact assessments and, where applicable, carrying out consultations with the Data Protection Commission in relation to Personal Data;

(iv) and the security of Personal Data, including by implementing technical and organisational security measures.

(j) To not delegate, assign or subcontract its obligations in respect of the Processing of any Personal Data pursuant to this Agreement or disclose any Personal Data, to any Sub-processor without the prior written consent of the Data Controller;

(k) On the granting of any consent by the Data Controller, pursuant to Clause 6(j), the Data Processor will procure that any of its Sub-processors will only process the Personal Data on the documented instructions of the Data Processor and the Data Processor will put in place a legal agreement in writing to govern the sub-processing which will impose obligations on the Sub-processor which are substantially the same as those imposed on the Data Processor in this Agreement. The Data Processor shall remain fully liable to the Data Controller for the processing of any Data Controller Personal Data by a Sub-processor.

Both the Data Processor and the Data Controller undertake to each other that in respect of their obligations under this Agreement they will comply fully with all applicable Data Protection Laws.

12. **Warranties**

The Consultant represents and warrants that:

(a) it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement and that it has duly and validly executed and delivered the

Agreement and the Agreement constitutes legal valid and binding obligations on the Consultant; and

(b) it will provide the Services in accordance with the terms of this Agreement.

13. **Transfer of Undertakings/Employment Issues**

13.1 The Consultant agrees to comply with its obligations under the Transfer Regulations, to the extent applicable, including the obligation to inform and/or consult Affected Employees in respect of the transfer of some or all of the Services.

13.2 On a request being made by the Authority, the Consultant shall provide the Authority, within 10 (ten) Working Days, with the names, addresses, dates of commencement of employment, hours of work, accrued holiday entitlement, job descriptions, copy contracts of employment or written statements of terms and conditions, collective agreements, customs and practices, details of any claims by or outstanding liabilities applicable to Affected Employees and such other information or documentation as may be reasonably required by the Authority.

13.3 The Authority may disclose all such information to any prospective Tenderer tendering to be appointed as a successor to the Consultant and, if requested by the Consultant to do so, shall ensure that prior to such disclosure the prospective Tenderer undertakes not to disclose (unless required by law to do so) the information to any other person other than a person who:

(a) is a servant or agent (including legal adviser) of the prospective Tenderer; and

(b) has undertaken not to disclose that information unless required by law to do so.

13.4 The Consultant shall neither amend the terms and conditions of employment of the Affected Employees nor replace any of them nor employ additional employees to provide the Services during the 6 (six) month period prior to the Expiry Date [(or, if this Agreement is extended in accordance with Clause 2.2, during the six month period prior to the date when the Agreement as so extended will expire)][5] without the prior written consent of the Authority.

13.5 The Consultant shall perform and observe all of its or any Sub-Consultant's obligations under or in connection with the contract of employment of the Affected Employees in respect of any period before the Expiry Date [(and, if this Contract is extended in accordance with Clause 2.2, during the period of any such extension)][6] or shall ensure that the relevant Sub-Consultant does so.

13.6 The Consultant shall indemnify and keep indemnified on demand the Authority from and against any and all Employment Liabilities arising from or incurred by reason of any claims made by any Affected Employee (or persons claiming to be Affected Employees) or Staff, including claims under the Transfer Regulations, against the Authority including but not limited to:

(a) an allegation that the Transfer Regulations apply or do not apply;

(b) the Consultant's or any Sub-Consultant's failure to comply with their obligations under the Transfer Regulations;

(c) the Consultant's or any Sub-Consultant's failure to comply with the terms of this Clause 13;

(d) any and all Employment Liabilities arising out of or in connection with the transfer of the Affected Employees under the Transfer Regulations;

(e) any event or occurrence related to or arising out of the employment of an Affected Employee prior to the date of termination of this Agreement; or

(f) any material term of any contract of employment (whether written or oral) not disclosed to the Authority or disclosed inaccurately in a material respect to the Authority and which term has effect as if originally made between the Authority and any Affected Employee as a result of the provisions of the Transfer Regulations.

13.7 The Consultant acknowledges and agrees that the Authority may grant indemnities and covenants in favour of each and any new service provider undertaking the Services to the same extent that the Consultant is undertaking to indemnify and covenant with the Authority in this Clause 13. The Consultant agrees that in the event of a claim on any indemnity or breach of covenant in terms of this Clause 13 for Employment Liabilities incurred by the Authority, that claim shall include the amount, if any, which the Authority is required to pay to any new service provider in accordance with the terms of any indemnities or covenants given to the new service provider.

13.8 In the event that the Consultant sub-contracts its obligations to a Sub-Consultant, the provisions of this Clause 13 shall apply as if references to "Consultant" were to "the Consultant and the relevant Sub-Consultant" and the Consultant shall indemnify the Authority on the terms of this Clause 13 for any failure by the relevant Sub-Consultant to comply with the obligations of this Clause 13 as if the acts or omissions of the relevant Sub-Consultant were the acts or omissions of the Consultant.

14. **Force Majeure**

14.1 Affected Party obligations

If a party is affected by a Force Majeure then the party so affected (the "**Affected Party**") shall promptly notify the other party in writing of the nature and extent of the circumstances in question and both parties shall consult each other and make every reasonable effort to mitigate the effect of such Force Majeure on the Affected Party's ability to perform its obligations under this Agreement.

14.2 Effect of Force Majeure

(a) Notwithstanding any other provisions of this Agreement, but subject to Clause 14.2(c), the Affected Party shall be deemed not to be in breach of this Agreement or otherwise be liable to the other party for any delay in performance or non-performance of its obligations under this Agreement arising from the operation of a Force Majeure which it has notified to the other party. The time for the performance of obligations affected by a Force Majeure which has been duly notified to the other party shall, subject to Clause 14.2(c), be extended until such time as the Force Majeure ceases to exist.

(b) The Affected Party shall notify the other party immediately in writing once the Force Majeure has ended and shall forthwith resume performance of its obligations under this Agreement.

(c) If any circumstances of Force Majeure exist for a continuous period of 6 (six) months then the Authority shall be entitled to terminate the Consultant's appointment under this Agreement forthwith by giving notice in writing to the Consultant.

15. Termination

15.1 Termination Events

(a) This Agreement may be terminated by either party immediately in writing (without prejudice to any other rights and remedies which it may possess):

(i) if in the reasonable opinion of such party there has been material breach, default or negligence by the other party or flagrant or persistent neglect by the other party of its obligations under this Agreement and, the party wishing to terminate having served written notice on the other party notifying it of the breach, default or negligence, the other party has failed to remedy such breach, default or negligence within a period of 15 (fifteen) Working Days of such notification;

(ii) if the other party (or, where such party is a partnership, any partner therein) becomes bankrupt or compounds or makes any arrangement with or for the benefit of its creditors or (where such party is a company) enters into compulsory or voluntary liquidation or amalgamation (other than for the purpose of a bona fide reconstruction or amalgamation without insolvency) or such party has a receiver or manager appointed of its undertakings or if any security is enforced against any asset of such party or any distress or execution shall be threatened or levied upon any of its assets or if the other party is unable to pay its debts in accordance with the law relating to this Agreement;

(b) This Agreement may be terminated by the Authority immediately in writing (without prejudice to any other rights and remedies which it may possess):

(i) if the Consultant has been guilty of conduct tending to bring itself or the Authority into disrepute;

(ii) if funding of the Authority in connection with the matter the subject of the Services shall cease;

(iii) in the circumstances contemplated by Clause 17 (Performance Review).

15.2 Voluntary termination

This Agreement may be terminated by the Authority, without liability for compensation or damages, by serving 30 days written notice to the Consultant.

15.3 Consultant waiver

Without prejudice to any other clause of this Agreement, the Consultant waives any rights it may have under this Agreement, under statute, in equity or otherwise at law to seek compensation for loss of profit, loss of business or any indirect or consequential losses resulting from the Authority's termination of this Agreement.

15.4 Consequences of termination

On termination of this Agreement for any reason

(a) the Consultant shall do no further work to perform the Services (except as instructed in writing in the Authority's notice terminating the Agreement);

(b) the Consultant agrees that:

(i) the Authority may complete the Services (or part thereof) itself;

(ii) the Authority may employ others to complete the Services, or any part thereof;

(iii) the Authority may use or make available to others any rights to material, including the Materials, prepared by the Consultant which the Authority may hold;

(iv) the Consultant shall immediately return all records, papers, materials, media and other property in its possession that belongs to the Authority; and

(v) it shall cease to hold itself out as carrying out the Services;

(c) the Consultant shall be entitled to payment for such proportion of the Services as have been properly completed in accordance with the Agreement up to the date of termination less any amounts due or payable to the Authority pursuant to this Agreement or arising from such termination and such payments for Services duly performed shall be the only payment to which the Consultant shall be entitled and shall be in full and final satisfaction of the Consultant's entitlement to payment arising from the termination of the Agreement; and

(d) if the Consultant has breached this Agreement, the Authority may deduct from any amount due or to become due to the Consultant the Authority's reasonable estimate of the additional cost the Authority incurs in obtaining the Services because of the breach or termination.

15.5 Employee Information

If requested by the Authority, the Consultant shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Authority ("Employment Information"). The Consultant agrees that the Authority may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

15.6 Without prejudice

The provisions of this Clause 15 are and shall be without prejudice to any other rights or remedies which the Authority may have.

16. **Liability and Insurance**

16.1 Consultant acknowledgement

The Consultant acknowledges that:

(a) any breach by it of the Agreement may cause financial losses to the Authority, not only directly but by liability to other public authorities, contractors, suppliers, or other consultants, and such losses may be included in compensation for which it is liable to the Authority; and

(b) the Authority shall not be liable to the Consultant for any losses whatsoever suffered or incurred by the Consultant arising out of or in connection with the Agreement for any reason.

16.2 Consultant liability

The Consultant accepts:

(a) liability for death or personal injury resulting from any act, default, omission and/or negligence of the Consultant, its Personnel, servants or agents; and

(b) liability for damage to property resulting from any act, default, omission and/or negligence of the Consultant, its Personnel, servants or agents,

and hereby agrees to indemnify and keep indemnified the Authority, its directors, employees, servants and agents, against all actions, claims, demands, proceedings, damages, costs, charges and expenses whatsoever made or awarded against, or incurred by (as the case may be) them or any of them, arising from the work being carried out by the Consultant under this Agreement.

16.3 Insurance obligations

(a) The Consultant shall take out and maintain professional indemnity cover in respect of the Services provided by the Consultant for a sum not less than €1,000,000 each and every claim covering claims for civil liability and negligence. Such insurance shall be in a form and with insurers approved by the Authority and shall be maintained for a period of 6 years from the date of termination or expiry of this Agreement.

(b) The Consultant shall procure and maintain employer's liability insurance, if applicable, covering any liability, loss, claim or proceedings in respect of any injury to or disease contracted by or death of any person in the employment of the Consultant up to a limit of €13,000,000 in respect of any one claim or series of claims arising out of any one event and unlimited in any one period from the Commencement Date until the termination or expiry of this Agreement.

(c) The Consultant shall procure and maintain public liability insurance covering any liability for death or personal injury of any person and/or damage to property resulting from any act, default, omission and/or negligence of the Consultant, its servants or agents up to a limit of €6,500,000 in respect of any one claim or series of claims arising out of any one event and unlimited in any one period from the Commencement Date until the termination or expiry of this Agreement.

(d) The Consultant agrees not to do or refrain from doing or omit to do anything, and shall procure that its Personnel refrain from doing or omitting to do, anything which might render the insurances referred to in this Clause 16 void or voidable.

(e) The Consultant will comply with all conditions and obligations of any such insurance policies referred to in this Clause 16 and on request shall supply evidence of the required cover to the Authority together with evidence that the required premia have

been paid up to date. If the Consultant fails to supply the relevant details on request, the Authority will be at liberty to effect such insurance cover as it deems to be requisite and recover the cost from the Consultant as a debt on demand or, at its discretion, reduce any fees payable to the Consultant pursuant to this Agreement by the amount required to effect such insurance cover.

(f) The Consultant shall notify the Authority immediately in the event of any of the insurances ceasing to be available and shall in such event enter into discussions with the Authority as to how best protect their respective interests at the cost of the Consultant.

(g) The insurance required to be obtained by the Consultant pursuant to this Clause 16 shall not limit the obligations, liabilities or responsibilities of the Consultant under the terms of this Agreement or otherwise. Any amounts not insured or recovered from the insurers shall be borne by the Consultant in accordance with the obligations, liabilities and responsibilities set out under this Agreement.

(h) The Consultant shall be liable to pay the full amount of any deductibles or excess amounts arising under the insurance policies in respect of each and every claim owing.

17. **Performance Review**

(a) The Consultant's performance will be continually monitored over the term of contract. If the Consultant's performance is considered unsatisfactory by the Authority following any such review, the Consultant's appointment may be terminated in accordance with Clause 15 (Termination).

(b) The Consultant shall take a proactive role in monitoring performance with a view to making appropriate recommendations where necessary.

18. **Dispute Resolution**

Subject to any conciliation or other dispute resolution process which may be agreed between the parties, any dispute or difference which arises or occurs between the parties in relation to any matter in connection with this Agreement shall be referred to arbitration under the Arbitration rules of the Chartered Institute of Arbitrators – Irish Branch whose decision in relation to matters shall be binding.

19. **Notices**

19.1 Communications in writing

Any communication to be made under or in connection with this Agreement shall be made in writing and, unless otherwise stated, may be made by email or letter.

19.2 Addresses

The email and postal address (and the department or officer, if any, for whose attention the communication is to be made) of each party for any communication or document to be made or delivered under or in connection with this Agreement is:

(a) in the case of the Authority:

Arts Council

Postal Address:	Email Address:	Attention:
70 Merrion Square Dublin D02 NY52	jennifer.lawless@artscouncil.ie	Jennifer Lawless

(b) in the case of the Consultant:

[*insert name of Consultant*]

Postal Address:	Email Address:	Attention:
[*To be inserted*]	[*To be inserted*]	[*To be inserted*]

or such other email or postal address as may be notified to the other party to this Agreement, such notice to take effect not less than 5 (five) Working Days' after the service of the notice.

19.3 Delivery

(a) Subject to Clause 19.2(b), a communication or document made or delivered by one person to another under or in connection with this Agreement will only be effective:

(i) if by way of email, when received in legible form; or

(ii) if by way of letter, when it has been left at the relevant address or 5 (five) Working Days' after being deposited in the post postage prepaid in an envelope addressed to it at that address,

and, if a particular department or officer is specified as part of its address details provided under Clause 19.2, if addressed to that department or officer.

(b) Any communication or document to be made or delivered to the Authority will be effective only when actually received by the Authority and then only if it is expressly marked for the attention of the department or officer identified with the Authority's signature below (or any substitute department or officer as the Authority shall specify for this purpose).

19.4 English language

(a) Any notice given under or in connection with this Agreement must be in English.

(b) All other documents provided under or in connection with this Agreement must be:

(i) in English, or

(ii) if not in English, and if so required by the Authority, accompanied by a certified English translation and, in this case, the English translation will prevail unless the document is a constitutional, statutory or other official document.

20. **Waiver, Delay and Remedies**

20.1 No waiver

The failure by either party to enforce any provision of this Agreement will in no way affect its right thereafter to require complete performance by the other party nor will the waiver of any

breach of any provision be taken or held to be a waiver of any subsequent breach of any provisions or be a waiver of the provision itself.

20.2 Delay

No failure or delay by the Authority in exercising any claim, remedy, right, power or privilege under this Agreement shall operate as a waiver nor shall a single or partial exercise of any claim, remedy, right, power or privilege preclude any further exercise thereof or exercise of any other claim, remedy, right, power or privilege.

20.3 Remedies cumulative

Except where this Agreement provides otherwise, the rights and remedies contained in this Agreement are cumulative and not exclusive of rights or remedies provided by law.

21. **Amendment or variation**

An amendment or variation of this Agreement is valid only if it is in writing and signed by or on behalf of each party.

22. **Non-Exclusivity**

The Authority shall at all times be entitled to enter into separate contracts for the provision of any or all services the same as or similar to the Services with persons other than the Consultant. Nothing in this Agreement shall create an exclusive relationship between the Authority and the Consultant for the provision of Services.

23. **Severance**

Each of the provisions of this Agreement is severable and distinct from the others and if at any time one or more of such provisions become invalid, illegal or unenforceable then the validity and legality or enforceability of the remaining provisions hereof shall not in any way be affected or impaired thereby.

24. **Entire Agreement**

This Agreement constitutes the whole and only agreement between the parties relating to the Services. Each party acknowledges that in entering into the Agreement on the terms set out herein, it is not relying upon any pre-contractual statement or arrangement which is not expressly set out herein.

25. **Governing Law**

The laws of Ireland shall govern the construction, validity and performance of this Agreement.

IN WITNESS WHEREOF the parties hereto have executed this Agreement the day and year first written above.

SIGNED by [INSERT NAME OF INDIVIDUAL] _____

a duly authorised representative of/for and on behalf of the Authority _____

in the presence of: _____

Signature of Witness _____

Name of Witness _____

Address of Witness _____

Occupation of Witness _____

SIGNED by [INSERT NAME OF INDIVIDUAL] _____

[a duly authorised representative of/for and on behalf of the Consultant][7] _____

in the presence of: _____

Signature of Witness _____

Name of Witness _____

Address of Witness _____

_____

Occupation of Witness _____

[7] This wording referring to "duly authorised representative" would not be necessary if the Consultant is an individual.

Schedule 1 – The Services

Schedule 2 – Pricing

PART 2 – PRICING SUBMISSION

To be inserted

For the avoidance of doubt the rates set out above are fixed and shall not be subject to any price adjustment or escalation formula to reflect variations in currency, exchange rates, taxation, and the cost of labour, materials, overheads or any other expense. In particular, the rates set out above exclude VAT (which should be itemised separately on invoices), and include:

i. salary payments;

ii. provision of all secretarial/administrative/clerical support;

iii. all equipment required in the performance of the services;

iv. office overheads;

v. insurance;

vi. general office consumables;

vii. annual leave payments/sick leave payments;

viii. all travel, accommodation and subsistence arrangements in providing the required services;

ix. postage/telephone/email costs;

x. internal photocopy and printing costs;

xi. general overheads, and

xii. profit.

Schedule 3 – Quality Submission

[*To be inserted*]