Tipperary ETB
Bord Oideachais & Oiliúna Thiobraid Árann
Tipperary Education & Training Board

CALL for TENDER

Contract for	**The Provision of Electric Forklifts to Tipperary Education Training Board**
Procedure	**OPEN**
eTenders CFT ID	**CFT 9398457**
Issue Date	**Thursday 5 November 2026**
Closing Date for Queries	**19th November 2026@ 12:00**
Contact for Queries	**Questions and Answers facility on www.etenders.gov.ie**
Closing Date / Time for receipt of Tenders	**26 November 2026@ 12:00**

Please note that information relating to this Call for Tender, including clarifications and changes, will be published on the Irish Government Procurement Opportunities Portal. www.etenders.gov.ie Registration is free of charge and there is no charge for documents.

Please note that the contracting Authority cannot accept responsibility for information relayed (or not relayed) via third parties.

The Contracting Authority have provided a Tender Response Document as a separate document for tenderers to use in preparing their response to this tender. This document and format must be used.

TABLE OF CONTENTS

1. Disclaimer 5
1 Summary 6
2 Small and Medium Enterprise Participation 6
3 About the Contracting Authority 7
4 Scope of the Contract 8
4.1 Summary of Specification 8
4.1.1 Delivery Locations 8
4.1.2 Volumes 8
4.1.3 Pricing 8
4.2 Duration of the Contract 9
4.3 Indicative Budget 9
4.4 Review of Performance 9
4.5 Account Management 9
4.5.1 Account Manager 9
4.5.2 Replacement Personnel 10
4.5.3 Invoicing 10
4.5.4 Award to Runner Up 10
4.6 Compliance with the Terms and Conditions 10
4.7 Termination of Contract 10
5 Evaluation Criteria 11
5.1 Selection Criteria 11
5.1.1 General Information relating to the Tenderer 11
5.1.2 Legal Compliance 11
5.1.3 Financial Capacity 11
5.1.4 Technical Capacity 12
5.1.5 Status of European Single Procurement Document (ESPD) 13
5.2 Award Criteria 13
5.2.1 Post Tender Clarification 15
5.2.2 Verification 15
5.2.3 Clarification of Abnormally Low Tenders 15
5.2.4 Right to Confirm Suitability 16
APPENDIX 1 - INSTRUCTIONS TO TENDERERS 17
(a) Submission of Tenders 17
(b) Queries 17

(c) Sufficiency & Accuracy of Tender 18
(d) Qualification of Tenders and Referential Bids 18
(e) Extension of Tender Period 19
(f) Modifications to Tenders prior to the Closing Date for Receipt of Tenders 19
(g) Cost of Preparation of Tender 19
(h) Tender Validity Period 19
(i) Currency and Payments 19
(j) Conflict of Interest 19
(k) Freedom of Information Acts 20
(l) Tax Clearance 20
(m) Withholding Tax 20
(n) Irish Legislation and Law 21
(o) Dignity at Work 21
(p) Clarification of Tenders 21
(q) Correction of Errors 21
(r) Change in the Composition of a Tender 21
(s) Interference and Inducement to Purchase 21
(t) Notification of Tender Evaluations 22
(u) Award Notices 22
(v) Policy on Personal Debriefings 22
(w) Copyright 22
(x) Brand Names, etc. 22
(y) Payment 22
(z) Right Not to Award 23
(aa) Environmental Aspects 23
(bb) Accessibility 23
(cc) Knowledge and Skills Transfer 23
(dd) Collusive Tendering 23
(ee) Confidentiality 23
(ff) Consortia and Prime Subcontractors 24
(gg) Anti-Competitive Conduct 24
(hh) Changes in Legislation 24
(ii) Data Protection 24
(jj) RETURN OF SIGNED CONTRACTS 25
APPENDIX 2 – SPECIFICATION 26
APPENDIX 3 – Tenderer's Statement 28
APPENDIX 4 - DECLARATION AS TO PERSONAL CIRCUMSTANCES OF TENDERER 30

APPENDIX 5 – FRAMEWORK AGREEMENT TERMS AND CONDITIONS 33
1 CONTRACTOR'S OBLIGATIONS 37
2. THE GOODS 38
3. INSPECTION OF GOODS 39
4. RISK AND TITLE 41
5. PAYMENT 41
6. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS 42
7. REMEDIES 43
8. CONFIDENTIALITY 44
9. FORCE MAJEURE 45
10. TERMINATION 46
11. CONTRACT MANAGEMENT 47
12. DISPUTES 48
13. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION 48
14. NOTICES 48
15. ASSIGNMENT AND SUBCONTRACT 49
16. ENTIRE AGREEMENT 49
17. SEVERABILITY 49
18. WAIVER 49
19. NON-EXCLUSIVITY 50
20. MEDIA 50
21. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS 50
22. ACCESS TO PREMISES 50
23. NON-SOLICITATION 51
24. CHANGE CONTROL PROCEDURE 51
25. DATA PROTECTION AND SECURITY 51
Schedule E: Data Protection 55
Appendix 6 – Confidentiality Agreement 56

1. Disclaimer

This document issued herewith ("the Document") is for information only and does not constitute, and shall not be interpreted as, an offer for sale, prospectus, or the basis of a contract.

Tenderers are recommended to read the documents thoroughly. While all reasonable steps have been taken to ensure that the information set out in the Document is accurate and up to date, no representation or warranty, express or implied, is or will be made or given in relation to the accuracy or the completeness of any information contained in the Document or otherwise provided by or on behalf of the Contracting Authority (in writing or otherwise) to any interested party or its advisers. No responsibility or liability for any loss or damage arising as a result of reliance on these documents, or for the information contained in these documents or for any omission is or will be accepted by the Contracting Authority or by any of its officers, employees, agents or professional advisers. No officer, employee, agent, or professional adviser of the company has any authority to give or make any representation or warranty, express or implied, in relation to such information. The Contracting Authority's officers, employees, agents and professional advisers expressly disclaim any and all liability arising out of such documentation or information and any errors or omissions in or from the documents and information.

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

This Call for Tender ('CFT') does not constitute an offer or commitment to enter into a Contract.

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

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

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

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

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

The Contracting Authority reserves the right to discontinue the procurement process at any time for any reason.

1 Summary

Contracting Authority:	Tipperary Education and Training Board
Nature of procurement:	The Provision of Electric Forklifts to Tipperary Education and Training Board
Type:	Goods
Procedure:	**OPEN PROCEDURE**
Stage in procedure:	This is a single stage tender procedure whereby all interested parties may tender, but only those meeting the selection criteria (financial and technical capacity) will be deemed eligible for evaluation against the award criteria.

2 Small and Medium Enterprise Participation

It is the policy of the Contracting Authority to promote participation by Small and Medium Enterprises ("SMEs") on a fair and equal basis.

SMEs are encouraged to explore the possibilities of forming relationships with other SMEs or with larger enterprises to meet the financial, economic or technical capacity requirements of the competition, if required.

Tenderers may include individuals, partnerships, limited companies, groupings or any combination of the foregoing with or without legal personality. However, a grouping, consortium or combination of entities may be required to establish legal personality in order to enter into a contract. The Contracting Authority may also:

- contract with one member of the grouping, consortium or combination of entities on the basis that party will carry overall responsibility for the performance of services required under the contract;
- contract with each member of the grouping, consortium or combination of entities based on joint and several liabilities; or
- contract with one member of the grouping, consortium or combination of entities with the other members being sub-contractors.

Tenderers are reminded that they may rely on the resources of other entities to establish the requirements on condition that they can prove to the satisfaction of the Contracting Authority that they will have these resources at their disposal when necessary.

If the tenderer is from a consortium / joint venture, tenderers must ensure that all the relevant information is provided and where necessary, provide the information requested separately for each party. Relevant information relates to where a tenderer is relying on the resources to qualify (e.g. turnover, manpower, previous experience) and/or to deliver the contract. The consortium must appoint a single point of contact who will assume overall responsibility for participating in this procurement process and who is authorised to act on behalf of all consortia members. The Contracting Authority will not act as an arbitrator between members of consortia.

3 About the Contracting Authority

Tipperary Education and Training Board. The Contracting Authority is an ETB responsible for the delivery of services in county **Tipperary**

Education and Training Boards (ETBs) are statutory authorities which have responsibility for education and training, youth work and a range of other functions. Formerly known as Vocational Education Committees (VECs) ETBs manage and operate second-level schools, further education colleges, multi-faith community national schools and a range of adult, further education and training centres delivering education and training programmes, including 19 (former FÁS) training centres. There are 16 Education and Training Boards spread throughout the country with over 650 sites under their remit. The Chief Executive (CE) of each ETB carries out the executive functions of the ETB, including those in relation to procurement.

For more information on ETBs and ETBI go to www.etbi.ie

4 Scope of the Contract

The Tipperary Education and Training Board (the "Contracting Authority") invites tenders ("Tenders") to this Call for Tender ("CFT") from Economic Operators ("Tenderers") for the supply and delivery of Electric Forklifts with a lift capacity of 1400kgs – 1800kgs as detailed in the Specification appended at Appendix 2 to this CFT (the "Services/Goods").

4.1 Summary of Specification

The successful company shall deliver and commission the Goods within the best possible timeframe from issue of Order Confirmation. The contract will continue beyond this point in relation to normal maintenance and warranty.

It should be noted that it would be the responsibility of the successful tenderer to make all of the arrangements for the delivery and unloading of the equipment. Any additional costs to Tipperary Education and Training Board should be included in the financial part of the Form of Tender.

Tipperary Education and Training Board will ensure clear access for delivery and positioning of the Electric Forklifts

See Appendix 2 for Full Specifications

4.1.1 Delivery Locations

Delivery is required to the following locations

The goods will be delivered, commissioned and initial training given on site to Tipperary Education and Training Board, Unit 7B, Thurles Retail Park, Stradavoher, Thurles, Co. Tipperary E41HD27 and Building 6, Antigen Business Park, Lourdes Road, Roscrea, Co Tipperary E53VE80.

4.1.2 Volumes

Initial requirements will be for two (2) Electric Forklifts (funding dependent.)

There may be a requirement for additional forklifts during the term of the contract. The contracting authority reserves the right to procure additional forklifts should a future requirement arise during the term of the contract depending on the funding available.

4.1.3 Pricing

Pricing should be outlined in the Form of Tender which forms part of the Tender Response Document.

All Tenderers must complete the Pricing section in the Tender Response Document accompanying this CFT.

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

Tenderers must confirm that all prices quoted in the Tender will remain valid for 1 year commencing from the Tender Deadline.

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

Payments for goods supplied under this CFT shall be made subject to and in accordance with the Contract at Appendix 5 to this CFT.

Tenderers should note that prices may be increased or decreased only on the first anniversary of the Effective Date of the Contract (as defined in the Contract) and on subsequent anniversaries of the Effective Date thereafter, and then only by the percentage by which the Consumer Price Index has increased or decreased in the edition of that index published by the [insert relevant authority] most recently prior to that anniversary.

4.2 Duration of the Contract

The initial contract will be for initial delivery installation and commissioning and will continue beyond this point in relation to normal maintenance and warranty. Further contracts that may result from this competition will be issued for a term of 2 years.

The Contracting Authority reserves the right at its sole discretion to extend the Term for a period or periods of up to twelve months, with a maximum number of two such extension or extensions on the same terms and conditions, subject to satisfactory performance, business needs and budgetary constraints and the Contracting Authority's obligations at law.

4.3 Indicative Budget

The indicative budget for the Contract is €66,000 (excluding VAT) over the Term and any possible extensions. Tenderers must understand that this figure is an estimate only based on current and future expected usage, subject to approval and budget.

4.4 Review of Performance

Supplier performance will be continually monitored over the Term of the Contract. The format will be agreed between the Contracting Authority and the Successful Tenderer.

Click or tap here to enter text.

4.5 Account Management

4.5.1 Account Manager

The Contracting Authority requires tenderers to nominate a dedicated Account Manager who will act as the main point of contact for the duration of the contract. This person shall have the authority to deal with all matters in relation to the contract and be responsible for the satisfactory delivery of the services required. The duties of the account manager will include the following:

- Overall responsibility for a good working relationship with the Contracting Authority;
- Meet as and when required to review the relationship and examine performance;
- Deal with disputes, complaints or concerns that cannot be adequately resolved;
- Regularly give and receive both formal and informal feedback on the relationship, workloads, processes, areas and suggestions for improvement and cost savings;
- Proactively discuss with the Contracting Authority ways of improving efficiency regarding service delivery in general.

NOTE: Tenderers will note that account management activities will be non-billable (i.e. the Contracting Authority will not pay separately for account management activities). The Contracting Authority will nominate authorised staff to liaise with the successful tenderer and delegate as required.

4.5.2 Replacement Personnel

Notification must be sent in writing as soon as possible to the Contracting Authority on any proposed change of nominated personnel, such change to be subject to the written approval of the Contracting Authority. Replacement personnel must be of equal or better standing than the personnel originally nominated in terms of qualifications and experience.

4.5.3 Invoicing

Invoices shall be submitted by the successful tenderer on a monthly basis for all costs due under the contract in the preceding month. All official invoices must quote a Contracting Authority purchase order number. All invoices which do not quote the relevant order number(s) will be returned to the provider.

4.5.4 Award to Runner Up

If for any reason, it is not possible to award the Contract to the designated successful tenderer emerging from this competitive process the Contracting Authority reserves the right to award the Contract to the next highest scoring tenderer based on the terms advertised at any time during the tender validity period. This shall be without prejudice to the right of the Contracting Authority to cancel this competitive process and/or initiate a new contract award procedure at its sole discretion.

4.6 Compliance with the Terms and Conditions

Award of Contract will be conditional upon acceptance of the Contract Terms and Conditions as contained in Appendix 5 to this CFT. Tenderers may not amend the Contract.

4.7 Termination of Contract

It shall be the responsibility of the tenderer (in the event of success) to fulfil the obligations under the contract, notwithstanding any changes in EU and national circulars, laws, regulations, taxation, duties or other factors.

5 Evaluation Criteria

5.1 Selection Criteria

The **OPEN** procedure at national level is being used by the Contracting Authority for the award of this contract. While all interested parties may submit a tender, only those demonstrating that they can comply with the required level of financial and technical competence will be eligible for full tender evaluation.

In order to demonstrate a tenderers' suitability, tenderers must respond to the information set out below by completing the separate Tender Response Document.

.

5.1.1 General Information relating to the Tenderer

Please provide company name, address and contact details for individual responsible for this tender and company overview.

5.1.2 Legal Compliance

Please complete the Declaration of Bona Fides as per Art. 57 of Directive 2014/24/EU as implemented by SI 284 of May 2016 included in the Tender Response Document. The declaration also covers compliance with relevant Statutory Obligations relating to labour law, employment law, etc.

5.1.3 Financial Capacity

Please confirm that you meet the following financial requirements:

i. Confirmation that the tenderer / all parties associated with the tenderer are fully tax compliant in accordance with the rules of the Irish Revenue Commissioners.
ii. Confirmation that your turnover exceeded €130,000[1] for each of the last three years During one of the last three years or pro-rata if more recently established firms;
iii. Confirmation of the following insurances being in place and that if successful you agree to implement the following levels, promptly on award where these are not currently available.

[1] In line with EU and national legislation, and to support SME participation in public procurement, the minimum yearly turnover required should not exceed (and can be lower than) twice the estimated contract value, except in justified cases.

Insurance Type[2]	Minimum Indemnity limit	Excess required
Employers Liability	**€13m**	
Public Liability	**€6.5m**	
Product Liability	**€6.5m**	

By submitting a tender, Tenderers confirm that, if awarded a Services Contract under this Competition, (i) they will, from the Effective Date of the Contract (as defined in the Contract), obtain and hold the types and levels of insurance as specified above, (ii) the territorial limits and jurisdiction of its insurance policies include Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the Tenderer's insurance company or broker to this effect will be requested from the successful Tenderer(s) prior to the award of (and shall be a condition of) any Contract.

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

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

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

(c) produce valid certificates of insurance upon request.

NOTE: Tenderers **must** provide evidence of the self-declared information within seven (7) calendar days of request, which will be made prior to any award decision. If the evidence required is not provided by the deadline date, then the tenderer in question will be eliminated. Furthermore, tenderers should note that the provision of inaccurate or misleading information in this declaration may lead to exclusion from participation in this and future tenders.

5.1.4 Technical Capacity

(i) Previous experience – information demonstrating successful delivery of ***2*** previous comparable contracts in the ***past three (3) years.***

(ii) Access to minimum levels of personnel and skills as detailed in addition to an organisation chart.

(iii) Quality Assurance - Details of quality assurance policies and systems and whether 3rd party certified.

(iv) Health & Safety - Details of health and safety policies and whether 3rd party certified.

(v) Environmental – Details of environmental policies and systems in place and whether 3rd party certified.

5.1.5 Status of European Single Procurement Document (ESPD)

Under the 2014 Directives, suppliers may have compiled an ESPD which will be accepted as evidence of compliance with Section 5.1.2 (Legal) and Section 5.1.3 (Financial). However, the Contracting Authority requires evidence via completed submission of Appendix 5 relating to Technical Capacity Section 5.1.4. Mere confirmation **will not** be sufficient under these headings.

Tenderers are asked to demonstrate their legal, financial and technical capacity by responding to all the information requested above. In addition, Tenderers must ensure that they have completed and signed the Declaration of Bona Fides in the Tender Response Document. Failure to supply the required information may result in elimination from detailed tender evaluation.

Prior to the award of any contract, the Contracting Authority will request evidence of self-declared information prior to award decision. Failure to provide appropriate evidence within the required timeframe will result in the tenderer being deemed inadmissible for formal award.

5.2 Award Criteria

Only tenders meeting the selection criteria and confirmed as valid and responsive to the specifications set out in this document will be evaluated against the award criteria. Tenderers should ensure that they have submitted sufficient relevant information to allow their tenders to be assessed under each of the award criteria set out below. Responses are required through completion of the Tender Response Document.

Unless otherwise stated, the contract will be awarded on the basis of the most economically advantageous compliant tender taking into account the following award criteria and weightings.

Criteria		Weighting	Maximum Score	Minimum Score Required
A	**Suitability of proposed goods**	20%	200	120
Tenderer's must demonstrate how the forklifts purchased will meet the criterion mentioned in Appendix 2 Specification.				
B	**Proposed delivery timeline**	10%	100	60
Delivery shall be completed within 2 weeks of receipt of the Purchase Order. Tenderer's must outline how this delivery timeframe will be achieved				
C	**Post delivery services offered including but not limited to maintenance, user familiarisation-training, replacement parts etc.**	30%	300	180

Tenderers should provide information to enable Contracting Authority to assess their offer under this criterion in Appendix 2 Specification

D	**Innovation and Added Value/ Environmentally Friendly Initiatives/Sustainability Considerations**	10%	100	60

Tenderers should address the following elements in their response under this criterion:

1) Ease of disassembly at the end of life
2) Management of hazardous chemicals or materials in production
3) Battery return, recycling or disposable arrangements at end of battery life

E	**Ultimate Cost to the Contracting Authority over the life of the contract**	30%	300	N/A

Tenders should indicate clearly the price of goods in Euro in the Tender Respond Document

NOTE 1: Tenderers should note that they must achieve a minimum rating of 60% for each of the individual qualitative criteria (A) to (D) in order to avoid elimination from the competition. Qualitative criteria will be scored using the following baseline scoring system:

100%	**Outstanding**
90%	**Excellent**
80%	**Very good**
70%	**Good**
60%	**Acceptable**
Less than 60%	**Unacceptable**

Marks between the base lines outlined above can be awarded where responses so merit additional marks.

NOTE 2: The lowest cost tender that also meets all of the minimum requirements of the qualitative award criteria will receive the maximum score achievable under this criterion. The scores of the other valid tenders will be calculated using the following formula:

Lowest Cost from a Bona Fide Tender	**A**
Cost for the tender being evaluated	**B**
Maximum Points available for Cost	**300**
Formula employed	$\frac{300 \times A}{B}$

NOTE 3: Tenderers should ensure in their tenders that they provide detailed information in respect of all aspects of the contract award criteria as stated above. This will enable the awarding authority to assess fully the extent of their offers.

NOTE 4: Award of contract may be subject to attendance at a clarification and verification meeting. It would be essential that the key personnel assigned to this contract should be available and present at this meeting.

NOTE 5: Tenderers should note that the Contracting Authority reserves the right to confirm that the financial and technical capacity of the tenderer is valid and unchanged prior to the award of any contract.

5.2.1 Post Tender Clarification

At the discretion of the Contracting Authority, tenderers may be invited, in writing, to clarify certain aspects of their tender, particularly where information or documentation to be submitted appears to be incomplete or erroneous. However, all such requests will be made in full compliance with the principles of equal treatment and transparency and avoid any distortion of competition.

Responses to requests for clarification must not materially change any of the elements of the tenders submitted and the Contracting Authority will not accept any additional submissions, other than clarifications, as part of that process. Tenderers who do not provide the clarifications sought within a specified time period of receipt of such a request via email/eTenders from the Contracting Authority may be excluded from the competition. No unsolicited communications from tenderers will be entertained during the evaluation period

5.2.2 Verification

Award of contract may be subject to attendance at a verification meeting. It would be essential that the key personnel assigned to this contract should be available and present at this meeting. If required, tenderers will be notified of the date, time, agenda and format for such meetings as soon as possible.

A visit to the tenderer's premises may be required to clarify any questions or queries regarding the tender offer.

5.2.3 Clarification of Abnormally Low Tenders

If the Contracting Authority considers the tender submission to be commercially unsustainable or otherwise problematic considering the tendered price or any other financial matter (including proposed indicative hours), the tenderer shall be invited to provide clarification to the Contracting Authority in respect of all elements of the tender submission that the Contracting Authority deems relevant. Any failure to satisfactorily comply with such a request, or to satisfactorily address the Contracting Authority's concerns, may, at the discretion of the Contracting Authority, result in the elimination of the tender in question based on it being considered abnormally low.

5.2.4 Right to Confirm Suitability

Tenderers should note that the Contracting Authority reserves the right to confirm that the financial and technical capacity of the tenderer is valid and unchanged prior to the award of any contract.

APPENDIX 1 - INSTRUCTIONS TO TENDERERS

(a) Submission of Tenders

The Contracting Authority is using the Tender Postbox facility and tenders must be submitted electronically via the etenders postbox facility on www.etenders.gov.ie only. Tenderers must ensure that they give sufficient time to upload their tender response.

The Contracting Authority is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

In responding to this tender all tenders must follow the format of the tender document and respond to each element of the tender document in the order as set out in this CFT. Tenders should produce their response as a **SINGLE UPLOADED FILE, if possible, which is clearly labelled, page numbered and indexed**.

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

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

Tenderers must note that in the electronic tenderbox, there is a current file size limit of 250MB for each single file uploaded, with a maximum total limit of 2GB for all documentation (combined) in the Tender submitted.

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

Tenderers not familiar with uploading on eTenders should ensure they familiarise themselves with the process.

The closing date for tenders is *[12.00 hours (GMT) on Thursday 26th November, 2026]*

It is the responsibility of the tenderer to ensure that their tender is complete and is uploaded by the designated deadline. **Tenders that are received late or via other means WILL NOT be considered in this public procurement competition.**

(b) Queries

If you consider that you are missing any documents which would prevent you from submitting a comprehensive tender, please contact us as soon as possible.

Tenderers shall immediately notify the Contracting Authority should they become aware of any ambiguity, discrepancy, error or omission in the tender documents. The Contracting Authority will, upon receipt of such notification, issue a clarification via eTenders in respect of any such ambiguity, discrepancy, error or omission. Such clarification shall then form part of the tender documents.

All queries regarding this tender should be through the messaging facility on www.etenders.gov.ie.

The closing date for receipt of queries is *12.00 hours (GMT) on Thursday 19th November, 2026]*.

For the avoidance of doubt, **Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.**

Responses to queries will be issued via eTenders to all parties who have expressed an interest in the contract on that site, in order to ensure that no party has an unfair advantage over any other.

For the purpose of circulating responses queries will be edited to avoid disclosing the identity of the querist, and any sensitive information included in the query should be clearly indicated. Please note that the Contracting Authority cannot accept responsibility for information relayed (or not relayed) via third parties.

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

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

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

(c) Sufficiency & Accuracy of Tender

Tenderers will be deemed to have examined all the documents enclosed and by their own independent observations and enquiries will be held to have fully informed themselves as to the nature and extent of the requirements of the tender.

Tenderers are cautioned to check the accuracy of their tender prior to submission. A tender found containing any clerical errors or omissions may, at the sole discretion of the Contracting Authority, be referred back to the tenderer for correction. Any subsequent adjustment(s) must be confirmed in writing.

The Contracting Authority reserves the right to disqualify incomplete tenders.

(d) Qualification of Tenders and Referential Bids

Please note that qualifications to a Tender may be considered a counteroffer and may render the tender invalid. Tenders made by reference to other tenders are not valid and cannot be considered.

(e) Extension of Tender Period

The Contracting Authority reserves the right, at its sole discretion, to extend the closing date for receipt of tenders by giving notice in writing to all parties who have expressed an interest in the notice via eTenders no later than seven (7) calendar days before the original closing date.

(f) Modifications to Tenders prior to the Closing Date for Receipt of Tenders

Modifications to tenders will be accepted in the form of supplementary information and/or addenda, provided they are submitted electronically via the etenders postbox facility on www.etenders.gov.ie only before the closing date for receipt of tenders and clearly marked as part of the tender. Any modifications received, by whatever means, after the closing time for receipt of tenders will not be considered.

(g) Cost of Preparation of Tender

The Contracting Authority will not be liable for any costs, charges or expenses incurred by tenderers in the preparation of proposals or any associated efforts. It is the responsibility of the tenderer to ensure that they are fully aware and understand the requirements as laid down in this document. Tenderers will be responsible for any costs incurred by them in the event that they are required to attend clarification or other meetings or make a presentation of their proposals.

(h) Tender Validity Period

To allow sufficient time for Tender assessment a Tender Validity period of ***Click or tap here to enter text.*** Months is required, this period commencing on the closing date by which the Tenders are to be returned.

(i) Currency and Payments

The currency and invoices in which all prices and rates shall be tendered, and which payments under the contract will be paid, shall be Euros (€). All prices and rates quoted should be exclusive of VAT. A schedule of payments will be agreed with the successful tenderer. The Contracting Authority operates in accordance with the European Communities (Late Payment in Commercial Transactions) Regulations 2012. The method of payment used by the Contracting Authority is normally Electronic Funds Transfer.

Note: The Contracting Authority may roll out e-Invoicing during the term of the contract / framework and tenderers may be required to issue their invoices to the sector in an e-Invoice format that is compliant with the PEPPOL directive.

(j) Conflict of Interest

It will be a condition of award of this contract and any subsequent contract that the successful tenderer(s) that any conflict of interest involving a tenderer (or tenderers in the event of a consortium bid) must be fully disclosed to the Contracting Authority. Any registrable interest involving the tenderer or subcontractor and the Contracting Authority or employees of the Contracting Authority or their relatives must be fully disclosed in the tender submission or should be communicated to the Contracting Authority immediately upon such information becoming known to the tenderer. The

terms 'registrable interest' and 'relative' shall be interpreted as per Section 2 of the *Ethics in Public Office Acts, 1995 and 2001*. Failure to disclose a conflict of interest may, at the absolute discretion of the Contracting Authority, disqualify a tenderer or invalidate an award of contract.

(k) Freedom of Information Acts

All responses to this call for tender will be treated in confidence and no information contained therein will be communicated to any third party without the written permission of the tenderer except insofar as is specifically required for the consideration and evaluation of the response or as may be required under law, including the *Freedom of Information Act 2014* and the *European Communities (Access to Information on the Environment) Regulations 2007 to 2014*, EU and Irish Government Procurement Procedures, or in response to questions, debates or other parliamentary procedures in or of the Oireachtas (the Irish Parliament).

Tenderers are asked to consider if any of the information supplied by them in response to this call for tenders should not be disclosed because of its confidentiality or commercial sensitivity. If this is the case, tenderers should clearly specify the information that is confidential or commercially sensitive and the reasons for its sensitivity. The Contracting Authority cannot guarantee that any information provided by tenderers, either in response to this tender or in the course of any contract awarded as a result thereof, will not be released pursuant to the Contracting Authority's obligations under law, including the *Freedom of Information Act 2014* and the *European Communities (Access to Information on the Environment) Regulations 2007 to 2014*, EU and Irish Government Procurement Procedures. the Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such disclosure.

(l) Tax Clearance

It will be a condition of award of this contract and any subsequent contract that the successful tenderer(s) comply with all EU and national tax laws. Tenderers are referred to the Irish Revenue web site http://www.revenue.ie/. Non-resident tenderers should apply to the Office of the Revenue Commissioners, Non Resident Tax Clearance Unit, Office of the Collector General, Sarsfield House, Francis Street, Limerick, Ireland; e-mail: nonrestaxclearance@revenue.ie. The Contracting Authority will satisfy themselves that any tenderers being considered for award of a contract are appropriately tax compliant by checking their status via the online system for which tenderers are requested to provide their Tax Clearance Access Number and Tax Reference Number to facilitate verification. By supplying these numbers, tenderers acknowledge and agree that the Contracting Authority has the permission to verify its tax cleared position at any time during the term of the contract.

(m) Withholding Tax

Where applicable, payments shall be subject to Irish 'Professional Services Withholding Tax' at the prevailing rate (currently at 20%) as laid down by the Revenue Commissioners in Ireland in accordance with section 523 of the *Taxes Consolidation Act 1997*. Any and all taxes applicable to the supply of the goods / services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

(n) Irish Legislation and Law

Tenderers should be aware that national legislation applies in other matters including, employment and health and safety matters and includes, but is not limited to, the *Employment Equality Acts 1998-2015, National Minimum Wages Act 2000 (as amended), Safety, Health and Welfare at Work Act 2005* (as amended), *Data Protection Act 2018* and *Official Secrets Act 1963* (as amended). Tenderers must have regard to statutory terms relating to minimum pay and to legally binding industrial or sectoral agreements in the Contracting Authority tenders and in delivering contracts awarded to them. The contract[s] awarded on foot of this tender process will be governed by and construed in accordance with Irish law.

(o) Dignity at Work

The successful tenderer(s) shall comply with all relevant legislation relating to dignity at work. As a public body and employer, the Contracting Authority is committed to a policy of equality of opportunity for all personnel.

(p) Clarification of Tenders

The Contracting Authority is entitled, but not obliged, to seek clarification of tenders, including pricing breakdowns in the course of the evaluation process. No change in the price or substance of the Tender shall be sought, offered or permitted. To assist in finalising the tender evaluation, selected tenderers may be invited to attend clarification meetings with the Contracting Authority.

(q) Correction of Errors

Detailed pricing of all tenders will be examined for errors that might alter the tender pricing as determined from the figures on the tender form or as between the hard copy and electronic versions of the tender. In general, the following approach will be applied to manifest errors - where there is a discrepancy between the unit price and the total amount derived from the multiplication of the unit price and the quantity, the unit price as quoted will normally govern.

The amount stated in the tender form will be adjusted by the Contracting Authority in accordance with the above procedure and, with the agreement of the tenderer, shall be considered as binding upon the tenderer. Without prejudice to the above, a tenderer not accepting the correction of their tender as outlined may have their tender rejected.

(r) Change in the Composition of a Tender

The Contracting Authority reserves the right, but is not obliged, to disqualify any Tenderer that makes any change to its composition after submission of a Tender.

(s) Interference and Inducement to Purchase

Any effort by the tenderer 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*, and all other measures for the time being governing the subject-matter in any applicable jurisdiction, shall be applicable.

(t) Notification of Tender Evaluations

All tenderers will be informed of the outcome of their proposals following tender evaluation and any necessary clarifications.

On a voluntary basis the Contracting Authority undertakes that no contract will be signed or take effect until at least seven (7) calendar days after the day on which the unsuccessful Tenderers have been sent the appropriate notice informing them of the result of this public procurement competition ("Standstill Period"). The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.

(u) Award Notices

Following the formal conclusion of a contract, an award notice will be despatched to eTenders announcing the results of the competition.

(v) Policy on Personal Debriefings

Based on the provision of the information to unsuccessful tenderers as outlined above and due to resourcing constraints, the Contracting Authority will not be offering individual debriefing meetings to unsuccessful bidders.

(w) Copyright

The Contracting Authority will have copyright ownership of any material developed for use by the Contracting Authority under the terms of this tender. The service provider may have a non-exclusive licence to use such material but only for its own purposes (to be agreed with the successful tenderer).

(x) Brand Names, etc.

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".

(y) Payment

A schedule of payments will be agreed with the successful tenderer. The Contracting Authority operates in accordance with *S.I. 580 of 2012* which transposes *EU Directive 2011/7/EU* on combating Late Payment in commercial Transactions. The method of payment used by the Contracting Authority is normally Electronic Funds Transfer.

(z) Right Not to Award

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

The call for tender is issued in good faith; however, the Contracting Authority at its sole discretion shall not be obliged to award a contract or proceed to further stages in the procurement process and reserves the right to cancel the procurement process.

(aa) Environmental Aspects

The Contracting Authority is committed to the principles of environmental management in its activities and it encourages the implementation of sustainability principles in its procurement practices. Tenderers/contractors should make all reasonable efforts to minimise adverse environmental impact in the methods of services delivery and in materials used.

(bb) Accessibility

In line with the *Disability Act 2005*, accessibility requirements should be clearly stated in Call for tenders / quotations where applicable. Under Section 27 of the Act the Contracting Authority is required to ensure that both the goods supplied, and services provided to it are accessible to persons with disabilities.

(cc) Knowledge and Skills Transfer

It will be a condition of the contract that opportunities for the transfer of skills and/or knowledge from the Tender/Tender's staff to the Contracting Authority staff will be availed of during the course of the contract or prior to the handing over of the finished work/product.

(dd) Collusive Tendering

If any tendering party is found to have, at any time, offered to give or to have agreed to offer or give to any person, any bribe, gift, gratuity, commission or consideration of any kind as an inducement or reward for taking or forbearing to take any action in relation to the obtaining of its tenders, or for showing or forbearing to show any favour or disfavour to any person in relation to its tenders, the bid submitted by such tendering party shall be automatically disqualified and the circumstances surrounding such action shall be referred to the appropriate authority.

(ee) Confidentiality

After the official opening of tenders, information relating to the examination, clarification, evaluation and comparison of tenders and recommendations will not be disclosed to tenderers or other persons not officially concerned with such process until the award decision with the successful tenderer has been announced and in conformity with national laws.

Tenderers shall treat the details of all documents supplied to them in connection with this contract as private and confidential and shall not disclose the contents to a third party without the permission of the Contracting Authority.

Any effort by the tenderer to influence the Contracting Authority or their staff in the process of examination, clarification, evaluation and comparison of tenders and in decisions concerning the award of the contract may result in the rejection of that tender.

(ff) Consortia and Prime Subcontractors

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

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

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit a tender in response to this CFT the Contracting Authority will deal with all matters relating to this Competition through the entity who will carry overall responsibility for the performance of the Services Contract only (the "Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the "Subcontractor"). The tenderer must clearly and comprehensively set out the name, title, telephone number, postal address and email address of the nominated contact personnel of the Prime Contractor authorised to represent the tenderer and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person (including from any Subcontractor) will NOT be accepted, acknowledged or responded to.

(gg) Anti-Competitive Conduct

Tenderers attention is drawn to the Competition Act 2002 to 2017 (as amended, the "2002 Act") which makes it a criminal offence for Tenderers to collude on prices or terms in a public procurement competition.

(hh) Changes in Legislation

As a condition of award, it shall be the sole responsibility of the tenderer (in the event of success in this competition) to fulfil the obligations under the Contract, notwithstanding any changes in circulars, laws, regulations, taxation, duties or other factors which might arise following the withdrawal of the United Kingdom from membership of the EU.

(ii) Data Protection

"Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines including but not limited to the *Irish Data Protection Acts 1988 to 2018*, the *General Data Protection 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 any other applicable law or

regulation relating to the processing of personal data and to privacy, including the *E-Privacy Directive and European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communities) Regulations 2011*, as such legislation may be supplemented, amended, revised or replaced from time to time.

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

The tenderer, as Data Controller in respect of any Personal Data provided by it in its tender, is required to confirm in its tender that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the tenderer have consented to the processing of such Personal Data by the tenderer, the Contracting Authority, the evaluation team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the tenderer in this competition or that the tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this competition. The tenderer shall comply with all of its obligations under the Data Protection Laws.

(jj) RETURN OF SIGNED CONTRACTS

The successful Tenderer must sign and return the Contract and the Confidentiality Agreement (Appendix 5), both in duplicate, to the Contracting Authority no later than seven (7) calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing by the Contracting Authority. A signed Contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Contract.

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

APPENDIX 2 – SPECIFICATION

The successful company/s shall deliver, install and commission the Goods within the best possible timeframe from issue of Order Confirmation. The contract will continue beyond this point in relation to normal maintenance and warranty.

It should be noted that it would be the responsibility of the successful tenderer to make all of the arrangements for the delivery and unloading of the equipment including the positioning of the machine at its final location. Any additional costs to the TETB should be included in the financial part of the Form of Tender. Tipperary Education and Training Board will ensure clear access for delivery and positioning of the goods.

Commissioning (On-Site)

The successful company should have a minimum of (1) full time service engineer and (1) application engineer directly employed to support Tipperary Education and Training Board. The engineer(s) proposed to oversee the project must be named in criteria C of award criteria.
The successful company must ensure the goods are fully operational and fit for purpose. They must be installed and commissioned in accordance with all relevant health and safety standards in relation to its installation and position in the building. Appropriate commissioning certificate(s) must be issued by the successful company to Tipperary Education and Training Board on completion of the installation and commissioning process. End user familiarisation training will be required for Tipperary Education and Training Board Staff and should be accounted for in tender submissions.

The Supplier must demonstrate as per 5.1.4 **Technical Capacity above – Previous contracts (this can be completed in Section 2 of the TRD).**
A proven record of accomplishment of the goods proposed in industry, colleges or training centres within the Ireland or the European Union. Please include references and contact details.

Warranty

All goods must have a Min two (2 year) warranty included in the unit cost.

Automatic 3-wheel counterbalance forklift – New Condition

Mast:	3-stage container spec mast
Capacity:	1400kg min – 1800kg max
Lift Height:	4700mm
Lowered height:	No requirement
Free Lift:	1000mm
Forks Length:	To suit euro pallet (1000mm)
Forks Width:	To suit euro pallet (1000mm)
Fitted with:	Forks
Tyres:	Standard Solid Rubber
Battery:	Lithium Batteries preferable.
Charger:	Single Phase Charger

Cab: Open cab
Lights: Road lights and indictor lamps, Amber strobe light, blue floor light
Mirrors
Alarm: Reversing alarm
3rd and 4th Hydraulics piped to side-shifting forks positioner

- Warranty period provided by the Supplier
- 4-year Service and Maintenance contract
- Initial delivery to Tipperary Education and Training Board, Unit 7B, Thurles Retail Park, Stradavoher, Thurles, Co. Tipperary E41HD27 and Building 6, Antigen Business Park, Lourdes Road, Roscrea, Co Tipperary E53VE80
- All necessary electrical and mechanical fitting including charging points etc.as required
- Delivery time upon placement of order (within 2 weeks on receipt of PO)
- Operator training on operation and maintenance checks

APPENDIX 3 – Tenderer's Statement

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

TENDERERS' STATEMENT

TO: Tipperary Education & Training Board (TETB) (the "Contracting Authority")

RE: Request for Tenders for the Provision of Electric Forklifts to Tipperary Education Training Board.

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

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of:
    a) the RFT;
    b) the Goods Contract at Appendix 5 to the cFT.
    c) the Confidentiality Agreement at Appendix 6 of the CFT;
3. We accept all the Selection and Award Criteria as set out in Part 6 of the CFT.
4. We agree to provide the Goods in accordance with the CFT, our Tender, if awarded any Goods Contract.
5 We agree that, if awarded any contract, that we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out in the RFT.
7. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the Tender Deadline specified at paragraph 4.2 of the RFT.
8. We shall, if awarded any Goods Contract, have in place on the Effective Date of the Goods Contract all insurances (if any) as required by paragraph 2.21.1 of the RFT.
9. We confirm that all Data Subjects whose Personal Data is provided in our Tender have consented to the processing of such Personal Data by us, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such

Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.

SIGNED **Company**

(Authorised Signatory)

Print name **Address**

Date

APPENDIX 4 - DECLARATION AS TO PERSONAL CIRCUMSTANCES OF TENDERER

Re: The Provision of Electric Forklifts to Tipperary Education Training Board.

NAME: [Click here and insert name]

ADDRESS: [Click here and insert address]

I, [Click here and insert name of Declarant], having been duly authorised by [Click here and insert name of entity] sincerely declare that [Click here and insert name of entity] itself or any person who has is a member of the administrative, management or supervisory body of [Click here and insert name of entity] or has powers of representation, decision or control in [Click here and insert name of entity]:

(a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.

(b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or [Click here and insert name of entity].

(c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.

(d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.

(e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.

(f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

(g) Is not in breach and has not breached its obligations relating to the payment of taxes or social security contributions.

(h) Has, in the performance of all public contracts, complied with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the services provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law

listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).

(i) That the preparation of the Tender was carried out independently;

(j) Is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.

(k) Is not guilty of grave professional misconduct.

(l) Has not entered into agreements with other economic operators aimed at distorting competition.

(m) Is not aware of any conflict of interest due to its participation in the Competition.

(n) Has not had any prior involvement in the preparation of the Competition.

(o) Has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.

(p) Is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).

(q) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition, or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

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

_____ -

_____

Signature of Declarant Name of Declarant in print or block capitals

Declared before me by _____ who is personally known to me

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

at _____ this _____ day of _____ 20__

_____

(signed)

Practising Solicitor/Commissioner for Oaths

APPENDIX 5 – FRAMEWORK AGREEMENT TERMS AND CONDITIONS

CONTRACT TERMS AND CONDITIONS

GOODS

[Company]

and

[Subject]

AGREEMENT

Relating to the Provision of Goods pursuant to

Call for Tenders for the supply of [Comments]

CONTENTS

Schedule A: Terms and Conditions 37
1 CONTRACTOR'S OBLIGATIONS 37
2 THE GOODS 38
3 INSPECTION OF GOODS 39
4 RISK AND TITLE 41
5 PAYMENT 41
6 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS 42
7 REMEDIES 43
8 CONFIDENTIALITY 44
9 FORCE MAJEURE 45
10 TERMINATION 46
11 CONTRACT MANAGEMENT 47
12 DISPUTES 48
13 GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION 48
14 NOTICES 48
15 ASSIGNMENT AND SUBCONTRACT 49
16 ENTIRE AGREEMENT 49
17 SEVERABILITY 49
18 WAIVER 49
19 NON-EXCLUSIVITY 50
20 MEDIA 50
21 CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS 50
22 ACCESS TO PREMISES 50
23 NON-SOLICITATION 51
24 CHANGE CONTROL PROCEDURE 51
25 ADDITIONAL CONDITION(S) ..... **Error! Bookmark not defined.**
Schedule B: Goods: The Specification ..... **Error! Bookmark not defined.**
Schedule C: Charges ..... **Error! Bookmark not defined.**
Schedule D: Service Levels / Service Level Agreement ..... **Error! Bookmark not defined.**

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

[Company] of [Address] ("the Contracting Authority");

and

[Contractor's full legal name], of [Address] ("the Contractor")

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

WHEREAS:

A. By Call for Tender advertised on the Irish government website www.etenders.gov.ie on [insert date of issue of CFT] ("the CFT"), the Contracting Authority invited tenders from economic operators ("Tenderers") for the provision of the goods described in Appendix 2 to the CFT (the "Goods"). References to the CFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie prior to the closing date of [insert tender closing date] (the "CFT Clarifications"). The CFT (including the CFT Clarifications) is hereby incorporated by reference into this Agreement.

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

IT IS HEREBY AGREED AS FOLLOWS:

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

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

   ii. The CFT;

   iii. The Tender.

2. The Contractor shall sell, and the Contracting Authority shall purchase in accordance with this Agreement ("Agreement") the Goods described in Schedule B ("Goods"). Schedule B details the nature, quantity, quality, time of delivery and functional specifications of the Goods in accordance with the CFT and the Tender ("the Specification").

3. Subject to the terms and conditions of this Agreement, the Contracting Authority agrees to pay to the Contractor the charges as stipulated in Schedule C ("the Charges"). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.

4. For the purposes of this Agreement, the Contracting Authority's Contact is [insert contact name] of [insert contact address]; the Contractor's Contact is [Contractor contact name] of [Contractor contact address].

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

this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties ("the Term").

Delete and replace with "Not Used" if not applicable:

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

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

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

8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.

9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

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

Schedule A: Terms and Conditions

1 CONTRACTOR'S OBLIGATIONS

A. The Contractor undertakes to act with due care, skill and diligence in the provision of Goods and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Goods and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.

B. In consideration of the payment of the Charges and subject to Clause 5 the Contractor shall:

1. supply the Goods in accordance with the Specification, the CFT, the Contracting Authority's directions and the terms of this Agreement;

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

3. comply with all local security and health and safety arrangements as notified to it by the Contracting Authority;

4. supply the Goods in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Goods provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations"). The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement; and

5. comply with any additional conditions under Clause 25 hereof.

C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Tender hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to Clause 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to Clause 15, the Contractor shall notify the Contracting Authority as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.

D. Without prejudice to Clause 1C, where the Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Contracting Authority reserves the right to require the Contractor to immediately replace

such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds or any of the circumstances set forth in Regulation 73 of the Regulations apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

E. During this Agreement, the Contractor shall be an independent contractor and not the employee of the Contracting Authority. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Contracting Authority for any purposes whatsoever.

F. The Contracting Authority acknowledges that the Contractor may from time to time be dependent on the Contracting Authority to facilitate the Contractor in the carrying out of its duties under this Agreement. The Contracting Authority agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with Clause 11.

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

2. THE GOODS

A. The Contractor shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties.

B. Unless otherwise stated in the Specification:

1. Where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Contracting Authority's premises as notified to the Contractor. Where the Goods are collected by the Contracting Authority, the point of delivery shall be when the Goods are loaded on the Contracting Authority's vehicle.

2. Delivery shall include the unloading, stacking or installation of the Goods by the Contractor's staff, agents or carriers at such place as the Contracting Authority or a duly authorised person shall reasonably direct.

3. The Goods shall be packed and marked in a proper manner and in accordance with the Contracting Authority's instructions and any statutory requirements and any requirements of the carriers and manufacturers. In particular the Goods shall be marked with the contract number (or other reference number if appropriate) and the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

4. Unless expressly agreed to the contrary, the Contracting Authority shall not be obliged to accept delivery by instalments. If, however, the Contracting Authority does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of the Contracting Authority, entitle the Contracting Authority to terminate the whole of any unfulfilled part of the Agreement without further liability to the Contracting Authority.

5. The Contracting Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. The risk in any over-delivered Goods shall remain with the Contractor.

6. The Contracting Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.

C. Any Contractor pre-printed terms and conditions produced, signed or stamped by either Party and for whatever purpose during the Term are hereby disallowed.

D. Select either D or E and replace with "Not Used" if not applicable:

Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods within the time period promised or specified in the Specification, the Contracting Authority may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Goods and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Contracting Authority.

E. Select either D or E and replace with "Not Used" if not applicable:

Without prejudice to any general right to damages under this Agreement where the Contractor does not deliver the ordered amount within delivery dates or lead times in accordance with this Agreement, the Contracting Authority may, at his discretion, deduct [number] per cent per week, or part thereof, for each week of late delivery of the value of the entire relevant invoice or order as liquidated damages up to a maximum amount of [number] per cent of the Charges (or invoice or order) price for the relevant Goods (the "Liquidated Damages Threshold").

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

1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and;

2. without prejudice to Sub-Clause (1), the Contracting Authority shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor.

3. INSPECTION OF GOODS

A. The Contracting Authority or its authorised representative may inspect (to include a call for advance samples) or test the Goods either completed or in the process of manufacture, during normal business hours on reasonable notice at the Contractor's premises (including the premises of any subcontractor or agent) and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint

at the time of any such inspection or test and / or the approval given during or after such inspection or test shall not constitute a waiver by the Contracting Authority of any rights or remedies in respect of the Goods and the Contracting Authority reserves the right to reject the Goods in accordance with Clause 3B.

B. The Contracting Authority may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Contracting Authority of such Goods. If the Contracting Authority rejects any of the Goods pursuant to this clause the Contracting Authority may (without prejudice to other rights and remedies) either:

1. treat the Agreement as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Contracting Authority in obtaining other Goods in replacement provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

   or

2. have such Goods promptly, and in any event within [insert number] calendar days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.

C. Rejected Goods shall be removed by the Contractor from the Contracting Authority within [insert number] calendar days from the date of the notification to the Contractor of their rejection. In the event of failure by the Contractor to remove Goods within [insert number] calendar days of such notification, the Contracting Authority may dispose of such Goods as it sees fit and pending such removal, the Goods will remain with the Contracting Authority at the risk of the Contractor. Any costs incurred by the Contracting Authority relating to such disposal shall at the option of the Contracting Authority be borne by the Contractor.

D. For the avoidance of doubt, the Contracting Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with Clause 3B.

E. The issue by the Contracting Authority of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Contracting Authority's acceptance of them.

F. The Contractor hereby guarantees the Goods for [insert period] from the date of delivery (the "Guarantee Period") against faulty materials or workmanship. The Contracting Authority shall within such Guarantee Period, or within 14 calendar days thereafter, give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such Guarantee Period under proper and normal use. The Contractor shall (without prejudice to any other rights and remedies which the Contracting Authority may have) promptly remedy such defects (whether by repair or replacement as the Contracting Authority shall elect) free of charge, which replaced or repaired Goods shall also have the benefit of this clause for the Guarantee Period.

4. RISK AND TITLE

A. The Goods ordered under this Agreement shall be delivered to any location specified by the Contracting Authority, in Ireland, without limit to the number of locations, in the quantities and by the dates specified in the orders, unless otherwise stated. Any extension of the delivery time shall not constitute a general waiver or acquiescence on the part of the Contracting Authority. All such Goods shall be delivered free of encumbrances or retention of title clauses or similar provision. The Charges quoted shall be based on the understanding that the Goods are to be delivered carriage paid to the various locations as specified in the order, along with the necessary delivery documentation. Pending such delivery, the Goods shall remain at the risk of the Contractor.

B. Title shall pass to the Contracting Authority on payment for the Goods.

5. PAYMENT

A. Subject to the provisions of this Clause 5 the Contracting Authority shall pay and discharge the Charges (plus any applicable VAT), in the manner (including as to timing) specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.

B. Discharge of the Charges is subject to:

1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to Clause 11A from time to time;

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

3. Invoices being submitted to the Contracting Authority's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Goods for any billing period (including whether or not Goods have been accepted, rejected, satisfactorily repaired or replaced as the case may be) must be raised by the Contracting Authority's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14-day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Contracting Authority or upon such deemed acceptance the invoice shall be payable by the Contracting Authority. Payment is subject to any rights reserved by the Contracting Authority under any other provision of this Agreement; and

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

C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.

D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Contracting Authority in respect of any breach of this Agreement), the Contracting Authority may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Contracting Authority. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

E. Where indicated in the Specification, the Charges shall include the cost of instruction of the Contracting Authority's personnel in the use and maintenance of the Goods and such instructions shall be in accordance with the requirements detailed in the Specification.

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

G. The Client (like all Irish Public Bodies) no longer sends cheques to businesses in Ireland. To receive payment for your supply to the Client the business bank details must be submitted to [insert relevant email address e.g. accountspayable@xxxx.ie]

6. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

A. The Contractor acknowledges, warrants, represents and undertakes that:

1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply the Goods hereunder;

2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;

3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;

4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Goods (to include manufacture and distribution process) as they apply to the Contractor;

5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;

6. Delete and replace with "Not Used" if not applicable:

it has inspected the Contracting Authority's premises, lands and facilities before submitting its Tender and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;

7. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated [Insert Date] which confirms that none of the excluding circumstances

listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged; and

8. the Contracting Authority shall be under no obligation to purchase any minimum number or value of Goods.

B. The Contractor shall be and undertakes to be responsible for and to take due precautions for the safe custody of any Goods on its premises which are the property of the Contractor and shall insure the same against any form of loss or damage and the Contractor so acknowledges and confirms.

C. The Contractor confirms and undertakes that the Goods supplied will, at the time of delivery (and for the Guarantee Period), correspond to the description given by the Contractor in accordance with the Tender (to include any samples furnished thereunder) and the Specification (Schedule B) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in the Tender. None of the provisions of the Sale of Goods Acts 1893 and 1980 shall be excluded or limited under this Agreement.

D. The Contractor undertakes to ensure that all and any necessary consents and/or licences are obtained and in place for the purposes of this Agreement. The Contractor hereby indemnifies the Contracting Authority and shall keep and hold the Contracting Authority harmless from and in respect of all and any losses (whether direct, indirect or consequential), liability, damages, claims, costs or expenses which arise by reason of any breach of third party intellectual property rights in so far as any such rights are used for the purposes of this Agreement.

E. The Contractor undertakes to notify the Contracting Authority forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out in Clause 6A and to comply with all reasonable directions of the Contracting Authority with regard thereto which may include termination of this Agreement.

7. REMEDIES

A. The Contractor shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which the Contracting Authority may suffer due to and arising as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in Clause 1. The terms of this Clause 7A shall survive termination of this Agreement for any reason.

B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under Clause 6D, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.

C. Should the Contracting Authority find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Goods of approved quality, the Contracting Authority shall

be entitled to recover from the Contractor any excess prices or expenses which may be paid by the Contracting Authority.

D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

E. Delete and replace with "Not Used" if not applicable:

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

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

[insert] ("the Retention Amount") which Retention Amount shall not at any given time exceed [number] per cent of the Charges. In such event the Contracting Authority shall identify the particular Goods with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the Goods as identified by the Contracting Authority or resolution of outstanding queries. The Contracting Authority shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this Clause 7F shall be without prejudice to and not be in substitution for any remedy of the Contracting Authority under this Agreement.

8. CONFIDENTIALITY

A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:-

1. its professional advisers subject to the provisions of this Clause 8; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this Clause 8; or
4. in the case of the Contracting Authority by request of any person or body or authority whose request the Contracting Authority or persons associated with the Contracting Authority (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

B. The Contractor undertakes to comply with all reasonable directions of the Contracting Authority with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 7 to the CFT ("the Confidentiality Agreement").

The obligations in this Clause 8 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
2. which is or becomes public knowledge other than by breach of this clause; or
3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
4. is lawfully received by the disclosing Party from a third party (with full right to disclose).

C. In circumstances where the Contracting Authority is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2018, then in the event of the Contracting Authority receiving a request for information related to this Agreement, the Contracting Authority shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. The Contracting Authority will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation.

D. The Contractor undertakes to comply with all requirements of data protection law and such guidelines as may be issued by the Data Protection Commission from time to time including but not limited to (i) the Data Protection Acts 1988 to 2018; and (ii) all EU requirements arising (including but not limited to provisions relating to the processing of data, ensuring the security of data and restrictions on transfer of data abroad) and any legislation and regulations implementing same.

E. The parties will enter into a data processing agreement pursuant to the requirements under Article 28 of the GDPR.[3]

F. The terms of this Clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

9. FORCE MAJEURE

A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in Clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of provision of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.

B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:

1. the nature of the Force Majeure Event;
2. the anticipated delay in the performance of obligations;
3. the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

C. If the Force Majeure Event continues for [insert number] calendar days either Party may terminate at 14 days' notice.

D. In circumstances where the Contractor is the Affected Party, the Contracting Authority shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

10. TERMINATION

A. This Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving [insert period of time months] written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving [insert period of time months] written notice to the Contracting Authority.

B. Either Party shall have the right (in addition to its rights under Clause 10(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:

1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement or of applicable law and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
3. in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Contracting Authority, be removed by other means; and
4. in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the Contractor.

C. The Contracting Authority shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor or if any

of the circumstances set forth in Regulation 73 of the Regulations apply to the Contractor or any of its subcontractors or agents or if the Contractor (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).

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

E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all confidential information, records, papers, materials, media and other property of the Contracting Authority which is in its possession.

11. CONTRACT MANAGEMENT

A. The Contracting Authority's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may affect the performance of this Agreement and 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 Contractor shall meet formally with the Contracting Authority to report on progress and shall comply with all written directions of the Contracting Authority.

B. The Contractor agrees to:

1. liaise with and keep the Contracting Authority's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;

2. maintain such records and comply with such reporting arrangements and protocols required by the Contracting Authority from time to time;

3. comply with all reasonable directions of the Contracting Authority; and

4. comply with the service levels and performance indicators set out in Schedule D.

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

D. The Contractor shall be required to hold for the Term insurances of the nature and amount as set out in the ITT and shall immediately advise the Contracting Authority of any material change to its insured status. The Contractor shall produce proof of current premiums paid upon request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Contracting Authority with regard to compliance with this Clause 11D.

12. DISPUTES

A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.

B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Contracting Authority contact] within the Contracting Authority, respectively.

C. If the Dispute has not been resolved within fifteen (15) Business Days (being days other than weekends or public holidays in Ireland) (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.

E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.

F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.

G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

13. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

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

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

C. References in this Agreement to statutory and EU Law provisions shall be deemed to include any amendments, re-enactments or replacements thereof.

14. NOTICES

A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this Clause 14.

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

1. if personally delivered, at the time of delivery;
2. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
3. if communicated by email, on the next calendar day following transmission.

15. ASSIGNMENT AND SUBCONTRACT

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

Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Contracting Authority may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

16. ENTIRE AGREEMENT

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

17. SEVERABILITY

If any term or provision herein is found to be illegal or unenforceable for any reason, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

18. WAIVER

No failure or delay by either Party to exercise any right, power or remedy shall operate as a waiver of it, nor shall any partial exercise preclude further exercise of same or some other right, power or remedy.

19. NON-EXCLUSIVITY

Nothing in this Agreement shall preclude the Contracting Authority from purchasing goods (or Goods) from a third party at any time during the currency of the Agreement.

20. MEDIA

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

21. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

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

B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Contracting Authority, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Contracting Authority immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Contracting Authority's directions in respect thereof to the satisfaction of the Contracting Authority. In the event of such disclosure, the Contracting Authority shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per Section 2 of the Ethics in Public Office Acts 1995 (as amended) a copy of which is available on request.

C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this Clause 21C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018shall entitle the Contracting Authority to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

22. ACCESS TO PREMISES

A. Any of the Contracting Authority's premises made available from time to time to the Contractor by the Contracting Authority in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the

purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

B. The Contractor shall upon reasonable notice by the Contracting Authority allow the Contracting Authority access to its premises (including the premises of any Subcontractor or agent) where the Goods are being performed for the Contracting Authority under this Agreement.

23. NON-SOLICITATION

A. For the Term and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither the Contracting Authority nor the Contractor shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

24. CHANGE CONTROL PROCEDURE

A. At any time during the Term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.

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

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

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

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

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

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

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

25. DATA PROTECTION AND SECURITY

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

"Data" means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Contracting Authority (including but not limited to his 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 Commission or other supervisory authority for data protection in Ireland.

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

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

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

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

B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.

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

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

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

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

Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

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

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

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

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

E. The Contractor 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).

F. The Contractor 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.

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

H. The Contractor 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 Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.

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

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

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

L. The Contractor 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 Contractor 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.

M. (IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)
The Contracting Authority does not consent to the Contractor appointing any third party processor of Personal Data under this agreement
(OR IF USING A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

the Contracting Authority consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor 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 25 as between the Contracting Authority and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

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

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

Schedule E: Data Protection

Processing, Personal Data and Data Subjects

1. **Processing by the Contractor**

1.1 Subject matter of processing

All information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to his employees, agents, independent contractor 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 Client provided under the Agreement which relates to an identified or identifiable natural person;

1.2 Nature of processing

Any operation or set of operations which is performed on personal data or on sets of personal data, whether or not by automated means, such as collection, recording, organisation, structuring, storage, adaptation or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction.

1.3 Purpose of processing

To allow the Contractor to provide the services under the agreement.

1.4 Duration of the processing

The term of the Agreement.

2. **Types of personal data**

Employee data such as: name, job title, address, mobile telephone number, centre/school telephone number, email address, location address, periods of unavailability for delivery.

Customer data such as: Name, address, telephone number, email address, contractual details, contract history, bank details, tax details. Supplier data such as: Name, address, telephone number, email address, contractual details, contract history, bank details.

3. **Categories of data subject**

A data subject is a natural person whose personal data is process by a controller or processor. Data subjects may be categorised into groups with a common theme. For example:

Client and Current Employees of Client

Appendix 6 – Confidentiality Agreement

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

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

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

WHEREAS

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

The Contractor has been identified as the preferred bidder in the Competition.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

6. The Contractor undertakes:

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

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

6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt "document" includes documents stored on a computer storage medium and data in digital form whether legible or not.

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

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

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

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

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

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

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

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

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

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

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

B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.

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

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

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

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

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

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

i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
ii. the data subject has enforceable rights and effective legal remedies;
iii. The Contractor 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 Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

E. The Contractor 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).

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

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

H. The Contractor 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 Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.

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

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

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

L. The Contractor 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 Contractor 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.

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

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

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