Comhairle Cathrach Bhaile Átha Cliath
Dublin City Council

Multi-Operator Framework Agreement

Terms and Conditions

for the Provision of:	
[insert details]	
PARTIES	
Contracting Authority:	
Framework Operator:	
Date:	

Subject to contract / contract denied

Framework Agreement with a Framework Member in a Multi-Operator Framework for [insert description of services/Supplies]

Parties

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

(Hereinafter referred to as the 'Contracting Authority)

AND

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

(Hereinafter referred to as the "Framework Member" or "Member")

Background

The Contracting Authority has conducted a tender competition advertised on the Irish Government procurement website www.etenders.gov.ie under the open procedure. Following evaluation of its tender against the published award criteria, the Framework Member is now appointed as one of the operators under this Framework Agreement.

Definitions

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

"Call Off Request" means the request issued by the Contracting Authority to a Framework Member instructing that Framework Member, under the Cascade method, to provide the required Services/Supplies.

"Commencement Date" means after [insert date].

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

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

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

"Framework Member" means the supplier or service provider formally appointed to the Framework Agreement on foot of a Competitive Procedure.

"Framework Period" means the period in years set out in Clause 3.1;

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

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

"Supplementary Request for Tender" means a new competition between all the Framework Members for the award of a Contract falling within the scope of the Framework Agreement.

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

1. Appointment of Framework Member

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

1.2 The operators appointed to the Framework Agreement are:

i) [insert the names of all the framework members including this framework member – if cascade being used in ranked order – if not cascade in alphabetical order (note which one it is) …]

ii) [insert name]

iii) [insert name]

(the 'Framework Members').

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

1.4 Membership of this Framework does not entitle the Member to be consulted in respect of, or awarded any contract during, the Framework Period. The Contracting Authority may at its sole discretion choose not to enter any contracts falling within the scope of this Framework Agreement, or to terminate the Agreement in accordance with Section 9.

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

2. Period of Framework Agreement

2.1 The Framework Agreement shall take effect on the Commencement Date.

2.2 The Framework Agreement will be for a period of [insert number] years [period of framework as specified in notice].

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

3. Scope of Framework Agreement

3.1 This Framework Agreement relates to the provision of [insert description of supplies/services from published contract notice including initial contract and any follow-on contracts which may be awarded]

3.2 The maximum value of the framework over the life of the framework is

Edit as appropriate:

- XX Thousand Euro €000,000 excluding VAT.

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

4. Procedure for the award of Call-Off Contracts

4.1 As and when the Contracting Authority decides to source Supplies/Services through this Framework Agreement, then it may award a Call-Off Contract to the Framework Member based on the Tender in accordance with the process for Mini-Tenders or using the cascade method, as appropriate.

4.2 When a Call-Off Contract is awarded to the Framework Member the Contracting Authority and the Framework Member shall enter a contract in accordance with the relevant Contract Terms and Conditions as well as any Special Terms and Conditions that will be set out in the invitation to provide a Supplementary Tender. The Call-Off Contract shall be within the scope of Contracts defined for the Framework Agreement.

4.3 Mini-Competition Procedure

4.3.1 The Contracting Authority will complete a Supplementary Request for Tender indicating the scope of the Call-Off Contract to be awarded and the award criteria.

4.3.2 The Contracting Authority shall fix a deadline for the receipt of the Supplementary Request for Tender considering the complexity of the scope of requirements and the time needed to prepare an appropriate response.

4.3.3 The Contracting Authority will issue the Supplementary Request for Tender via etenders to all Framework Members.

4.3.4 Supplementary Tenders shall be submitted electronically via etenders and their content shall remain confidential until at least the stipulated time limit for replies has expired.

4.3.5 Any clarifications requested by a Framework Member in relation to a Supplementary Request for Tender shall be submitted via the messaging facility on etenders and any responses containing further material information will be issued via the messaging facility on etenders to all other Framework Members.

4.3.6 Award Criteria
The criteria for the award of a Call-Off Contract will be the Most Economically Advantageous Tender in terms of one or more of the following award criteria [insert award criteria from tender document – no weightings **and** any other relevant criteria suitable for a Call-Off Contract]:
[ ]

[ ]

[ ]

To reflect the requirements of the particular Call-Off Contract to be awarded, each Supplementary Request for Tender will set out the precise award criteria, scope and weightings applicable to the award of the Call-Off Contract in question.

Following evaluation of all valid Supplementary Tenders received against the award criteria set out in the Supplementary Request for Tender, the Contracting Authority may enter into the Call-Off Contract with the successful Framework Member.

4.4 Cascade Procedure

4.4.1 Where all the terms necessary for the performance of a Call-Off Contract are included in this Framework Agreement, the Contracting Authority may issue a Call-Off Request to a Framework Member at any time during the Framework Period. Recourse to this procedure is without prejudice to the provisions of Sub-Clause 4.4.8

4.4.2 Subject to Sub-Clause 4.4.8, the ranking of the Framework Members as determined by the objective criteria used to establish this Framework Agreement and contained in the Request for Tender is as follows:

(a) [ ] (the 'First-Ranked Framework Member')

(b) [ ] (the 'Second-Ranked Framework Member')

(c) [ ] (the 'Third-Ranked Framework Member')

(d) [ ] (the 'Fourth-Ranked Framework Member')

The Contracting Authority will communicate any changes to this ranking by email to all Framework Members.

4.4.3 The Contracting Authority will complete a Call-Off Request indicating the scope and term of the Call-Off Contract to be awarded. This may be in the form of a Purchase Order or by other means.

4.4.4 The Contracting Authority will consult with the First-Ranked Framework Member to establish whether any capacity/performance issues or a Conflict of Interest dictate that the First-Ranked Framework Member is unable to perform the proposed Call-Off Contract. If the First-Ranked Framework Member is unable to perform the Call-Off Contract subject to this Sub-Clause 4.4.4, the Contracting Authority will consult with the next ranked Framework Member. This process will be repeated until the Contracting Authority has deemed that a Framework Member is not precluded from performing the Call-Off Contract.

4.4.5 Subject to Sub-Clause 4.4.4, the Contracting Authority will issue the Call-Off Request to the First-Ranked Framework indicating the relevant deadline for the receipt of confirmation by the First-Ranked Framework Member of its acceptance of the Call-Off Request.

4.4.6 The First-Ranked Framework Member shall inform the Contracting Authority within the stipulated deadline whether it accepts the Call-Off Request. Upon receipt of this acceptance, the Contracting Authority will enter the Call-Off Contract with the First-Ranked Framework Member.

4.4.7 If the First-Ranked Framework Member does not accept the Call-Off Request, the Contracting Authority will issue that Call-Off Request to the next ranked Framework Member

seeking their acceptance. This process will be repeated until a Framework Member has accepted the Call-Off Request or the Contracting Authority terminates the award procedure.

4.4.8 Ranking Relegation Procedure (Cascade only)

The Contracting Authority reserves the right to relegate the First-Ranked Framework Member and move them to last position in the ranking under one of the following circumstances:

4.4.8.1 Where the First-Ranked Framework Member does not perform a Call-Off Contract to the requirements set out in this Framework Agreement or the Call-Off Request on more than two (2) occasions and the Contracting Authority is not satisfied with the reasons provided by the First-Ranked Framework Member to justify the poor/non-performance; or

4.4.8.2 Where the First-Ranked Framework Member has not accepted a Call-Off Request on more than two (2) consecutive occasions.

[customise and include other performance clauses for relegation which might be relevant]

5. Notification of the award of a Call-Off Contract

5.1 When the Contracting Authority has made an award decision pursuant to Sub-Clause 4.3 the Contracting Authority will issue a notification in writing to all Framework Members that have submitted a Supplementary Tender. The notification will contain the following information:

5.1.1 in the case of the successful Framework Member, any decisions reached concerning the award of the Call-Off Contract; and

5.1.2 in the case of the unsuccessful Framework Members,

5.1.2.1 any decisions reached concerning the award of the Call-Off Contract.

5.1.2.2 the name of the successful Framework Member.

5.1.2.3 summary information on the reason for rejection.

6. Fixed Conditions for Contracts

6.1 Prices

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

6.2 Contract Manager

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

6.3 Personnel

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

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

7. Obligations of Framework Member

7.1 Conflict of Interest

The Framework Member is required to inform the Contracting Authority of any conflict of interest of which it becomes aware during the period of the Framework Agreement. Any registrable interest involving the Framework Member and the Contracting Authority or employees of the Contracting Authority or their relatives must be communicated to the Contracting Authority immediately. The terms 'registrable interest' and 'relative' shall be interpreted as per Section 2 and the Second Schedule of the Ethics in Public Office Act, 1995. Failure to disclose a conflict of interest may disqualify the Framework Member from tendering for a Contract or invalidate an award of Contract, depending on when the conflict becomes apparent.

7.2 Insurances

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

7.3 Tax Clearance

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

7.4 Assignment

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

7.5 Data Protection

The Framework Member must operate fully in compliance with all relevant Data Protection legislation and accept the following terms and conditions:

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

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

any information that was created by or in any way originating with the Contracting Authority provided under this Agreement and includes any Personal Data;

“Data Controller” has the meaning given under the Data Protection Laws;

“Data Processor” has the meaning given under the Data Protection Laws;

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

“Data Subject” has the meaning given under the Data Protection Laws;

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

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7.5.12 The Framework Member shall:

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

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

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

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

7.5.14 Save for clauses 7.5.2, 7.5.3, 7.5.4(4) and 7.5.5, all the obligations on the Framework Member in this clause 7 relating to the processing of Personal Data shall apply to the processing of all Data.

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

8. Termination of Appointment

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

9. Termination of Framework Agreement

9.1 In circumstances outlined in Section 8.1 and 8.2, the Contracting Authority reserves the right to terminate this Agreement by providing three (3) months' notice in writing to the Framework Member. The Framework Member shall have no claim for damages or otherwise against the Contracting Authority as a result of the Contracting Authority terminating this Framework Agreement in accordance with this Clause.

9.2 In circumstances outlined in Section 8.3, the Contracting Authority reserves the right to terminate this Agreement by providing fourteen (14) days' notice in writing to the Framework Member. The Framework Member shall have no claim for damages or otherwise against the Contracting Authority as a result of the Contracting Authority terminating this Framework Agreement in accordance with this Clause.

9.3 Termination of the Framework Agreement pursuant to Clause 9.1 and Clause 9.2 shall not relieve or discharge the Framework Member from any obligations which may have accrued prior to such termination.

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

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

10. Notices

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

The Contracting Authority

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address: [insert email]

Tel: [insert number]

Fax: [insert number]

The Framework Member

[Name of contact for notices]

[Address Line 1]

[Address Line 2]

[Address Line 3]

E-mail address: [insert email]

Tel: [insert number]

Fax: [insert number]

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

10.2.1 If delivered, at the time of delivery to the addressee or its duly authorised agent;

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

10.2.3 If transmitted electronically on receipt of ‘read receipt’ or equivalent.

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

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

SIGNED:

On behalf of the CONTRACTING AUTHORITY

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

On behalf of the Framework Member

Name:

(Block letters)

Position:

Signature:

Date:

Witnessed by:

(signature)

Witness name:

(Block letters)

Schedules to this agreement:

Schedule 1: Form of Tender – from the Framework Members' tender response

Schedule 2: Resources – from the Framework Members' tender response

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

Schedule 4: Proposed Contract Terms and Conditions

Schedule 5: Data Protection

Schedule 1: Form of Tender – from the Framework Members' tender response

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Schedule 4: Proposed Contract Terms and Conditions

Schedule 5: Data Protection

[complete when completing the contract]

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1 Subject matter of processing

1.2 Nature of processing

1.3 Purpose of processing

1.4 Duration of the processing

2. Types of personal data

3. Categories of data subject