LDA

The Land Development Agency

APPENDIX 5

CALL-OFF CONTRACT

for the Provision of Technical and Construction Quality Assurance and Quality Control Monitoring Services

[Insert Call-Off Contract particulars from the Call-Off Order / Mini-Competition]

These terms and conditions constitute Schedule 11 of the Framework Agreement (Appendix 3). Each Call-Off Contract is formed on these terms completed with the particulars established in the relevant Call-Off Order or Mini-Competition. This Call-Off Contract shall be executed as a deed. These terms may be amended only in accordance with the Framework Agreement.

THIS CALL-OFF CONTRACT is made on [date]

BETWEEN:

(1) [THE RELEVANT FRAMEWORK USER — for the LDA:] THE LAND DEVELOPMENT AGENCY, a designated activity company with company registration number 710453 and whose registered office is at Second Floor, Ashford House, 18–23 Tara Street, Dublin 2, D02 VX67 (the "LDA") including its successors and assigns; and

(2) [FRAMEWORK MEMBER], a company established under [insert detail] law with company registration number [insert] and its registered address at [insert] (hereinafter referred to as the "Framework Member" which expression includes its successors and permitted assigns) of the other part.

WHEREAS

(A) In this Agreement: (a) the "Framework" means the Framework Agreement dated [insert detail] made between the LDA and the Framework Member for Technical and Construction Quality Assurance and Quality Control Monitoring Services; (b) other capitalised terms shall have the meaning attributed to them in the Framework save where indicated otherwise; and (c) where this Call-Off Contract is entered into by a Framework User other than the LDA, references to the LDA shall be read as references to that Framework User.

(B) The LDA proposes to award this Call-Off Contract to the Framework Member in accordance with the Framework in respect of the services described in Schedule 1 (the "Services").

NOW IT IS HEREBY AGREED as follows:

1. Definitions and Interpretation

In this Call-Off Contract, unless where otherwise specified:

1.1 headings are included for ease of reference only and shall not affect the construction of this Call-Off Contract;

1.2 references in this Call-Off Contract to any Clause or Sub-Clause or Schedule without further designation shall be construed as a reference to the Clause or Sub-Clause or Schedule to this Call-Off Contract so numbered;

1.3 references to any person shall include natural persons and partnerships, firms and other incorporated bodies and all other legal persons of whatever kind and however constituted and their successors and permitted assigns or transferees;

1.4 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;

1.5 any phrase introduced by the terms "including", "include", "in particular" or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms;

1.6 unless the context otherwise requires, words in the singular include the plural and in the plural include the singular;

1.7 to the extent that any specific term or condition in this Call-Off Contract is inconsistent or conflicts with any term or condition of the Framework, the relevant term or condition in this Call-Off Contract shall prevail **only** in respect of a matter which the Framework expressly permits to be determined or particularised at call-off level (including the matters listed in Clause 6.9 of the Framework); in respect of any other matter, the Framework shall prevail.

2. Engagement

2.1 The LDA appoints the Framework Member to carry out and complete the Services in accordance with this Call-Off Contract and subject to the provisions of the Framework (the "Engagement").

3. Duties

3.1 During the Engagement the Framework Member shall:

(a) provide the Services using the standard of reasonable skill, care and diligence to be expected of a competent professional experienced in providing services in the nature of the Services;

(b) promptly give to the LDA all such information, advice and reports as it may reasonably require in connection with matters relating to the provision of the Services; and

(c) use all reasonable endeavours to ensure that it is available at all times on reasonable notice to provide such assistance or information as the LDA may require.

3.2 Unless it has been specifically authorised to do so by the LDA in writing, the Framework Member shall not:

(a) have any authority to incur any expenditure in the name of or for the account of the LDA; or

(b) hold itself out as having authority to bind the LDA.

4. Fees

4.1 The LDA shall pay the fees for the Services in accordance with Schedule 2 and in accordance with the Framework.

4.2 Professional Services Withholding Tax may apply to payments made for professional services provided to the LDA and, if applicable, will be deducted by accountable persons from all payments made for professional services.

4.3 The LDA shall be entitled to deduct from the fees and any other sums due to the Framework Member any sums that the Framework Member may owe to the LDA at any time.

4.4 Payment in full or in part of the fees claimed under this Clause 4 shall be without prejudice to any claims or rights of the LDA against the Framework Member in respect of the provision of the Services.

4.5 The Framework Member shall, and shall procure that any Sub-Consultant shall, for the term of this Call-Off Contract, comply with all EU and domestic taxation law and requirements, including the maintenance of a valid Tax Clearance Certificate (or equivalent).

5. Conflicts of Interest

5.1 The Framework Member confirms that all actual and potential conflicts of interest (whether non-legal or commercial or other interests) will be disclosed in full prior to the execution of this Call-Off Contract and it will comply in all respects with the LDA's requirements on confidentiality and conflicts of interest.

5.2 The Framework Member shall disclose to the LDA within forty-eight (48) hours of it coming to its attention, any conflict of interest or potential conflict of interest which it, or any of its affiliates, or any partner, officer, director or employee of the Framework Member may have in performing any Services.

5.3 The Framework Member hereby indemnifies the LDA for any additional costs and any other losses, damage and expenses (including legal expenses) reasonably incurred by the LDA if the LDA terminates this Agreement due to an actual or potential conflict of interest on the part of the Framework Member which was not, but should have been, declared to the LDA.

6. Confidential Information

6.1 The Framework Member acknowledges that in the course of the Engagement it will have access to Confidential Information. The terms of the Confidentiality Agreement and the Framework shall continue to apply to this Engagement and the Services.

6.2 The foregoing obligations as to confidentiality shall remain in full force and effect notwithstanding any termination of this Engagement for whatever reason.

6.3 At any stage during the Call-Off Contract, the Framework Member, on request from the LDA, will promptly return all and any LDA property in its possession to the LDA.

7. Insurance and Liability

7.1 Prior to the execution of this Call-Off Contract, the Framework Member shall produce to the LDA copies of all insurance policies required to be maintained pursuant to the Framework (together with any call-off-specific requirements notified under Clause 8.1.2 of the Framework), or a broker's verification of insurance to demonstrate that the appropriate cover is in place, together with receipts or other evidence of payment of the latest premiums due under those policies. The Framework Member undertakes to maintain those insurances for the duration required by the Framework.

7.2 The Framework Member shall ensure that the insurance policies are taken out with reputable insurers acceptable to the LDA and that the level of cover and other terms of insurance are as stated in the Framework and as agreed by the LDA.

7.3 The Framework Member shall have liability for and shall indemnify the LDA for any loss, liability, costs (including reasonable legal costs), damages or expenses arising directly and indirectly from any breach by the Framework Member of the terms of this Call-Off Contract including any negligent or reckless act, omission or default in the provision of the Services and shall accordingly maintain in force during the Engagement full and comprehensive insurance cover, as required by the Framework and by applicable law.

7.4 In respect of the Employer's Liability and Public Liability policies, the Framework Member shall procure that the policies contain an indemnity to principals clause noting the interest of the LDA, in the form generally available in the insurance market. In respect of the Professional Indemnity policy, the Framework Member shall maintain the cover required by the Framework and shall, on request, provide a broker's letter confirming the cover, its basis and its currency; the Parties acknowledge that professional indemnity policies indemnify the insured only and that noting of third-party interests is not required. If any claim is brought or made by the LDA against the Framework Member in respect of which the Framework Member is entitled to receive indemnity under any of its insurance policies, the Framework Member shall use all insurance monies received by it to satisfy such claim (including any charges, costs and expenses in respect of such claim) and shall make good any deficiency from its own resources.

7.5 The Framework Member shall comply with all terms and conditions of the insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way, or if the Framework Member is aware of any reason why the cover under the insurance policies may lapse or not be renewed or be changed in any material way, the Framework Member shall notify the LDA without delay.

8. Termination

8.1 **Termination for cause.** The LDA may terminate the Engagement with immediate effect by notice in writing (including by email) to the Framework Member, with no liability to make any further payment to the Framework Member (other than in respect of amounts accrued in respect of Services properly performed before the termination date), if the Framework Member:

(a) commits any material breach or any serious or repeated breach or non-observance of any of the provisions of this Call-Off Contract or of the Framework, or refuses or neglects to comply with any reasonable and lawful directions of the LDA, and (where such breach is capable of remedy) fails to remedy it within fourteen (14) days of written notice requiring it to do so; or

(b) is, in the reasonable opinion of the LDA, negligent or incompetent in the performance of the Services; or

(c) becomes insolvent, is wound up, commences winding up, has a receiver, examiner or liquidator appointed over it or any of its assets, makes any arrangement with or for the benefit of its creditors, or suffers any analogous event in any jurisdiction; or

(d) is or becomes subject to any of the exclusion grounds in Article 57 of Directive 2014/24/EU, or the LDA becomes aware that any such ground applied at the time of award; or

(e) commits any fraud or dishonesty, or any offence under the Criminal Justice (Corruption Offences) Act 2018, as amended, or acts in any manner which in the opinion of the LDA brings or is likely to bring the LDA into disrepute or is materially adverse to the interests or reputation of the LDA.

8.2 **Termination for convenience.** The LDA may terminate the Engagement at any time and for any reason on not less than ten (10) business days' notice in writing to the Framework Member. On such termination the LDA shall pay the Framework Member the fees properly accrued in respect of Services properly performed up to the termination date, together with any costs reasonably and unavoidably committed by the Framework Member in respect of the Services prior to receipt of the notice which cannot reasonably be mitigated, and shall have no liability to make any other payment, including for loss of profit or loss of opportunity.

8.3 The rights of the LDA under Clauses 8.1 and 8.2 are without prejudice to any other rights that it might have at law to terminate the Engagement or to accept any breach of this Call-Off Contract on the part of the Framework Member as having brought the Call-Off Contract to an end. Any delay by the LDA in exercising its rights to terminate shall not constitute a waiver of these rights.

8.4 On the termination date the Framework Member shall:

(a) upon request immediately deliver to the LDA all LDA property in its possession or under its control;

(b) delete any information relating to the business of the LDA stored on any magnetic or optical disk or memory and all matter derived from such sources which is in its possession or under its control outside the premises of the LDA, save as required to be retained by law or under the Framework; and

(c) confirm in writing (including by email) that it has complied fully with its obligations under this Clause 8.4.

9. Governing Law and Jurisdiction

9.1 The LDA and the Framework Member accept the exclusive jurisdiction of the Irish courts, subject to the provisions of Clause 15 (Resolution of Disputes) of the Framework, and agree that this Call-Off Contract is to be governed by and construed according to the laws of Ireland.

9.2 Any disputes arising from, or in connection with, this Engagement and Call-Off Contract shall be dealt with in accordance with the provisions of the Framework.

Schedule 1 — Services

To be inserted from the Call-Off Order or Mini-Competition Request: scope and deliverables (drawn from the Specification at Appendix 1 to the RFT); sites, developments and phases; commencement, duration and any extension options; programme; KPIs and reporting; governance; key personnel; and any other particulars determined under Clause 6.9 of the Framework.

Schedule 2 — Fees

The fees for the Services are as stated in the Call-Off Order or established through the Mini-Competition, on the pricing option and at the rates applicable under the Pricing Schedule and Rate Card at Appendix 2 to the RFT (Schedule 2 of the Framework). In no case may any rate charged exceed the applicable Rate Card ceiling. [Insert pricing option and price particulars.]

Execution

EXECUTED AS A DEED by the parties on the date first written above.

GIVEN under the COMMON SEAL of THE LAND DEVELOPMENT AGENCY / [FRAMEWORK USER]:

_____ Director / Person duly authorised

GIVEN under the COMMON SEAL of [FRAMEWORK MEMBER]:

_____ Director

_____ Director / Secretary