

**Request for Tenders 05/21 dated 04 May 2021
for the provision of:**

**Chaplaincy Services to Letterkenny Institute of
Technology**

Tender procedure: Open Procedure

**Tender Deadline 12:00 Noon on
Monday 31st May 2021**

Contents

- Part 1: Introduction
- Part 2: Instructions to Tenderers
- Part 3: Eligibility and Award Criteria
- Appendix 1: Requirements and Specifications
- Appendix 2: Tender Response Document (TRD)
- Appendix 3: Services Contract
- Appendix 4: Confidentiality Agreement

Part 1: Introduction

- 1.1 Letterkenny Institute of Technology (the “Contracting Authority”) invites tenders (“Tenders”) to this Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the provision of the services as described in **Appendix 1** to this RFT (the “Services”).
- 1.2 In summary, the Services comprise: the provision of Chaplaincy Services to Letterkenny Institute of Technology.
- 1.3 *Not used*
- 1.4 This public procurement competition (the “Competition”) will be conducted in accordance with the open procedure under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the “Regulations”). Any contract that may result from this Competition (the “Services Contract”) will be issued for a term of **two (2) years** (“the Term”).
- 1.5 The Contracting Authority reserves the right to extend the Term for a period or periods of up to **one (1) year** with a maximum of **two (2)** such extension or extensions on the same terms and conditions, subject to the Contracting Authority’s obligations at law.
- 1.6 The Contracting Authority estimates that the expenditure on the Services to be covered by the proposed Chaplaincy Services contract will not amount to more than €42,000 over each year (excl. VAT) over the Term. Tenderers must understand that this figure is an estimate only based on current and future expected usage.
- 1.7 The Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises (“SME”)s in this Competition. SMEs that believe the scope of this Competition is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, 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 Contract that may result from this Competition and therefore increase their social and economic benefits.

Larger enterprises are also encouraged, subject to paragraph 2.5, 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.

Part 2: Instructions to Tenderers

2.1 Important Notices

2.1.1 While every effort has been made to provide comprehensive and accurate information in all notices and documents prepared for the purposes of this Competition, the Contracting Authority does not accept any liability or provide any express or implied warranty in respect of any such information. Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT and may wish to consult their legal advisers.

2.1.2 The Contracting Authority does not bind itself to accept the lowest priced or any Tender. This RFT does not constitute an offer or commitment to enter into a Services Contract.

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

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

2.1.3 This RFT 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.

2.1.4 In this clause 2.14, “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 the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidance and code of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under 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 RFT.

The Tenderer, as Data Controller in respect of any Personal Data provided by it in its Tender is required to confirm in the statement required under paragraph 2.4 below that all Data Subjects

(where Data Subject has the meaning given under Data Protection Laws) whose Personal Data is provided by the Tenderer has consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of etenders.gov.ie website, for the purposes of 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.

2.2 Compliant Tenders

2.2.1 If a Tenderer fails to comply in any respect with the requirements of this paragraph 2.2.1, the Contracting Authority reserves the right to reject the Tenderer's Tender as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- seeking written clarification from the Tenderer;
- seeking further information from the Tenderer;
- waiving a requirement, which in Contracting Authority's view, is non-material or procedural.

Tenderers are required:

- (a) To fully complete all elements of the Tender Response Document (TRD) at **Appendix 2** and submit this together with the supporting documentation requested within this RFT document and the TRD. (Note: Tenderers may submit the electronic version of the European Single Procurement Document ("eESPD") or may submit an eESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that:
 - (i) the information contained in it continues to be correct; and
 - (ii) that they satisfy the Eligibility Criteria for this Competition as set out at part 3.2 below.
- (b) To submit all documentation which this RFT requires to be submitted with their Tender,
- (c) To follow the format of this RFT and respond to each element in the order as set out in the TRD at **Appendix 2**,
- (d) To conform to and comply with all instructions and requirements set out within this RFT and the TRD at **Appendix 2**,

(e) Not to alter or edit this RFT in any way.

2.2.2 Without prejudice to the generality of paragraphs 2.2.1, failure to comply with paragraph 2.6.1, 2.6.2 or 2.6.3 below will render the Tender non-compliant and it will be rejected.

2.3 Services Contract

2.3.1 Tenderers should note the terms and conditions of the Services Contract at **Appendix 3** to this RFT.

2.3.2 Tenderers are required to confirm their acceptance of the terms and conditions of the Services Contract by signing the Tenderer's Statement at Section B of the Tender Response Document (TRD) at **Appendix 2**. Tenderers may not amend the Services Contract.

2.4 Acceptance of RFT Requirements

Each Tenderer is required to accept the provisions of this RFT. ALL TENDERERS MUST RETURN, with their Tender, a scanned signed copy of the Tenderer's Statement, as set out at Section B of the TRD at **Appendix 2**, printed on the Tenderer's letterhead. The Contracting Authority must be able to read the scanned signature of the Tenderer. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderer's Statement.

2.5 Consortia and Prime / Subcontractors

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 RFT, the Contracting Authority will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the Services Contract only ("Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium members (the "Subcontractor"). The Tenderer must clearly set out the name, title, telephone number, postal address, facsimile number and e-mail 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.

2.6 Tender Submission Requirements

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

Tenderers must ensure that they give themselves sufficient time to upload and submit all required tender documentation before the Tender Deadline (as defined in paragraph 2.6.2).

Tenderers should take into account the fact that upload speeds vary. There is a maximum of 4GB for the total (combined) documents sent to the electronic postbox.

Prior to uploading, tenderers should combine their response document into one or more single zipped folders, each folder not exceeding 4GB. Where possible, documents within each zipped folder should be combined into single pdf documents.

In order to submit a document to the electronic postbox, please note that you must click “Submit Response”. After submitting you can still modify and re-send your response up until response deadline. Tenderers should be aware that the ‘Submit Response’ button will be disabled automatically upon the expiration of the response deadline.

2.6.2 Tenders must be received not later than **12.00 noon on Monday, 31st May 2021** (the “Tender Deadline”). Tenders that are received late WILL NOT be considered in this Competition.

2.6.3 Tenders must be submitted in English.

2.6.4 Each Tenderer is limited to submitting one Tender in his own capacity and one Tender as part of a consortium/group of undertakings under this RFT.

2.6.5 All Tenders submitted in soft copy must be compiled such that they can be read immediately using PDF or MS Word. The Contracting Authority is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

2.7 Queries and Clarifications

2.7.1 All queries relating to any aspect of this Competition or of this RFT must be directed to the messaging facility on www.etenders.gov.ie. Queries will be accepted no later than **5:00pm on Monday 24th May 2021** unless otherwise published by the Contracting Authority. For the avoidance of doubt, Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.

2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie. Where appropriate, queries may be amalgamated. Tenderers should note that the Contracting Authority will not respond to individual Tenderers privately.

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

2.7.4 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.

2.7.5 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.

2.8 Tendering Costs

All costs and expenses incurred by Tenderers relating to their participation in this Competition including, but not being limited to, site visits, field trials, demonstrations and/or presentations shall be borne by and are a matter for discharge by the Tenderers exclusively.

2.9 Confidentiality

2.9.1 All documentation, data, statistics, drawings, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this Competition:

- a. are furnished for the sole purpose of replying to this RFT only;
- b. may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;
- c. shall be treated as confidential by the Tenderer and by any third parties (including subcontractors) engaged or consulted by the Tenderer; and
- d. must be returned immediately to the Contracting Authority upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.

2.10 Pricing

2.10.1 All Tenderers must complete the Pricing Schedule included at Section J of the TRD at **Appendix 2** to this RFT.

2.10.2 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.

2.10.3 Tenderers must confirm that all prices quoted in the Tender will remain valid for **12 months** commencing from the Tender Deadline.

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

2.10.5 Payments for Services provided pursuant to this RFT shall be subject to and made in accordance with the Services Contract at **Appendix 3** to this RFT.

2.10.6 Where foreign currency exchange rates apply, the Supplier shall use the daily exchange rate published by the Central Bank of Ireland only. No additional charges or commission fees shall apply.

2.11 Environmental, Social and Labour Law

2.11.1 In the performance of any Services Contract awarded, the successful Tenderers their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU of the European Parliament and of the Council on public procurement (the “Directive”).

2.11.2 Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.

2.11.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the “2012 Act”) provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the Services will involve the provision to the Contracting Authority of Agency Workers (within the meaning of the 2012 Act), Tenderers should ensure that they consider their obligations under the 2012 Act when pricing their Tender. The Contracting Authority shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the Services.

2.12 Publicity

No publicity regarding this Competition or any Services Contract pursuant to this Competition is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

2.13 Registrable Interest

Any Registrable Interest involving any Tenderer or Subcontractor and the Contracting Authority, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority and their relatives must be fully disclosed in the Tender or, in the event of this information only coming to the notice of the Tenderer or Subcontractor after the submission of a Tender, must be communicated to the Contracting Authority immediately upon such information becoming known to the Tenderer or Subcontractor.

The terms “Registrable Interest” and “Relative” shall be interpreted as per Section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.gov.ie. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Services Contract entered into by a Tenderer.

2.14 Anti-Competitive Conduct

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

2.15 Industry Terms Used in this RFT

Where reference is made to a particular item, source, process, trademark, or type in this RFT then all such references are to be given the meaning generally understood in the relevant industry and operational environment.

2.16 Freedom of Information

2.16.1 Tenderers should be aware that, under the Freedom of Information Act 2014, information provided by them during this Competition may be liable to be disclosed.

2.16.2 Tenderers are asked to consider if any of the information supplied by them in their Tender should not be disclosed because of its confidentiality or commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Tenderers must, when providing such information, clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Tenderers do not identify information as confidential or commercially sensitive, it is liable to be released in response to a Freedom of Information request without further notice to or consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about confidentiality or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act.

2.17 Tax Clearance

2.17.1 It will be a condition of any Services Contract pursuant to this Competition that the successful Tenderer(s) shall, for the term of such contract(s), comply with all EU and domestic tax laws. Tenderers are referred to www.revenue.ie for further information. Prior to the award of any Services Contract arising out of this Competition the successful Tenderer shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify its tax cleared position online.

2.18 Conflicts of Interest

Any conflict of interest or potential conflict of interest on the part of a Tenderer, Subcontractor or individual employee(s) or agent(s) of a Tenderer or Subcontractor(s) must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict of interest might be removed. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Services Contract entered into by a Tenderer.

2.19 Withdrawal from this Competition

Tenderers are required to notify the Contracting Authority immediately via the e-tenders website, if at any stage they decide to withdraw from this Competition.

2.20 Site Visit

2.20.1 *Not used*

2.21 Insurance

2.21.1 The successful Tenderer shall be required to hold for the term of the Services Contract the following insurances:

Type of Insurance	Indemnity Limit
Employer's Liability	€13 million in any one claim
Public Liability	€6.5 million in any one claim

2.21.2 By signing the Tenderer's Statement at Section B of the TRD at **Appendix 2**, Tenderers confirm, that if awarded a Services Contract under this Competition, they will, from the Effective Date of the Services Contract (as defined in the Services Contract), obtain and hold the types and levels of insurance as specified at paragraph 2.21.1. 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 Services Contract.

2.21.3 The successful Tenderer will, during the term of the Services 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.

Part 3: Eligibility and Award Criteria

3.1 Compliant Tenders

3.1 Only those Tenderers who have: -

- (a) Submitted compliant Tenders pursuant to part 2.2 above; and
- (b) Declared by way of eESPD (or the ESPD at Section E of the TRD at **Appendix 2**) that no grounds for Exclusion of the Tenderer pursuant to Article 57 of the Directive (the “Exclusion Grounds”) apply to them or that, where any such Exclusion Grounds apply, and where the Tenderer is not precluded from doing so under Article 57(6) (final paragraph) of the Directive, it can provide evidence to the effect that measures taken by the Tenderer are sufficient to demonstrate its reliability despite the existence of any relevant Exclusion Grounds; and
- (c) Declared by way of eESPD (or the ESPD at Section E of the TRD at **Appendix 2**) that they satisfy the eligibility criteria for this Competition as set out in part 3.2 below (the “Eligibility Criteria”);

will be evaluated in accordance with the Award Criteria at part 3.3 below.

Tenderers should note that where a Tenderer (Prime Contractor) is relying on the capacity of other entities (Subcontractors) for the purposes of fulfilling any of the Eligibility Criteria in part 3.2 below it must:

- (i) complete and submit a separate TRD at **Appendix 2** in respect of each such Subcontractor; and
- (ii) when requested by the Contracting Authority, submit proof, to the satisfaction of the Contracting Authority, that each such Subcontractor will place the necessary resources at the disposal of the Prime Contractor.

Where a Tenderer (Prime Contractor) intends to subcontract any share of any Services Contract to a Subcontractor, but is not relying on the capacity of such Subcontractor for the purposes of fulfilling any of the Eligibility Criteria in part 3.2 below, it must submit a separate TRD at **Appendix 2** in respect of such Subcontractor completing those sections of the ESPD which are specified in section D of the ESPD for this Competition.

The Contracting Authority may decide to examine Tenders before verifying the absence of Exclusion Grounds and the fulfilment of the Eligibility Criteria.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit any or all

of the following for the purposes of verification of the status of the Tenderer (including the Prime Contractor and any Subcontractor):

- (i) a Declaration with regard to the Personal Circumstances of the Tenderer and any sub-contractors, similar to that located at Section D of the TRD at **Appendix 2**;
- (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground; and
- (iii) in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, all or any of the supporting documents specified at paragraph 3.2 below.

If a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) its fulfilment of the Eligibility Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion Ground, it shall be excluded from further participation in this Competition.

If a Tenderer does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies of the Eligibility Criteria (or any one of them) in accordance with this RFT and (ii) the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion Ground, it shall be excluded from further participation in this Competition *unless* it replaces the Subcontractor with one which meets all relevant requirements of this RFT.

3.2 Eligibility Criteria

3.2 Tenderers will either pass OR fail each of the Eligibility Criteria in this part 3.2. In the event of one or more of the Eligibility Criteria achieving a fail, the Tenderer will be excluded from participating in this Competition.

3.2.A Economic and Financial Standing

Tenderers must declare by way of ESPD that they satisfy the financial and economic standing requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case.

Tenderers must declare by way of completing Sections F1 and F2 of the TRD at **Appendix 2**, that they satisfy the financial and economic standing requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case.

(i) Turnover

Tenderers should provide a statement from a suitably competent person to confirm their level of turnover **or** they may provide a statement from the firm’s auditor or audited accounts evidencing their firm’s turnover to demonstrate that the minimum turnover in respect of training provision of Chaplaincy Services meets or exceeds the requirements of the table below during one of their most recent years of operation*:

Name	Turnover Requirement
Chaplaincy Services	€30,000

**If the date of establishment is within the last 12 months, the minimum annual turnover required shall be adjusted on a pro rata basis based on the number of months of establishment – e.g., a Tenderer established for six months will have to demonstrate a turnover of €15,000 to apply.*

(ii) Insurance Cover

Tenderers are required to provide copies of current insurance certificates or a broker’s letter confirming that they currently have the forms of insurance in place as required in Paragraph 2.21 of this Request for Tender Document. If the policy amounts are below those required, a broker’s letter should be provided indicating that the required levels can be put in place if awarded the contract.

NOTE: If tenderers do not have the evidence requested under (i) and (ii) above only when submitting their tender, they can instead complete the Form of Self-Declaration contained at Section G of the TRD at Appendix 2 in the interim. However, prior to the award of contract, LYIT will request relevant evidence in full, to be delivered within 7 calendar days of receipt of said request. If the evidence required is not provided by the deadline date, the tenderer in question will be eliminated and the contract will be awarded to the next ranked tenderer providing the required evidence.

Tenderers must provide the supporting documentation specified above without delay when requested by the Contracting Authority. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation, the Tenderer must inform the Contracting Authority of the reason as to why the documentation cannot be supplied and, if the Contracting Authority considers the reason given to be valid, provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

3.2.B Technical and Professional Ability

Tenderers must declare by way of fully completing Section H of the TRD at **Appendix 2** that they have successfully delivered, within the last three (3) years, at least one service contract of a similar nature and complexity to the services described in **Appendix 1** of this RFT.

Note: The Contracting Authority may contact any or all referees without prior notice being given to the Tenderer to verify the information provided.

3.3 Award Criteria

3.3.1 The Services Contract will be awarded on the basis of the most economically advantageous tender(s) as identified in accordance with the following criteria:

	Criterion	Weighting	Maximum Score Available	Min Score Required
A	Methodology for the delivery of the Chaplaincy Service and ability to meet LYIT's requirements	45%	4,500	2,700
B	Technical merit of the human resources committed to the contract	20%	2,000	1,200
C	Ultimate Cost	35%	3,500	n/a
	TOTAL	100%	10,000	n/a

The tender award criteria will be applied to each tender who has successfully passed the Eligibility Criteria as outlined in Section 3.2 of this RFT. Tenderers must achieve a minimum of 60% on tender award criteria A and B above, **excluding Ultimate Cost**, in order to avoid elimination from the competition. Only tenderers who have achieved the 60% in Criteria A and B will be evaluated against Ultimate Cost.

Tenderers should carefully read the Specification and Requirements at **Appendix 1** and ensure that their proposed solution meets the requirements as laid out.

In order to enable Letterkenny IT to evaluate proposals based on the above criteria, **tenderers are requested to complete Section J of the TRD at Appendix 2 and to provide the following information in their responses:**

CRITERION A - Methodology for the delivery of the Chaplaincy Service and ability to meet LYIT's requirements [Weighting 45%]

Tenderers must complete Section J of the TRD at Appendix 2

Please describe the approach the proposed Chaplain(s) would take in relation to the following:

- proposed approach and service delivery methodology
- identification of challenges and proposed solutions in providing chaplaincy to varying age cohorts (predominantly 17-25).
- Developing & improving the service offered to LYIT students.
- Ensuring continuity would be maintained in the event of the proposed chaplain(s) being unavailable.

Please ensure that each point is addressed individually as points will be awarded based on completeness of submission.

Response must be limited to four (4) A4 pages.

*The Contracting Authority **may**, at its discretion, invite tenderers to provide a short presentation to supplement their response to this criterion. Tenderers will not be permitted to enter any dialogue or admit any new information during such presentations, in relation to price or any items which would result in significant changes to their tender submission. Please see Section 1.2.3 of Appendix 1 for further details.*

This criterion will be evaluated as a whole.

CRITERION B - Technical merit of the human resources committed to the contract [Weighting 20%]

Tenderers must complete the CV template at Section J of the TRD at Appendix 2 for all of the personnel proposed for this contract.

Tenderers must provide details on their expertise, experience and qualifications outlining how this demonstrates their ability to meet the requirement of providing Chaplaincy services. The Chaplain(s) proposed for this contract must have, as a minimum:

- An approved 3rd level qualification in Pastoral Care, Chaplaincy, Theology, Divinity, etc.
- Experience in working with students and staff in pastoral situations;
- Strong communication, leadership and interpersonal skills;
- Interest in student related welfare issues, enthusiasm for preventing same and promoting positive student lifestyle

- Good administration and IT skills
- Willingness and ability to work in a multi-faith, multi-cultural and/or non-belief situations
- Experience of working independently in a position of trust and the ability to observe confidentiality in their dealing with staff and students.

This criterion will be evaluated as a whole.

CRITERION C – Ultimate Cost [Weighting 35%]

Tenderers should detail this information by completing the appropriate Pricing Schedule at Section J of the TRD at **Appendix 2**.

Methodology for evaluation of tenders received

(i) Evaluation of Qualitative Criteria (A & B)

Qualitative Award Criteria A & B will be assessed first. Details of the scoring that will be applied to the Tender response to each qualitative award criterion are set out below. Tenderers should note that they must achieve the minimum qualifying threshold of 60% for criteria A&B. Failure to achieve the 60% threshold in any one criterion will result in the elimination of the Tender from the Competition.

Scoring of the qualitative criteria will be based on an assessment of the full provision of the information requested by the Contracting Authority from Tenderers, which must be supplied by Tenderers via the completed Tender Response Document (TRD) which is provided as a separate attachment to this RFT and located at **Appendix 2**. The Evaluation Panel will assess the information provided and each response element.

The following approach to scoring will be used to evaluate criteria A and B above:

CRITERIA A & B	
Weighting	Scoring Option
100%	Outstanding
90%	Excellent
80%	Very Good
70%	Good
60%	Satisfactory
Anything less than 60% is a fail	

(ii) Evaluation of “Ultimate Cost” (Criterion C)

In establishing ultimate cost, we will use the items priced in the Pricing Schedule at Section J of the TRD at **Appendix 2**. The lowest cost Tender which 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 by using the following formula:

$\text{Cost Score} = \frac{\text{Lowest Tendered Rate}}{\text{Tendered Rate under evaluation}} \times \text{Maximum Number of Marks Available}$

Note: 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, in particular, to source the requirement with more than one service provider.

3.3.2 Subject to parts 2.1 (Important Notices) and 3.5 (Standstill Period) of this RFT, award of the Services Contract to the highest ranked Tenderer (as determined by paragraph 3.3.1) will be conditional upon:

- (a) the Tenderer submitting the following evidence in respect of the Tenderer (including the Prime Contractor and any Subcontractors, as applicable in accordance with part 3.1 above) to the extent not already provided, within seven (7) days of request by the Contracting Authority:
 - (i) declarations at ESPD and Declaration as to Personal Circumstances of Tenderer in the forms attached within the TRD at **Appendix 2**;
 - (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion;
 - (iii) all or any of the supporting documents specified at part 3.2; and
- (b) the evidence specified at 3.3.2(a) above demonstrating that each entity concerned meets the Eligibility Criteria and that no Exclusion Grounds apply.

3.4 Presentation of Proposals

Tenderers may be required, at the Contracting Authorities discretion, to make a presentation in support of the proposal contained in their Tender, related to Award Criterion A. Details are included at section 1.2.3 at **Appendix 1**. The Contracting Authority will not be responsible for the cost of such presentations (in accordance with paragraph 2.8). Performance at presentations will NOT be evaluated.

3.5 Standstill Period

3.5.1 In circumstances where Directive 89/665/EEC as amended by Directive 2007/66/EC (the “Remedies Directive”) applies, no contract can or will be executed or take effect until at least

fourteen (14) calendar days after the day on which the Tenderers have been sent a notice informing them of the result of this Competition (the “Standstill Period”) if such notice is sent by electronic means. The Standstill Period shall be sixteen (16) calendar days if such notice is sent by other means. The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.

- 3.5.2 Tenderers should note that the Contracting Authority may, when notifying Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the preferred bidder in respect of each award criterion assessed by the Contracting Authority.

3.6 Return of Signed Contracts

- 3.6.1 The successful Tenderer must sign and return the Services Contract and the Confidentiality Agreement, both in duplicate, to the Contracting Authority no later than **seven** calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing by the Contracting Authority. A signed Services Contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Services Contract in accordance with paragraph 2.1.2 above.
- 3.6.2 Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period as specified at clause 3.6.1 then the Contracting Authority may proceed to award the Services Contract to the next highest- ranked Tenderer in accordance with paragraph 3.6.1 above.

Appendix 1: Requirements and Specifications

Tenderers must address each of the issues and requirements in this part of the RFT and submit a detailed description in each case which demonstrates how these issues and requirements will be dealt with / met and their approach to the proposed delivery of the Services. A mere affirmative statement by the Tenderer that it can/will do so or a reiteration of the tender requirements is NOT sufficient in this regard.

Letterkenny Institute of Technology (LYIT) is a Higher Education Institution with campuses located in Letterkenny and Killybegs. LYIT has approximately 4,800 full-time and part-time students and offers courses at various levels up to and including Doctoral level in a range of disciplines. The Institute also provides a range of services, working in partnership with business and community organisations to provide higher education throughout the region and to promote the economic, social and cultural development of our region.

The Chaplaincy Service at LYIT is part of a wider student support team that aspires to nurture growth towards individual autonomy in all students. LYIT's on-campus student services/support network currently consists of:

- Access and Academic Support
- Careers & Employability
- Counselling & Chaplaincy
- Health & Wellbeing
- Sports
- Students Union, Clubs & Societies

The current Chaplaincy Service is an on-campus service that provides a support and listening service to a diverse cohort of students. Its central role is in providing support and expertise to students dealing with difficult pastoral care issues and situations.

Full general information concerning the Contracting Authority is available on the Institute's website: www.lyit.ie

Introduction

Letterkenny Institute of Technology (LYIT) invites tenders for the provision of a Chaplaincy Service at both their Letterkenny and Killybegs campuses.

Any contract/s arising from this tender will be awarded for an initial period of two (2) years: from 01 September 2021 to 31 August 2023 with the option to extend for a period of up to one academic year with a maximum of two such extensions. Note, LYIT together with partners GMIT and IT Sligo aim to be designated as a Technological University from January 2022. Technological University designation will not impact the award of this contract.

All contract renewals will be subject to the conditions set out in 1.5.2

LYIT Background Information

1 Scope of the Contract

1.1 Introduction

LYIT has a dynamic and interactive campus environment. The dedication and commitment of our staff and students is reflected in the energy and enthusiasm that extends to every aspect of our goal to support a positive student experience.

Students have many opportunities to participate in activities that support their academic, cultural, social, sporting interests and preferences. LYIT recognises that college life can be challenging and provides a comprehensive range of student support services.

Chaplaincy is one of the key student support services (see 1.2.1) in LYIT which report to the Student Services Manager. The overall role of the Chaplain is the provision of pastoral care in LYIT.

By its nature, the Chaplaincy role encompasses the facilitation of spiritual and pastoral welfare of all the students, irrespective of faith, religious conviction, belief and or none of these.

The appointee(s) must have the ability to respond to the pastoral needs of students however they may arise and across different religious and cultural beliefs.

1.2 Detailed Specification of Requirements

While there will be issues that are common to all students, it should be noted students are predominantly between the ages of 18 years and 23 years with a small number under 18 (minors). There are also a significant number over the age of 23 years (mature students) who are likely to present with different issues.

1.2.1 The provision of the Chaplaincy service will include but is not limited to the following services:

- Ability to outreach to students and their families and the provision of an open, caring and sensitive environment.
- Strive to promote dignity and respect for each individual within the college community.
- Be willing to be part of the team of student services which includes:
 - Access and Academic Support
 - Careers & Employability
 - Counselling & Chaplaincy
 - Health & Wellbeing
 - Sports
 - Students Union, Clubs & Societies
- Provide support and expertise to students dealing with difficult pastoral care issues and situations.
- Provide/arrange opportunities for spiritual engagement, where possible of an inclusive nature.
- Support the administration and delivery of the Chaplaincy Emergency Fund which assists student who present in financial crisis.
- Participate in events and committees/groups to support and develop the chaplaincy role which actively engages with students.
- Actively support and contribute to the student induction programme
- Actively support the student volunteer programme
- Liaise with academic, technical and administration staff whenever necessary for the enhancement of the student experience.
- Provide opportunities for young people to experience positive spiritual, physical and psychological growth
- Develop and maintain effective relationships with the major faiths in the region.
- Take an active, focused role in the promotion and provision of the chaplaincy service.
- Be available to visit students' homes, hospital etc as is deemed appropriate given the presenting circumstances.
- Represent the Institute where possible and appropriate at funerals, services and memorials
- Develop/Support educational events, workshops and initiatives which encourage student engagement
- Support the development of a Chaplaincy Policy for LYIT.
- Provide an annual report to the Student Services Manager at the end of each academic year and/or when deemed necessary by the Student Services Manager.
- Issue LYIT staff and student bereavement notices to the Institute community.

1.2.2 Qualifications, skills and experience of proposed Chaplain

The Chaplaincy service may be provided by an individual or a team of chaplains. The Chaplain(s) will be required to demonstrate that they have suitable qualifications, skills and experience, per the requirements of Award Criterion B, to carry out the role and duties as outlined in this document. The Chaplain(s) proposed for this contract must have, as a minimum:

- An approved 3rd level qualification in Pastoral Care, Chaplaincy, Theology, Divinity, etc.
- Experience in working with students and staff in pastoral situations;
- Strong communication, leadership and interpersonal skills;
- Interest in student related welfare issues, enthusiasm for preventing same and promoting positive student lifestyle
- Good administration and IT skills
- Willingness and ability to work in a multi-faith, multi-cultural and/or non-belief situations
- Experience of working independently in a position of trust and the ability to observe confidentiality in their dealing with staff and students.

Tenderers should note that should it be necessary for the nominated chaplain(s) be replaced at any time during the lifetime of this contract, approval must be sought from LYIT prior to the appointment of replacement. Only replacements who are similarly qualified and experienced will be permitted to take on the role. Failure to offer a similarly qualified and experienced replacement will result in termination of this contract.

1.2.3 Presentation requirements

The Contracting Authority **may**, at its discretion, invite tenderers to provide a short presentation to supplement their response to Award Criterion A. Should LYIT decide that a presentation would be necessary, it would be a requirement that the proposed Chaplain(s) would be the person to deliver the presentation.

The presentation would be no more than 15 minutes duration, and should address, in particular, how the proposed Chaplain(s) would deal with the following situations (with reference to the specification at 1.2.1):

- A student who has received a serious health diagnosis in relation to a family member;
and
- A first-year student, living away from home, who is finding the transition to college life extremely difficult

The presentations will be scheduled for July 2021, and tenderers will be advised closer to the time of the specific date, time and venue for their presentation.

Tenderers will not be permitted to enter any dialogue or admit any new information during such presentations, in relation to price or any items which would result in significant changes to their tender submission.

1.2.4 General

The Chaplain(s) will be expected to operate within the Contracting Authority's policies and procedures at all times.

The Chaplain(s) appointed must comply with all relevant legal and policy requirements. The Chaplain(s) will act as a data processor of the Institute and a data processing agreement will be put in place. The Chaplain(s) may have access to personal data relating to the students and staff of the Institute and, as such, will undertake data protection training and cyber security training offered by the Institute and will comply with all IT Acceptable Usage Policies.

It will be a condition of this contract that the Chaplain(s) appointed must complete a Garda Vetting form and authorise LYIT to conduct a background check with the Garda Vetting Bureau (GVB) prior to commencement. Should the check present evidence of prior convictions, LYIT may request the nomination of a substitute Chaplain with equal qualifications and experience for approval. This nomination will be required to undertake the vetting process as outlined above.

Where the service is to be provided by a recognised Religious Authority the nominated person will be duly licensed by that Authority for the period of the contract.

This tender process and any contract following from this tender competition refers to the provision of a service to LYIT and will not lead to a contract of employment within the Contracting Authority.

LYIT estimates that the expenditure on the services to be covered by this contract will amount to no more than €42,000 (excl. vat) per academic year. This figure is an estimate only based on current and future expected usage.

1.3 Delivery Locations

Delivery is required at:

- LYIT Letterkenny Campus (*majority of time will be spent on this campus*)
- LYIT Killybegs Campus

1.4 Attendance on Campus

It is anticipated, that based on the level of service provided in recent years, the Chaplain(s) will be available on site as follows:

- Academic years 2021/22, 2022/23, 2023/24 & 2024/25: approximately 37 hours per week for 35 weeks (September to June) and spread over five days per week, (Monday to Friday and predominately during academic term time) (weeks to be defined annually in line with the academic calendar). The provision of the service will take place mainly during the normal college day (i.e. 9am-5pm), however there will also be a requirement to be available outside these times, including weekends, for both arranged and unexpected events. Tenderers should include their hourly rate for such events in the Pricing Schedule at Section K of the TRD at **Appendix 2**. Additional hours, when/if required must be pre-approved by the Student Services Manager.
- The Chaplain(s) will be predominately required on site in the Letterkenny campus, however a periodic on-site service will be required in Killybegs e.g. once per month. Service to the Killybegs campus should be predominantly via remote means. The cost of travel from the Letterkenny campus to the Killybegs campus will be covered by LYIT at applicable public sector rates. Travel must be approved in advance by the Student Services Manager.
- LYIT will provide one office for the Chaplaincy Service. Where the Chaplaincy Service consists of more than one individual, the office will be a shared space. In addition, LYIT will provide a Chaplaincy email address, phone and cover the cost of photocopying for LYIT purposes.

1.5 Account Management

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.

1.5.1 Invoicing

Invoices shall be submitted by the successful tenderer bi-annually. All official invoices must quote a purchase order number and be submitted directly to accounts@lyit.ie.

- All professional services are subject to withholding tax and payments for this service fall under this category. This 20% withholding tax will be deducted from the VAT exclusive invoice amount.
- Withholding tax can be claimed back from Revenue by the tenderer.

1.5.2 Annual Review of Performance

Performance will be monitored on an on-going basis in a manner to be agreed between the parties and may be subject to implementation of a Service Level Agreement with measurable Key Performance Indicators.

Options on renewal/continuation of a contract will be subject to the following:

- (a) Satisfactory annual performance review
- (b) On-going business need
- (c) Budgetary constraints

- (d) Instructions from Central Government to adopt national / sectoral specific frameworks
- (e) Alignment with Technological University requirements

It is expected that the successful tenderer(s) will take a proactive role in monitoring performance with a view to making appropriate recommendations where necessary.

Appendix 2: Pricing Schedule

Please See attached Appendix 2 - Tender Response Document attached separately to this RFT.

Appendix 3: Services Contract

Letterkenny Institute of Technology

and

[Insert successful Tenderer's full legal name]

AGREEMENT

Relating to the provision of Services pursuant to
Request for Tenders for the provision of Chaplaincy Services

THIS AGREEMENT is made on the [date e.g. 2nd] day of [month] 20[year] BETWEEN:

Letterkenny Institute of Technology, of Port Road, Letterkenny, Co Donegal (“the Client”);

and

[Contractor's full legal name], of [address] (“the Contractor”)

(each a “Party” and together “the Parties”).

WHEREAS:

- A. By Request for Tender entitled “RFT 05/21 for the Provision of Chaplaincy Services to Letterkenny Institute of Technology” advertised on the Irish Government’s E-Tender’s Portal www.etenders.gov.ie on **04 May 2021, Notice Number 189555**, (“the RFT”), the Contracting Authority invited tenders from economic operators (“Tenderers”) for the provision of the services described in **Appendix 1** to the RFT (the “Services”). References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie between **04 May 2021** and **31 May 2021** (the “RFT Clarifications”). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date of Tender] (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the “Submission Clarifications”). The Submission (including the Submission 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 RFT; and
 - iii. The Submission.
2. The Contractor agrees to provide the Services described in Schedule B (“the Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT and the Submission (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client 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 Client’s Contact is **Rory McMorrow** of **Letterkenny Institute of Technology, Port Road, Letterkenny, Co Donegal**; 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 if not applicable:

The Client reserves the right to extend the Term for a period or periods of up to **[INSERT NUMBER]** months with a maximum of **[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 RFT.
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.

SIGNED for and on behalf of the Client	SIGNED for and on behalf of the Contractor
_____	_____
(being a duly authorised officer)	
Witness	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 the Services 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 Services 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 3 the Contractor shall:
1. provide the Services in accordance with the Specification, the RFT, the Client'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 Client 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 Client; and
 4. provide the Services 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 Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU. 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.
- 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 Submission 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.
- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Article 57 of EU Directive 2014/24/EU apply to any Subcontractor, the Client 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 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 Client. 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 Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client 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 10.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client 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.
- H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the “TUPE Regulations”) and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Client under the TUPE Regulations by any Affected Employees. Affected Employees shall mean those employees in respect of whom the TUPE Regulations may be deemed to apply in connection with this Agreement.

2. Key Personnel

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission (“Key Personnel”), assigned by it to provide the Services shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. In the event that any of the Key Personnel assigned by the Contractor to provide the Services under this Agreement becomes unable to provide the Services for whatever reason then, the Contractor acknowledges and undertakes that it shall

immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3. Payment

- A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner 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 10A from time to time;
 - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to the Client'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 Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client'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 Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and
 - 4. The Client 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 Client in respect of any breach of this Agreement), the Parties 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 Client. 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. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client 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 Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

4. 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 provide the Services 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 Services 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. 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 Article 57 of EU Directive 2014/24/EU apply to the Contractor, remains unchanged;
 7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
 8. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material

change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.8; and

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

it has inspected the Client's premises, lands and facilities before submitting its Submission 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.

10. the Client shall be under no obligation to purchase any minimum number or value of Services.

- B. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

5. Remedies

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly 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 5A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, 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 Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- 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 (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed [insert amount – eg: [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 Client 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 Client shall identify the particular Services 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 said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5F shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

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

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

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

Without prejudice to any general right to damages under this Agreement where the Contractor does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Client 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 Services (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 Client 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 Client shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor.

6. Intellectual Property

- A. Intellectual Property Rights (“IPR”) means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor’s standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.
- D. The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client’s Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and

experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.

- G. The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any liability loss 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.

At the option of the Client for and in respect of any such breach, the Contractor shall at its expense and option:

- (i) procure the necessary rights for the Client to continue use;
- (ii) replace the relevant deliverable with a non-infringing equivalent;
- (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
- (iv) if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all direct losses thereby accruing to the Client as a result of the breach.

- H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

7. 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 7; or
 4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (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 Client with regard to the use and application of all and any Confidential Information and shall comply with the confidentiality agreement as exhibited at **Appendix 4** to the RFT (“the Confidentiality Agreement”).

The obligations in this clause 7 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. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.
- D. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client 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 Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any Freedom of Information request received.
- E. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

8. 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 8B

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 supply 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 Client 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.

9. Termination

A. Subject to the provisions of sub-clause 9B, this Agreement may be terminated by the Client, without liability for compensation or damages, by serving [insert period of time months] written notice to the Contractor. Subject to the provisions of sub-clause 9B, 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 Client.

B. Either Party 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 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 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;

and/or

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.
- C. The Client 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 Client becomes aware that any of the exclusion grounds set out in Article 57 of EU Directive 2014/24/EU apply to the Contractor.
- 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 Client which is in its possession.
- F. If requested by the Client, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client ("Employment Information"). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

10. Contract Management

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
1. liaise with and keep the Client'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 as required by the Client from time to time;

3. comply with all reasonable directions of the Client; and
 4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client 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 Client thereby arising. The cost of inspection shall be borne by the Client.

11. 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 senior 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 (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.

12. 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.

13. 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 13.
- 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.

14. 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.

15. 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.

16. 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.

17. 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.

18. Non-exclusivity

Nothing in this Agreement shall preclude the Client from purchasing services (or Services) from a third party at any time during the currency of the Agreement.

19. 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 Client.

20. Conflicts, Registrable Interests and Corrupt Gifts

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise the Client forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, 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 Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and to comply with the Client's directions in respect thereof, to the satisfaction of the Client. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 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 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement forthwith 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.

21. Access to Premises

- A. Any of the Client's premises made available from time to time to the Contractor by the Client 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 Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for the Client under this Agreement.

22. Equipment

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Services (“Equipment”).
- B. All Equipment brought onto the Client’s premises shall be at the Contractor’s own risk and the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client’s premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.
- C. The Contractor shall maintain and store all items of Equipment within the Client’s premises in a safe, serviceable and clean condition.
- D. The Contractor shall, at the Client’s written request, at its own expense and as soon as reasonably practicable:
 - i. remove from the Client’s premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
 - ii. replace such item with a suitable substitute item of Equipment.
- E. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Client’s premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

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 Client 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 Client 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 Services (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 Submission 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 Client 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 Client’s request for any variation is subsequently withdrawn but results in a delay in the performance of the Services 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.

Schedule B: Services: The Specification

[Insert when completing contract]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels

[Insert at RFT stage, if applicable, or when completing contract]

Appendix 4: Confidentiality Agreement

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

Letterkenny Institute of Technology, of Port Road, Letterkenny, Co Donegal, (hereinafter “the Contracting Authority”) of the one part;

and

[Contractor's legal name: to be completed on signing.], of [Contractor's 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 services described in **Appendix 1** to the RFT (the “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 (the “Confidential Information”) as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to the Client.

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 him 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 provision of services under the Contract and all and any information supplied or made available to the Contractor (to include agents, Subcontractors, customers and suppliers) for the purposes of the Contract (s); and

- 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
- 3.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
- 3.2 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.

4. 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).
5. The Contractor undertakes:

- 5.1 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 Acts, 1988 and 2003);
- 5.2 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;
- 5.3 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; and
- 5.4 to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:
 - i Data Protection Acts, 1988 and 2003; 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 transfers of data abroad) and any legislation and regulations implementing same.
6. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by the Contracting Authority and the Contractor so acknowledges and confirms.
7. 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.

8. 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.
9. 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.

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