



NPWS

An tSeirbhís Páirceanna
Náisiúnta agus Fiadhúlra
National Parks and Wildlife
Service

Request for Tenders dated 1st of
November 2024

For the provision of **Updated Habitat
Mapping and Habitat Condition
Assessments of Mount Brandon
Uplands within Páirc Náisiunta na
Mara, Ciarraí**

Tender Procedure: Open procedure

Tender Deadline: 25th November
2024

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- 1.2. The National Parks and Wildlife Service (NPWS) of the Department of Housing, local Government and Heritage (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”).
- 1.3. In summary, the Services comprise the following:

Páirc Náisiúnta na Mara, Ciarraí, (PNMC) established in April 2024, is Ireland’s newest and largest National Park. It comprises several sites of ecological, cultural, historical and archaeological significance. Several of these sites occur within Mount Brandon Special Area of Conservation, which has been designated under the EU Habitats Directive for upland habitats. Parts of these sites are also designated as a Special Protection Area under the EU Bird’s Directive, and as a Nature Reserve under the provisions of the Wildlife Act (1976 – 2023).

Habitats at these sites were last mapped during the National Survey of Upland Habitats carried out in 2011 – 2013; please see supporting documents for Mount Brandon SAC for details of these studies: <https://www.npws.ie/protected-sites/sac/000375>.

The NPWS now wish to commission (1) a **desktop review** of the existing **ecological datasets pertaining to habitats present at these sites** and (2) a **Habitat Condition Assessment** of lands occurring at two sites within Páirc Náisiúnta na Mara, Ciarraí: **(1) Owenmore River Valley and (2) Mount Brandon Uplands**. This is (i) to both update and improve our understanding of the occurrence and distribution of habitats found here, (ii) to record trends in habitat condition based on re-survey of the NSUH monitoring plots and, if warranted, (iii) to establish appropriate additional habitat condition monitoring plots to augment any habitat and condition data deficiencies and so better inform on habitat condition trends and responses to any future management actions.

- 1.4. This project is being funded through the **National Parks and Wildlife Service (NPWS)**, an Executive Agency within the Department of the Housing, Local Government and Heritage
- 1.5. 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 **12 Months** (“the Term”).
- 1.6. The Contracting Authority reserves the right to extend the Term for a period or periods of up to six months with a maximum of two such extension or extensions on the same terms and conditions, subject to the Contracting Authority’s obligations at law.

- 1.7. 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.
- 1.8. Larger enterprises are also encouraged, subject to paragraph 2.5, to consider the practical ways that SMEs can be included in their proposals to maximize the social and economic benefits of any Services Contracts that may result from this Competition.

PART 2: INSTRUCTION TO TENDERS

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.
- 2.1.3. This RFT does not constitute an offer or commitment to enter into a Services Contract.
- 2.1.4. 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.
- 2.1.5. Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer.
- 2.1.6. 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.
- 2.1.7. The award of a Services Contract does not confer exclusivity on the successful Tenderer
- 2.1.8. 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.
- 2.1.9. In this clause 2.1.4, “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU)

2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

- 2.1.10. The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this RFT.
- 2.1.11. 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 the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

2.2. COMPLIANT NEEDS

- 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; or

waiving a requirement, which in the Contracting Authority’s view, is non-material or procedural.

TENDERERS ARE REQUIRED:

- (a) To complete and submit with their Tender the electronic version of the European Single Procurement Document (“[eESPD](#)”). Tenderers 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 Selection 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 this RFT;

- (d) To conform to and comply with all instructions and requirements set out in this RFT;
- (e) To submit the statement required under paragraph 2.4 below; and
- (f) 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 5 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 Appendix 3. Tenderers may not amend the Services Contract.

2.4. ACCEPTANCE OF RFT REQUIREMENTS

- 2.4.1. 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 in Appendix 3, 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 Competition through a single nominated entity authorised to represent all members of the group of undertakings. The Tenderer must provide details of all members of the group of undertakings and their role in the Tender and clearly set out the contact details including name, title, telephone number, postal address, facsimile number and e-mail address of the nominated entity 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 will NOT be accepted, acknowledged or responded to.

Prior to and as a condition of award of any Services Contract, the successful Tenderer shall be required to designate a single entity who will carry overall responsibility for the Services Contract (the "Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the "Subcontractor").

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.

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 10.00 on 25th of November, 2024 (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. Subject to paragraph 2.14 and 2.18, each Tenderer is limited to submitting one Tender in its 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 Word/PDF. 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 14:00 on November 15th 2024 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 Competition if so requested by the Contracting Authority.

2.10. PRICING

- 2.10.1. All Tenderers must complete the Pricing Schedule 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 5 to this RFT.

2.11. ENVIRONMENTAL, SOCIAL AND LABOUR LAW

- 2.11.1. In the performance of any Services Contract awarded, the successful Tenderers and 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 Schedule 7 of the Regulations.
- 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 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. PUBLICITIY

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

- 2.13.1. 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.

2.13.2. 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.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 and the European Communities (Access to Information on the Environment) Regulations 2007 to 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 the specific sections of their Tender containing such information and specify the reasons for its confidentiality or commercial sensitivity. For the avoidance of doubt Tenderers may not assert confidentiality or commercial sensitivity over the entire Tender but must clearly identify the specific section containing such information. If Tenderers do not identify information as confidential or commercially sensitive, it is liable to be released in response to a request under the above legislation without further notice to or consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about confidential or commercially sensitive information so identified before making its decision on a request received. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

2.17. TAX CLEARANCE

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 applicable 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. Tenderers are required to declare that the preparation of their Tender was carried out independently. 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 and in circumstances where there are links between Tenderers, the Contracting Authority may seek further information to confirm the Tenders have been prepared independently. 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 any Mini-Competition or terminating any Framework Agreement or 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

A site visit can be arranged if required by Tenderers.

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 | €13,000,000 any one event where applicable |
| Public Liability | €6,500,000 any one event |
| Product Liability | N/A |
| Professional Indemnity | €1,000,000 any one claim excluding defence cost |

2.21.2. By signing the Tenderer's Statement at Appendix 3, Tenderers confirm that, if awarded a Services Contract under this Competition, (i) 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, (ii) the territorial limits and jurisdiction of its insurance policies include Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the Tenderer's insurance company or broker to this effect will be requested from the successful Tenderer(s) prior to the award of (and shall be a condition of) any 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: SELECTION AND AWARDS CRITERIA

3.1. COMPLIANT TENDERS

3.1.1. Only those Tenderers who have:

- (a) Submitted compliant Tenders pursuant to paragraph 2.2 above, and;
- (b) Declared by way of eESPD that either:
 - i. no mandatory grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Regulations apply to them, or
 - ii. in circumstances where any mandatory exclusion grounds apply to the Tenderer (and where the Tenderer is not precluded from doing so under Regulation 57(17) of the Regulations), that it can provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability despite the existence of any such relevant exclusion ground, and
- (c) Declared by way of eESPD that they satisfy the selection criteria for this Competition as set out in part 3.2 below (the "Selection Criteria"), will be evaluated in accordance with the Award Criteria at part 3.3 below.

However, please note that the Contracting Authority also reserves the right to exclude from evaluation a Tenderer to whom a discretionary ground for exclusion pursuant to Regulation 57 of the Regulations applies.

Tenderers should note that where a Tenderer is relying on the capacity of other entities (for example, Subcontractors) for the purposes of fulfilling any of the Selection Criteria in part 3.2 below it must ensure that each such entity:

- i. completes and submits a separate eESPD in respect of each such entity, and
- ii. when requested by the Contracting Authority, submit proof, to the satisfaction of the Contracting Authority, that each such entity will place the necessary resources at the disposal of the Tenderer.

The Contracting Authority may decide to examine Tenders before verifying the absence of exclusion grounds in Regulation 57 of the Regulations (the “Exclusion Grounds”) and the fulfilment of the Selection 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 in the form attached at Appendix 4;
- 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 Selection 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 Selection 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. SELECTION CRITERIA

3.1.2. Tenderers will either pass OR fail each of the Selection Criteria in this part 3.2. A Tenderer who fails a selection criterion will be excluded from participating in this Competition.

(a) **Economic and Financial Standing**

Tenderers must declare by way of eESPD 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.

See eESPD section on eTenders Portal

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 valid 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.

(b) **Technical and Professional Ability**

Tenderers must declare by way of eESPD that they satisfy the technical and professional 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.

The tenderer must have proven experience in condition assessments for upland habitats. Specifically, the tender should have proven record in carrying out assessments under the National Survey of Upland Habitat guidance contained in Irish Wildlife Manual No. 79.

The tender must have experience in habitat mapping, specifically a proven record in producing habitat maps under EU Habitats Annex I habitat **and** Fossitt habitat criteria.

The tenderer should have proven experience in using **the Irish Vegetation Classification** system to classify vegetation communities.

The tenderer must have proven experience in using GIS to collect and collate field data.

Tenderers must provide the supporting documentation specified above without delay when requested by the Contracting Authority.

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:

Tenders must achieve a minimum score of 70 marks to be considered as potentially suitable.

| Criteria | Total Marks |
|-----------------------------------|-------------|
| Relevant experience and expertise | 35 |
| Service Delivery | 40 |
| Price | 25 |

3.3.2. Subject to paragraphs 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 paragraph 3.1 above) to the extent not already provided, within seven (7) days of request by the Contracting Authority: (i) a Declaration in the form attached at Appendix 4; (ii) if applicable, 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; (iii) all or any of the supporting documents specified at paragraph 3.2; and
- (b) the evidence specified at paragraph 3.3.2(a) above demonstrating that each entity concerned meets the Selection Criteria and the compliance requirements specified at paragraph 3.1(b) and (c) above.

3.4. PRESENTATION OF PROPOSALS

Tenderers may be required to make a presentation of the proposal contained in their Tender. 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 the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010), as amended by the European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory Instrument 192 of 2015) and the European Communities (Public Authorities' Contracts (Review Procedures) (Amendment) Regulation 2017 (Statutory Instrument 327 of 2017) apply, 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 ("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 7 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 paragraph 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.

Introduction

The **National Parks and Wildlife Service (NPWS)**, an Executive Agency within the Department of the Housing, Local Government and Heritage, provides the legislative and policy framework for the conservation of nature and biodiversity in the Republic of Ireland. It also oversees its implementation, based on good science, with particular emphasis on the protection of habitats and species.

Páirc Náisiúnta na Mara, Ciarraí, (PNMC) established in April 2024, is Ireland's newest and largest National Park. It comprises several sites of ecological, cultural, historical and archaeological significance. Several of these sites occur within Mount Brandon Special Area of Conservation, which has been designated under the EU Habitats Directive for upland habitats (Figures 1 & 2). Parts of these sites are also designated as a Special Protection Area under the EU Bird's Directive, and as a Nature Reserve under the provisions of the Wildlife Act (1976 – 2023) (Figures 1 & 2).

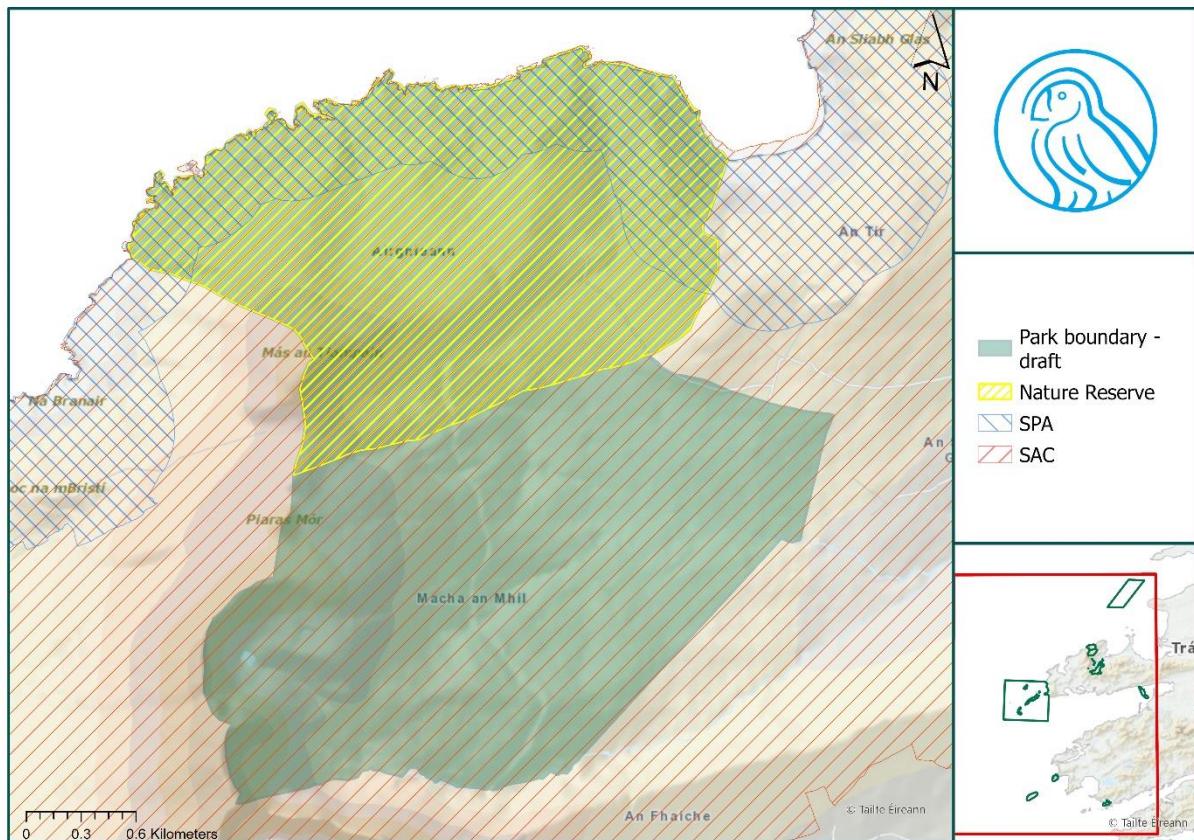


Figure 1: Existing nature conservation designations for the Mount Brandon uplands at Arraglen and Macha an Mhíl.

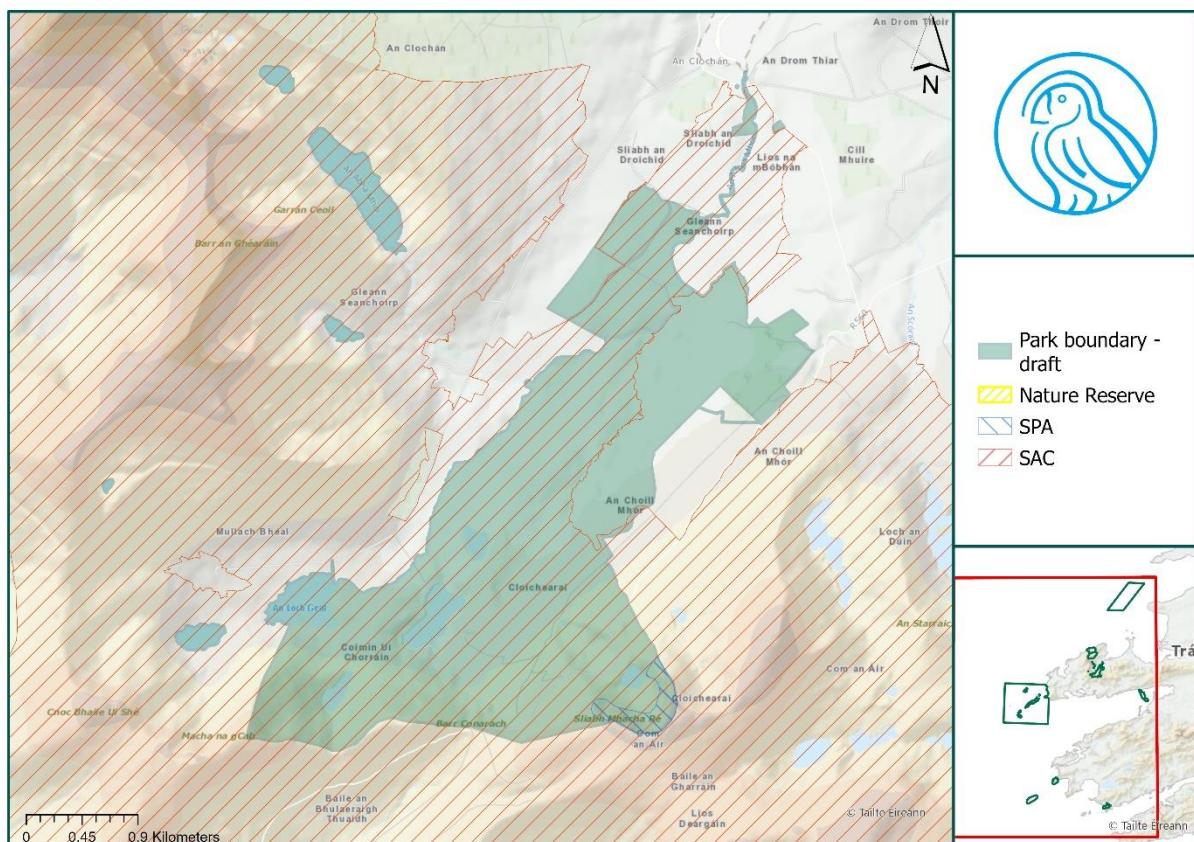


Figure 2: Existing nature conservation designations at the Owenmore River Valley.

Habitats at this site were last mapped during the National Survey of Upland Habitats carried out in 2011 – 2013; please see supporting documents for Mount Brandon SAC for details of these studies: <https://www.npws.ie/protected-sites/sac/000375>.

The NPWS now wish to commission (1) a **desktop review** of the existing **ecological datasets pertaining to habitats present at these sites** and (2) a **Habitat Condition Assessment** of lands occurring at two sites within Páirc Náisiúnta na Mara, Ciarraí: **(1) Owenmore River Valley and (2) Mount Brandon Uplands.** This is (i) to both update and improve our understanding of the occurrence and distribution of habitats found here, (ii) to record trends in habitat condition based on re-survey of the NSUH monitoring plots and, if warranted, (iii) to establish appropriate additional habitat condition monitoring plots to augment any habitat and condition data deficiencies and so better inform on habitat condition trends and responses to any future management actions.

STUDY AREA

Mount Brandon SAC comprises the central and north-western parts of the Dingle Peninsula. It is a mountainous area that encompasses several peaks including Mount Brandon (952 m), which is the highest peak outside of the Macgillycuddy's Reeks, Brandon Peak (840 m), and the Stradbally range which includes Beenoskee (826 m). The site includes the high sea cliffs of Brandon Head, as well as low-lying areas such as the Owenmore River/Cloghane River valley. Glaciation has played a large part in shaping the landscape into a series of ridges and valleys, with corrie lakes and steep cliffs. The underlying geology features Old Red Sandstone and Dingle Beds (the oldest Devonian rocks in Ireland). Conglomerates are also present.

There are two sites which occur within PNMC that are designated under Mount Brandon SAC, amongst other designations, and which are the focus areas for this survey:

1. Mount Brandon Uplands
2. Owenmore River Valley

The **Mount Brandon Uplands** occurs on the north side of the Dingle Peninsula and encompasses the entirety of two townlands: Airghleann and Macha an Mhíl (Figure 3). The area of this site amounts to approximately 988 ha/2441 acres. It includes the area of the Mount Brandon Nature Reserve, and borders the townlands of An Tir, An Sliabh Glas and An Fhaice to the east and south. To the north, it is bounded by the sea. A programme of conservation grazing by cattle has been in operation for several years within Mount Brandon Nature Reserve.

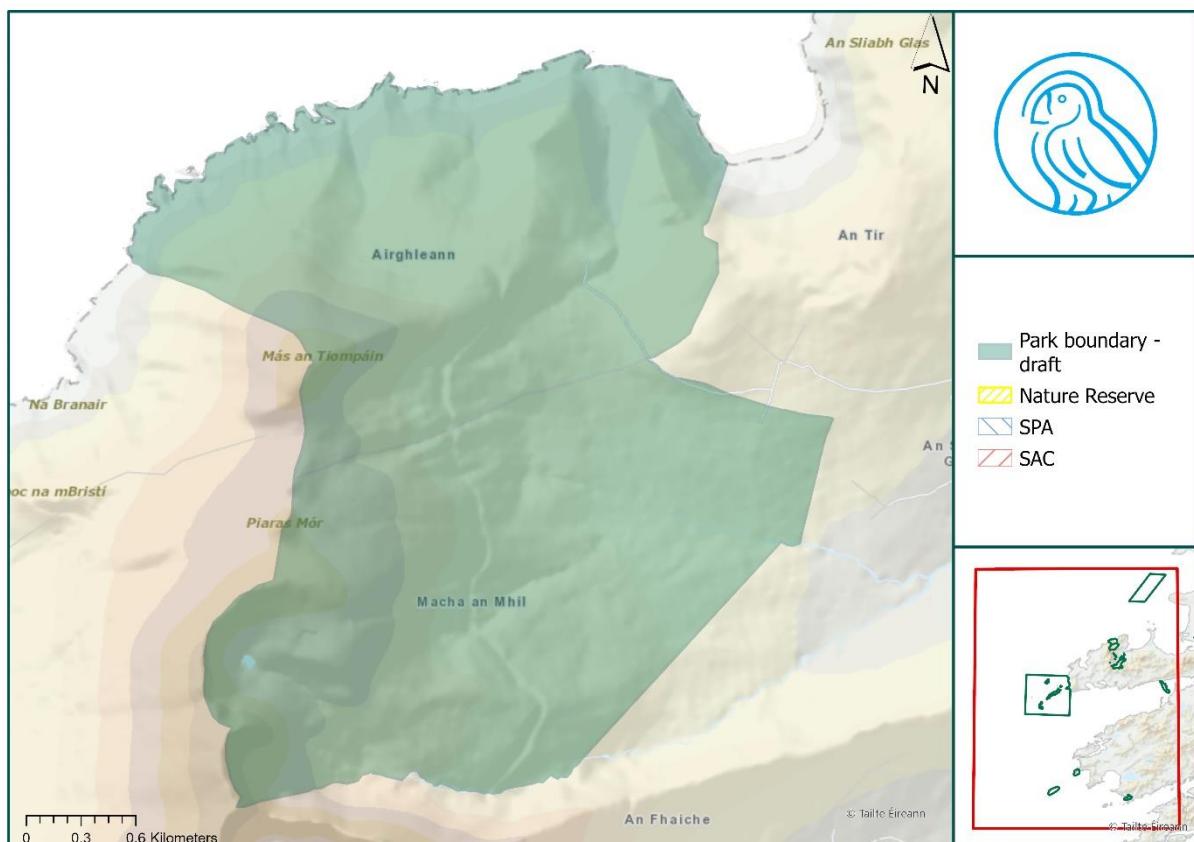


Figure 3: Mount Brandon uplands

The **Owenmore River Valley** stretches from the Conor Hill north to the mouth of the Owenmore River (Figure 4). It encompasses several upland lakes, blanket bog, much of the Owenmore River and its tributaries, and a commercial conifer plantation. There are areas of active peat harvesting under turbary rights, and older disused banks. The size of the area, including the 10 named lakes, is approx. 868 hectares/2144 acres including approx. 160 hectares of commercial conifer woodland. The Owenmore River catchment supports a population of freshwater pearl mussel and has supported a private fishery for sea trout and salmon for many years.

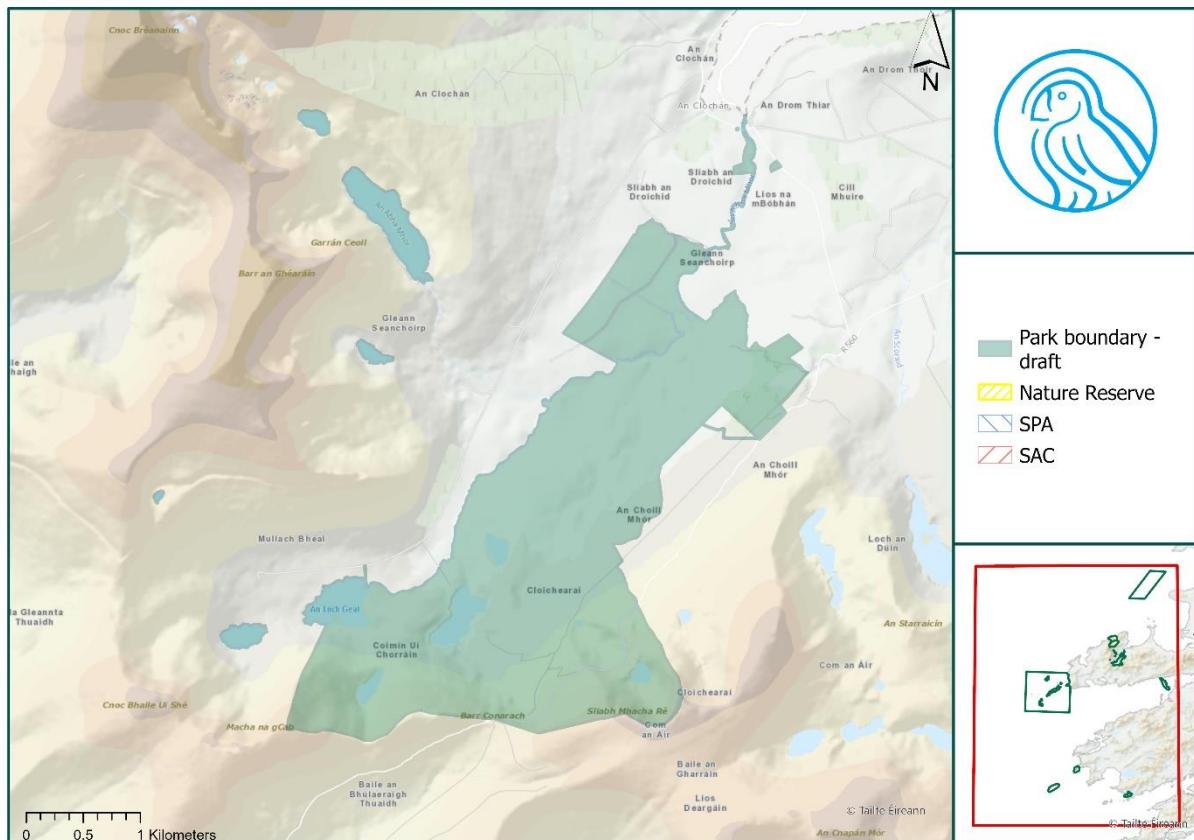


Figure 4: Owenmore River Valley

The most common habitats within these sites are wet and dry heath, and blanket bog. The heath occurs in areas of shallow peat and on the mineral soils of the mountain sides. It varies in nature from dry to wet. The dry heath is dominated by Heather (*Calluna vulgaris*) and Western Gorse (*Ulex gallii*), while the wet contains Cross-leaved Heath (*Erica tetralix*), Purple Moor-grass (*Molinia caerulea*), Carnation Sedge (*Carex panicea*) and bog mosses (*Sphagnum* spp.). The dry heath often grades into upland grassland which supports a range of characteristic grasses: Mat-grass (*Nardus stricta*), Common Bent (*Agrostis capillaris*) and Viviparous Fescue (*Festuca vivipara*).

A list of EU Habitats Directive Annex 1 Habitats previously mapped at these sites are present in Table 1. A full list of the qualifying interest habitats and species for both Mount Brandon SAC and

Dingle Peninsula SPA can be found on their respective information pages hosted on the NPWS website (<https://www.npws.ie>).

PROFESSIONAL SERVICE DESCRIPTION

REQUIREMENT NUMBER 01: INCEPTION MEETING

The successful Tenderer will be required to attend an Inception Meeting with the Contracting Authority at the outset of the project. At this meeting, the project plan will be discussed and details will be finalised.

The successful tenderer will also be required to attend a separate online meeting (duration c1hr) to discuss technical data and NPWS data delivery process (see further in Requirement 08)

REQUIREMENT NUMBER 02: BIOSECURITY

Contractors should take all reasonable measures to ensure that they do not inadvertently spread invasive alien species, either from seeds or other plant material, during the survey work.

Contractors should also ensure that they do not introduce other invasive species to the area. The Tenderer should provide a description of their proposed biosecurity protocols in their tender return.

REQUIREMENT NUMBER 03: STUDY AREA

The Study Area will comprise all areas, upland, roadside or otherwise, within the boundaries of PNMC as defined in Figure 3 & 4. A shapefile for this area will be provided to the successful tender.

REQUIREMENT NUMBER 04: DESKTOP REVIEW

Prior to surveying the site, the contractor will collate the available information from previous studies and surveys relevant to Mount Brandon SAC. Information might include previous NPWS surveys, academic studies, LIDAR and oral histories. All relevant ecological records relevant for the study area should be collated, including habitat GIS data; survey reports; rare plant species distribution, EPA catchment data, etc.

These datasets should be reviewed to identify any data gaps which exist. Where appropriate and in consultation with the NPWS, these outputs may be used to guide any habitat field survey work required under this RFT and any future similar field survey work at these sites.

Up to date aerial imagery should be compared with habitat mapping previously carried out during the National Survey of Upland Habitats in 2011 to identify any anomalies. These should be assessed to determine whether any such anomalies result from actual changes on the ground or are due solely to improved imagery. This may allow for a more accurate definition of habitat polygon boundaries mapped in 2011, which may, if required, be targeted by subsequent field work to update the NSUH maps.

Aerial imagery from the time of the NSUH survey and recent imagery should also be compared in order to identify any impacts which may have occurred since 2011 e.g. areas of fire damaged, track development, eroding areas, drains, livestock impacts etc. It is expected that this will also help inform elements of field survey work outlined in Requirement Number 05.

REQUIREMENT NUMBER 05: FIELD SURVEY

Survey methods for any additional survey work that may be required should in general follow guidance laid out in Irish Wildlife Manual No. 79 (*Guidelines for a national survey and conservation assessment of upland vegetation and habitats in Ireland - Version 2.0.*). Reference should also be made to Best Practice Guidance for Habitat Survey and Mapping (Smith et al. 2011), A Guide to Habitats in Ireland (Fossitt, 2000) and guidance on data collection for the Irish Vegetation Classification (Weekes & FitzPatrick 2010). Note also that some additional data will need to be recorded related to more recent updates to some IWM No. 79 task methodologies and these will be shared with the successful tender.

This project is seeking to build on the detailed baseline achieved during the NSUH survey and assess current conservation status of the habitats found here. This will support robust conservation management at this site, and data collection is expected to use a consistent methodology across the full suite of habitats present on site.

Any changes or updates to the extent and distribution of habitats mapped during the NSUH of these areas within Mount Brandon SAC are to be recorded where required, i.e., from areas previously unmapped and where anomalies have been identified during the Review Stage. Vegetation composition will be characterised using botanical relevés (in both Annex I and non-Annex I habitats) and the structure and function of Annex I habitats will be assessed in monitoring stops. (A list of the additional monitoring stop parameters will be provided to the successful tender by NPWS.) Positive and negative impacts should be digitised based on detection through aerial imagery analysis, and where necessary through ground validation during field survey work and informed by an examination of the NSUH monitoring stops data and recording of these monitoring stops to assess changes. Additional monitoring stops may be required to represent the range of variation in habitats and in the condition of the habitats across the site/s and will, among other ways, be informed by the analyses of existing data and the comparative assessment of recent and earlier (c. 2011) imagery. Information on threats, pressures and conservation actions taken should also be recorded and digitised – this could be augmented by interviews with local NPWS staff.

Additional details on the project asks are provided below:

1. Habitat mapping is only required where mapping did not previously occur during the NSUH programme (i.e., areas outside Mount Brandon SAC) **and** where anomalies have been identified by the Desktop Review in Requirement Number 04.
2. Habitats should be mapped within polygons containing areas with uniform habitat characteristics.

3. Minimum mapping units of 100m² for non-linear habitats and 2m*10m for linear or naturally small habitats (e.g. springs/flushes) will apply.
4. Where possible, given the minimum mapping units, each polygon should contain a single habitat. Mosaic polygons may be used where one or more Annex 1 habitat occurs in patches below the minimum mapping area within a larger habitat matrix. In this case, the % cover of each Annex I habitat present should be noted.
5. The estimated % cover of each Fossitt (Heritage Council Classification) habitat class present within each polygon should be recorded.
6. It is desirable that the estimated % cover of each NSUH plant community (See Appendix 1 in IWM No. 79 or update that will be provided to contractor by NPWS) and the equivalent IVC community present within each polygon should be recorded. This can be recorded in the field or through use of an equivalence table that will be provided to the contractor by NPWS).
7. It should be attempted to identify areas that are likely to correspond to 7130* active (peat-forming) and 7130 inactive (non-peat-forming) blanket bog (though guidance on this is preliminary at present thus the approach may best be to record cover of peat-forming bryophytes (and micro-topography) in the monitoring plots and relevé plots and give an indication on the extent of these areas such that this can be retrospectively used to identify such areas. (The plant communities equivalence table will also indicate which plant communities are regarded as potentially indicative active blanket bog).
8. The condition of Annex I habitats should be assessed using monitoring stops in accordance with established methodologies (aforementioned IWM No. 79 and any NPWS updates to same and also preliminary guidance on active blanket bog etc). Other Annex I habitats that occur on site should be noted however the question on whether monitoring stops are required for these habitats should be decided in consultation with NPWS.
9. Map damaged areas and assess the restoration potential of degraded areas including drained areas; areas damaged by peat-cutting; eroded or eroding areas; fire damaged areas; stock damaged areas etc.
10. Full botanical relevés will be recorded at all monitoring stops. The distribution of relevés should be representative of the variation in environmental conditions across the site.
11. The estimated number of relevés and monitoring stops anticipated per habitat is provided in Table 2. The final numbers will be informed by the Desktop Review and agreed with NPWS in advance. Each relevé will include vascular plants and bryophytes as well as information relating to vegetation structure and basic abiotic factors (slope, aspect, substrate etc.). Relevés should be assigned to IVC community or sub-community.

Table 1: Estimated coverage of Annex I habitats based on mapping carried out for the National Survey of Upland Habitat in 2011, and the corresponding number of monitoring stops. A relevé will be carried out at each monitoring stop. If the area of any habitat has significantly altered, the number of monitoring stops or relevés per habitat may also change. Please note: only areas within a Special Area of Conservation were surveyed during the NSUH effort; all areas which occur within PNMC are to be surveyed.

| Habitat - Annex I code | Habitat - Annex I name | Area (ha) | Minimum No. Stops with Relevés |
|------------------------|--|------------------------------|--------------------------------|
| 1230 | Vegetated sea cliffs of the Atlantic and Baltic coasts | 32.13 | 8 |
| 4010 | Northern Atlantic wet heaths with <i>Erica tetralix</i> | 789.58 | 20 |
| 4030 | European dry heaths | 392.42 | 16 |
| 4060 | Alpine and boreal heaths | 51.58 | 12 |
| 6150 | Siliceous alpine and boreal grasslands | 16.96 | 8 |
| 6230 | Species-rich <i>Nardus</i> grasslands, on siliceous substrates in mountain areas | TBC | TBC |
| 7130 | Blanket bogs (*if active) | 518.27 | 20 |
| 8110 | Siliceous scree of the montane to snow levels (<i>Androsacetalia alpinae</i> and <i>Galeopsietalia ladani</i>) | 13.96 | 8 |
| 8210 | Calcareous rocky slopes with chasmophytic vegetation | Not recorded by NSUH in 2011 | |
| 8220 | Siliceous rocky slopes with chasmophytic vegetation | 91.12 | 12 |

12. The location, intensity, extent of positive and negative impacts will be recorded spatially and both positive and negative impacts will be recorded according to the current Article 17 reporting codes and with a brief description – the list of impacts and impact codes should be the most recent version available (check Art 17 information on EU Commission website).
13. A spatial record should be made of features of relevance including noteworthy and/ or protected plants, evidence of past human activities (e.g. constructions; drainage; turbary areas; fire impacted areas; invasive alien species etc. As mentioned above damaged areas should be mapped.

Please note **NPWS Data Delivery Standards** must be adhered to for final data submissions (see Requirement 07). Interim data samples will need to be provided to NPWS during the project for initial quality assessment and feedback.

Schemas for the spatial data layers will be agreed in advance with the NPWS data team and Project Coordinator.

The Contractor shall provide a detailed description of their proposed survey methods in their Tender response.

REQUIREMENT NUMBER 06: REPORTING

A **survey report** will be prepared in a format suitable for publication as an *Irish Wildlife Manual* (a standard template based on recent NSUH survey reports will be provided to the contractor, however, the NSUH site survey reports currently hosted on the NPWS website will generally be followed but with the additional data from the above tasks to be included). It will include a review of relevant previously published information, context for the current survey, analyses of the NSUH data for the Mount Brandon SAC; with comparison also of c. 2011 and recent aerial imagery to identify the precise tasks and field survey needs of this project; general account of the site (landscape context, habitat types present, dynamic processes, main factors driving habitat creation and condition, features of interest), a description of current habitat condition and comparison with the NSUH baseline habitat condition data (including assessments in line with the Article 17 methodology for the Annex I habitats), and a discussion of the current conditions on the site and the range of pressures and threats that may be present and a comparison with those identified in the NSUH for the Mount Brandon SAC .

Advice should be provided on potential conservation management measures or restoration measures that may be appropriate to address pressure and threats on the site/s, as these will be considered when site management recommendations are drawn up.

Habitat mapping will be supplied in shapefile format and information on habitat condition will be supplied in tabular format.

A **species list** of all plant species (vascular and non-vascular) recorded during survey effort and opportunistically should also be supplied in an appropriate format.

Please note **NPWS Data Delivery Standards** must be adhered to for final data submissions (see Requirement Number 07). Note in particular the **requirement to provide detailed metadata** for all deliverables.

Schemas for the spatial data layers will be agreed in advance with the NPWS data team and Project Coordinator.

The Contractor shall provide a detailed description of their proposed survey methods in their Tender response.

REQUIREMENT NUMBER 07: PROJECT DELIVERY AND DATA STANDARDS

All project data deliverables must comply with the National Parks & Wildlife Service (NPWS) Data Standards. Full details of the NPWS standards can be found here: <https://www.npws.ie/maps-and-data/data-standards>. All data and metadata products produced by the project should be compatible with existing NPWS data management and GIS systems. Tenderers are referred to the document: **NPWS Data Standards and Project Delivery Guidelines** as a starting point for learning about the NPWS data standards and use of the NPWS project delivery template. It is advisable to be familiar with the project data delivery requirements at the tendering stage; this will ensure

adequate time for data management is allocated. The successful tenderer must liaise with the Project Co-ordinator early in the project to agree data requirements.

Spatial data arising from the project tasks should be collected and submitted in the Irish Transverse Mercator (ITM) co-ordinate reference system. Please consult with NPWS Data team with regards to the correct methods for conversion between different coordinate reference systems.

All data gathered in the field, processed and created as part of this survey remains the Intellectual Property (IP) of the National Parks and Wildlife Service (NPWS), who express overall ownership. This data cannot, without the express prior written permission of NPWS, be used for purposes other than for this project and the submission of the final report.

NPWS Open Data Policy is available [here](#). NPWS expects that outputs / findings should be widely disseminated and made publicly available, in an open format that can be freely used, re-used and shared by anyone for any purpose, unless restricted or excluded. NPWS publishes data which is not restricted or otherwise excluded to data.gov.ie.

REQUIREMENT NUMBER 08: GIS/DIGITAL MAPPING

The relevant NPWS GIS staff must be consulted prior to commencement of spatial dataset production. This should be organised through the NPWS Project Co-ordinator at the beginning of the project.

Prior to the initiation of the project, the successful tenderer must take heed of the GIS data standards and quality control checks outlined in the **NPWS Research Project Data standards**. *All data supplied must comply with these standards: <https://www.npws.ie/maps-and-data/data-standards>*

An early sample of the GIS dataset deliverable(s) should be forwarded to NPWS GIS staff for quality assurance. This will allow any potential data quality issues to be identified at an early stage in the project.

In particular, the following points are of relevance:

1. GIS data should be mapped to identifiable features on the OSI 1:5000 vector basemap where possible, and to features interpreted from ortho-rectified raster imagery where needed.
2. All GIS data must be provided in an ESRI-compatible format (Shapefiles or Geodatabases) and accompanied by appropriate metadata (NPWS Resource Catalogue).
3. The reference sources used for the creation of the GIS data should be identified and documented thoroughly in the associated metadata (NPWS Resource Catalogue) with special reference to the lineage entry.

4. Where data have been acquired from other organisations on behalf of DAHRRGA, and sanction has been given by that organisation for their retention by DAHRRGA, these original datasets should be provided.
5. The digitised GIS data must be fully topologically correct. There must be no open polygons, dangling arcs or digitising artefacts. There should be no ‘multipolygon’ features’. Polygons must also be fully attributed according to the project methodology.
6. Where polygon habitat GIS data are being created, habitats should be in one continuous layer, differentiated by habitat attribution.
7. Habitat data must match the spatial extent of the boundary shapefiles (as provided by NPWS) - i.e. the area of the habitat layer must equal the area of the boundary layer (for projects mapping designated areas).
8. Accuracy must be in keeping with that of digitising carried out by NPWS GIS staff. Digitised line work must follow the map detail accurately; the digitised line should split the underlying raster feature. Where digitising is being done against an existing vector boundary or feature (e.g. SPA boundary) the newly digitised line must ‘snap’ or ‘trace’ to every vertex in the pre-existing vector – this will eliminate ‘slivers’.
9. If supplying ESRI shapefiles, all core shapefile components (.shp, .shx and .dbf) must be provided. Where relevant, a map projection file (.prj), metadata file (.shp.xml) or layer/style file (.lyr) may also be required. Where the final map layout and its associated symbology is being provided to NPWS, please note that the contractor must transmit the MXD file and the data files (shapefiles) as an MXD file does not contain any data. The MXD should be configured to use relative directory paths to the data.

REQUIREMENT NUMBER 09: IMAGE DELIVERY

A digital copy of all images submitted with the project should be supplied in a format suitable for upload to the NPWS Image bank along with a manifest of the images in line with NPWS Data Standards.

REFERENCES

Brophy, J.T., Perrin, P.M., Penk, M.R., Devaney, F.M. and Leyden, K.J. (2019) Saltmarsh Monitoring Project 2017-2018. Irish Wildlife Manuals, No. 108. National Parks and Wildlife Service, Department of Culture, Heritage and the Gaeltacht, Ireland

Fossitt, J (2000) A Guide to Habitats in Ireland. Heritage Council.

Perrin, P.M., Barron, S.J., Roche, J.R. & O’Hanrahan, B. (2014). Guidelines for a national survey and conservation assessment of upland vegetation and habitats in Ireland. Version 2.0. *Irish Wildlife*

Manuals, No. 79. National Parks and Wildlife Service, Department of Arts, Heritage and the Gaeltacht, Dublin, Ireland.

Ryle, T., Murray, A., Connolly, K., and Swann, M. (2009) Coastal Monitoring Project 2004-2006. A report submitted to the National Parks and Wildlife Service, Dublin.

Smith, G. F., O'Donoghue, P., O'Hara, K., Delaney, E (2011). Best Practice and Guidance for Habitat Surveying and Mapping. Heritage Council.

Ssymank, A. (2010) Reference list threats, pressures and activities (final version).

Weekes, L.C. & FitzPatrick, Ú. (2010) The National Vegetation Database: Guidelines and Standards for the Collection and Storage of Vegetation Data in Ireland. Version 1.0. Irish Wildlife Manuals, No. 49. National Parks and Wildlife Service, Department of Environment, Heritage and Local Government, Dublin, Ireland.

DELIVERABLES AND PAYMENTS

All payments will be dependent on submission of valid invoices.

1st payment will follow signing of contract:

- Due: within 1 month of commencement

2nd payment (final) will be dependent on satisfactory completion of these deliverables:

- Submission of a **final report**. The report should cover all tasks outlined in Appendix 1. The report should be in a format suitable for publication as an *Irish Wildlife Manual* (a standard template will be provided).
- A database in MS Excel / Access or equivalent (details to be agreed with NPWS's data manager) to be submitted containing all relevant **survey data** and **metadata** collected during the contract, together with the completed **data resource catalogue**.
- A **spatial dataset** containing all survey records collected as part of the project.
- Due: Q4 2025

APPENDIX 2: PRICING SCHEDULE

A pricing schedule should be submitted with the tender. Each element of the contract should be costed separately, providing information on the team members and their daily rates, equipment, travel and subsistence costs, subcontracted service costs, overheads etc. as appropriate.

All costs should be quoted exclusive of VAT. Where VAT applies it should be indicated separately

APPENDIX 3: TENDERER'S STATEMENT

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

TENDERERS' STATEMENT

TO: The National Parks and Wildlife Service (NPWS) of the Department of Housing, Local Government and Heritage (the "Contracting Authority")

RE: Request for Tenders for the provision of **Habitat Mapping** and **Habitat Condition Assessment** of the **Inch Spit** within **Páirc Náisiunta na Mara, Ciarraí**

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

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of the RFT, the Services Contract and the Confidentiality Agreement and agree if awarded a Services Contract to execute the Services Contract at Appendix 5 to the RFT and the Confidentiality Agreement at Appendix 6 to the RFT.
3. We accept all the Selection and Award Criteria as set out in Part 3 of the RFT.
4. We agree to provide the Contracting Authority with the Services in accordance with the RFT and our Tender.
5. We agree that, if awarded any Services Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out at Part 2 of the RFT.
7. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the Tender Deadline, as specified at paragraph 2.10.3 of the RFT.
8. We shall, if awarded any Services Contract under the RFT, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFT.
9. We confirm that all Data Subjects whose Personal Data is provided in our Tender have consented to the processing of such Personal Data by us, the Contracting Authority, the

Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.

(Authorised Signatory)

Company

Print name

Address

Date: _____

APPENDIX 4: DECLARATION AS TO PERSONAL CIRCUMSTANCES OF TENDERER

Re: Request for Tenders for the Provision of [Insert type of services required]

NAME: [Click here and insert name]

ADDRESS: [Click here and insert address]

I, [Click here and insert name of Declarant], of [Click here and insert name of entity] do solemnly and sincerely declare that:

1. I am a [insert role of Declarant] of [Click here and insert name of entity] and am authorized by [Click here and insert name of entity] to make this declaration which relates to a tender ("the Tender") submitted by [Click here and insert name of entity] in response to an RFT dated titled [insert description of competition] published by [insert name of contracting authority] ("the Contracting Authority").
2. Neither [Click here and insert name of entity] nor any person who is a member of the administrative, management or supervisory body of [Click here and insert name of entity] nor any person who has powers of representation, decision or control in [Click here and insert name of entity] has:
 - a. ever been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
 - b. ever been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or the law of the state in [Click here and insert name of entity] is established.
 - c. ever been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
 - d. ever been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
 - e. ever been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
 - f. ever been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.
3. [Click here and insert name of entity]:

- a. is not in breach and has not breached its obligations relating to the payment of taxes or social security contributions.
- b. has carried out the preparation of the Tender independently.

4. [Click here and insert name of entity]:

- a. has, in the performance of all public contracts, complied with applicable obligations in the field of environmental social and labour law that apply at the place where the works are carried out or the services provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).
- b. is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.
- c. is not guilty of grave professional misconduct.
- d. has not entered into agreements with other economic operators aimed at distorting competition.
- e. is not aware of any conflict of interest due to its participation in the Competition;
- f. has not had any prior involvement in the preparation of the Competition;
- g. has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
- h. is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) .
- i. has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition, or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

5. [Click here and insert name of entity] does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);

6. The origin of goods connected to the Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);
7. Any subcontractor, supplier or other entity on whose capacity [Click here and insert name of entity] relies as part of the Tender does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

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

Signature of Declarant

Declared before me by _____ who is personally known to me

(or who is identified to me by _____ who is personally known to me) or*

at _____ this _____ day of _____ 20____

(signed)

Practising Solicitor/Commissioner for Oaths

**Please include such other form of identification used to identify the Declarant as permitted by the Statutory Declarations Act, 1938 (as amended)*

APPENDIX 5: SERVICES CONTRACT

The National Parks and Wildlife Service (NPWS) of the Department of Housing, Local Government and Heritage

and

[Insert successful Tenderer's full legal name]

AGREEMENT

Relating to the provision of Services pursuant to

Request for Tenders for the provision of **Habitat Mapping** and **Habitat Condition Assessment** of the **Inch Spit** within **Páirc Náisiunta na Mara, Ciarrai**

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

The **National Parks and Wildlife Service (NPWS)** of the Department of Housing, Local Government and Heritage, of 90 King Street North, Dublin 7 (“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 [“Insert title of RFT”] advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number _____ of _____ dated insert date of RFT (“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 [insert date] and [insert date] (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. i. This Agreement and Schedules A to E attached hereto;
 - ii. ii. The RFT;
 - .
 - i. 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 [name of contact person] of [address of contact person]; the Contractor’s Contact is [Contractor contact name] of [Contractor contact address].
5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [Insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

Delete and replace with “Not Used” if not applicable:

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

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the 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.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

SIGNED for and on behalf of the Client

SIGNED for and on behalf of the Contractor

| | |
|--|---------|
| <hr/> (being a duly authorised officer) | <hr/> |
| 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 Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations"). The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.

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. Subject to clause 14, the Contractor shall notify the Client as soon as

possible of any changes to the name, contact details and legal representatives of its Subcontractors.

- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations 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 any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

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 applicable 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 Regulation 57 of the Regulations 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. 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;
9. 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.9; and
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

Prior to publication please ensure to insert amounts/figures where applicable. When finished, delete these instructions.

- 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 or in respect of the Contractor’s indemnity under clause 6(G), 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 or in respect of the Contractor's indemnity under clause 6(G) (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. You must select one or the other of either G or H. 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. You must select one or the other of either G or 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 [insert amount] per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of [insert amount] (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 losses (whether direct, indirect or consequential) liability, damages, claims, costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

At the request 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 losses (whether direct, indirect or consequential) 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 7; 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 of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 6 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 or the European Communities (Access to Information on the Environment) Regulations 2007 to 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 request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

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, outbreak 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. 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. 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 its rights under clause 9(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
 1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
 2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
 3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and

- 4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- 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 Regulation 57 of the Regulations 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. 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 contact] within the Contractor and to [insert Client contact] within the Client 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 Mediators' Institute of 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

A. Subject to a Party's obligations at law, any assignment to a third party 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.

B. Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void.

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 neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately 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. In the event of such notification, 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.
- 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 the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, 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. 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 Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation

or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

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

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.

25. DATA PROTECTION AND SECURITY

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

“Data” means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to his employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Client provided under this Agreement and includes any Personal Data;

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

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

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

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

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

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

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

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement: -
 - (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having

regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

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

- i. Appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
- ii. The data subject has enforceable rights and effective legal remedies;
- iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

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

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

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

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

- I. The Contractor shall permit the Client, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall: -
 - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - (2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - (3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

M. (IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

(OR IF USING A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

the Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 25 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

- N. Save for clauses 25B, 25C, 25D(4) and 25E, all the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.
- O. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

26. ADDITIONAL CONDITION(S)

[Delete and replace with “Not Used” if not applicable:

This is a free text area to allow the Client to include any additional conditions to the Contract, for example a price review clause. Such additional conditions can be set out here by the Client]

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]

SCHEDULE E: DATA PROTECTION

[complete when completing the contract]

Processing, Personal Data and Data Subjects**1. Processing by the Contractor****1.1. Subject matter of processing****1.2. Nature of processing****1.3. Purpose of processing****1.4. Duration of the processing****2. Types of personal data****3. Categories of data subject**

APPENDIX 6: CONFIDENTIALITY AGREEMENT

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

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

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

WHEREAS

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

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

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

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

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
 - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and
 - 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.

3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time
4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
 - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
 - 4.2 not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to any person except:
 - i. to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or
 - ii. to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor
5. The obligations in this Agreement will not apply to any Confidential Information:
 - i. in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority; or
 - ii. which is or becomes public knowledge other than by breach of this clause; or
 - iii. is independently developed by the Contractor without access to or use of the Confidential Information; or
 - iv. is lawfully received from a third party (with full right to disclose).
6. The Contractor undertakes:

- 6.1 to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);
- 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;
- 6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not.

7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:
“Data Controller” has the meaning given under the Data Protection Laws;
“Data Processor” has the meaning given under the Data Protection Laws;

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

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

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

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

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

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

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

- (1) process that Personal Data only on the written instructions of the Contracting Authority;
- (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Contracting Authority, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
- (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Contracting Authority has been obtained and the following conditions are fulfilled;
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance

with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

- ii. the data subject has enforceable rights and effective legal remedies;
- iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- iv. The Contractor complies with reasonable instructions notified to it in advance by the Contracting Authority with respect to the processing of the Personal Data;

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

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

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

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

I. The Contractor shall permit the Contracting Authority, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The

Contractor shall comply with all reasonable directions of the Contracting Authority arising out of any such inspection, audit or review.

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

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

L. The Contractor shall:

1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
2. ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.

(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR - DELETE IF NOT IN USE)

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

(OR IF USING A THIRD PARTY PROCESSOR - DELETE IF NOT IN USE)

The Contracting Authority consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 11 as between the Contracting Authority and the Contractor. The Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

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

| | |
|---|--|
| SIGNED for and on behalf of the Contracting Authority | SIGNED for and on behalf of the Contractor |
| <hr/> (being a duly authorised officer) | <hr/> |
| Witness | Witness |

SCHEDULE A TO THE CONFIDENTIALITY AGREEMENT: DATA PROTECTION

[complete when completing the confidentiality agreement]

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1. Subject matter of processing

1.2. Nature of processing

1.3. Purpose of processing

1.4. Duration of the processing

2. Types of personal data

3. Categories of data subject

End of Document