

**Request for Tenders  
for the Provision of  
Services to assist in the development of a new Arts Plan  
for Waterford 2016 - 2021**

**WCCC/A/374**

**July 2015**

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## Part 1: Introduction

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1.1 The Arts Department of Waterford City and County Council invites responses (“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, “Requirements and Specifications”, (“the Services”). The Arts Department of Waterford City and County Council is the contracting authority for this public procurement competition (“the Contracting Authority”).

1.2

**The title of this RFT is Request for Tenders for the Provision of Services to assist in the development of a new Arts Plan for Waterford 2016 - 2021**

WCCC/A/374 (“RFT Title”).

1.3 This public procurement competition relates to the provision of the development of a new Arts Plan for Waterford from 2016 through to 2021. Tenders are sought from suitably experienced consultants to work closely with the Arts Officers to develop a new Arts Plan for Waterford .

1.4 Any contract that may result from this public procurement competition will be issued for a term of four months (“the Term”).

1.5 **This Clause 1.5 applies only to certain RFTs; it applies to this RFT.**  
The Contracting Authority reserves the right to extend the Term for a period or periods of up to twelve 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.

1.6 Tenders must be received not later than 16:00pm on Monday 31<sup>st</sup> August 2015. Tenders that are received late WILL NOT be considered in this public procurement competition.

## Part 2: Instructions to Tenderers

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### 2.1 Introduction to this RFT

- 2.1.1 While every effort has been made to provide comprehensive and accurate background information and requirements and specifications, Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT. Tenderers and recipients of this RFT may wish to consult their own legal advisers in relation to this RFT or the subject matter thereof.
- 2.1.2 All information supplied by Tenderers may be treated as contractually binding on the Tenderers if accepted by the Contracting Authority.
- 2.1.3 No commitment of any kind, contractual or otherwise shall exist unless and until a formal written contract has been executed by or on behalf of the Contracting Authority. Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer. The Contracting Authority may cancel this public procurement competition at any time prior to a formal written contract being executed by or on behalf of the Contracting Authority. The Contracting Authority does not bind itself to accept the lowest priced or any Tender.
- 2.1.4 This RFT supersedes and replaces all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence. Tenderers to this RFT should study the contents of this RFT carefully, including the information and documents contained in the Appendices. The Tenderers attention is drawn to the Tenderers' aide-memoire at Appendix 4.

### 2.2 Compliant Tenders

- 2.2.1 Failure to comply with the requirements of this paragraph 2.2.1 may render the Tender non-compliant and the Tender may be rejected. Tenderers must:
- a. Include all documentation specified in this RFT;
  - b. Follow the format of this RFT and respond to each element in the order as set out in this RFT;
  - c. Comply with all requirements as set out within this RFT.

2.2.2 If the RFT is altered or edited in any way, the subsequent Tender may be deemed non-compliant and may be rejected.

2.2.3 Failure to comply with the requirements of this paragraph 2.2.3 will render the Tender non-compliant and it will be rejected. Tenders must:

- a. Be received by the Contracting Authority in accordance with paragraphs 2.6.1 and 2.6.2 below;
- b. **This Clause 2.2.3(b) applies only to certain RFTs; it applies to this RFT.** Include a statement, confirming whether any of the excluding circumstances listed in Article 45 of EU Council Directive 2004/18/EC as implemented into Irish law by Regulation 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (Statutory Instrument 329 of 2006), apply to the Tenderer. Tenderers from Ireland and the United Kingdom must include with the Tender the declaration at Appendix 5 to this RFT ("Declaration"). Where submitting by eTenders, a scanned signed copy of the Declaration may be submitted electronically via the eTenders postbox. 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. For all Tenderers outside Ireland and the United Kingdom the statement must be evidenced, as required;
- c. Include the statement required under paragraph 2.4 below; and
- d. Tenders shall be submitted in the English Language.

2.2.4 The Contracting Authority shall consider all compliant Tenders against the Qualification and Award Criteria in Part 3 of this RFT.

## 2.3 Services Contract

2.3.1 The Contracting Authority will, subject to the right of cancellation of this public procurement competition (as set out at paragraph 2.1.3 above and at paragraph 3.3 below), select the successful Tenderer(s) to provide the Services sought under this RFT.

2.3.2 The successful Tenderer(s) shall provide the Services in accordance with and on the terms and conditions of the contract as set out at Appendix 6 to this RFT ("the Services Contract"). The successful Tenderer(s) shall be required to enter into the Services Contract with the Contracting Authority. Tenderers should take account of

the provisions of the Services Contract in the preparation of their Tenders. Tenderers are required to confirm their acceptance of the Services Contract in the Tenderers' Statement at Appendix 3. Tenderers may not amend the Services Contract.

- 2.3.3 Tenderers should be aware that any or all of the Special Conditions as set out at Schedule D to the Services Contract will apply (in addition to the Terms and Conditions in Schedule A to the Services Contract) to the provision of the Services if they have been marked as “applies” by the Contracting Authority.

## 2.4 Acceptance of RFT Requirements

Each Tenderer is required to accept the provisions of this RFT. ALL TENDERERS MUST RETURN, with their Tender, the signed Tenderer's Statement, as set out in Appendix 3, printed on the Tenderer's letterhead. **If requested in paragraph 2.6 to submit** by eTenders ([www.etenders.gov.ie](http://www.etenders.gov.ie)), then a scanned signed copy of the Tenderer's Statement may be submitted electronically via the eTenders postbox. 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 at Appendix 3.

## 2.5 Consortia and Prime / Subcontractors

Where a group of undertakings submit a Tender in response to this RFT the Contracting Authority will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the Services Contract only (“Prime Contractor”), irrespective of whether or not tasks are to be performed by a subcontractor and/or consortium members. The Tenderer must clearly set out:

- a. The full legal name of the Prime Contractor together with its registered business address (where applicable), registered business name (where applicable), company registration number (where applicable), telephone and e-mail contact details;
- b. The names of all subcontractors and/or consortium members who will be involved in the provision of the Services;
- c. A description of the role to be fulfilled by each subcontractor and/or consortium member; and
- d. The name, title, telephone number, postal address, facsimile number and e-mail address of the nominated contact personnel authorised to represent the Prime Contractor, within the organisation of the Prime Contractor, to whom all communications shall be directed and accepted until this public procurement

competition has been completed or terminated. Correspondence from any other person (including from any subcontractor and/or consortium member) will NOT be accepted, acknowledged or responded to.

## 2.6 Tender Submission Requirements

- 2.6.1 Tenders must be delivered to the postal address below. Tenders delivered by hand or by post must be delivered in sealed package(s). The package must be marked with the RFT Title and the word “Confidential”. Tenderers must clearly set out a return address on the Tender package. Tenders submitted by fax will NOT be accepted. The nominated address is:

Tender Name: WCCC-A-374 Tender for Waterford Arts Plan 2016 - 2021

TENDER BOX

WATERFORD CITY AND COUNTY COUNCIL

CUSTOMER SERVICE CENTRE

BAILEYS NEW STREET

WATERFORD

- 2.6.2 Tenders must be received not later than 16:00pm on Monday 31st August 2015. Tenders that are received late WILL NOT be considered in this public procurement competition.
- 2.6.3 Each Tenderer is limited to submitting one Tender in their own capacity and one Tender as part of a consortium/group of undertakings under this RFT. This does not preclude Tenderers from submitting for other Tenders within the Arts Programme.
- 2.6.4 In responding to this RFT all Tenders must follow the format of the RFT and respond to each element of the RFT in the order as set out in this RFT. Where submitting Tenders to a specified postal address, Tenderers must submit one (1) electronic copy on either CD or flash drive and two (2) hard copies of the of their Tender .
- 2.6.4a **This Clause 2.6.4a applies only to certain RFTs; it applies to this RFT.**  
All Tenders submitted in soft copy must be compiled such that they can be read

immediately using PDF readers. It is the Tenderer's responsibility to ensure that the information provided on the soft copy is identical to the information provided in the hard copy Tender. In the event that there is a discrepancy or conflict between the contents of the hard and soft copies of the Tender, hard copy shall be given precedence over the soft copy.

- 2.6.5 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 or requests for clarification relating to any aspect of this public procurement competition or of this RFT must be directed to Margaret Organ, Arts Officer [morgan@waterfordcouncil.ie](mailto:morgan@waterfordcouncil.ie). Queries or requests for clarifications will be accepted no later than 16:00pm on 12<sup>th</sup> August 2015 unless otherwise published by the Contracting Authority.
- 2.7.2 All clarifications and responses to queries/requests for clarification will be responded to by e-mail to all tenderers. Where appropriate, questions may be amalgamated. Tenderers should note that the Contracting Authority will not make responses or clarifications 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 to update or alter the information contained in this document at any time up to Seven days before the final date for receipt of Tenders. Participating Tenderers will be so informed through the eTenders website. In the event of such updates or alterations the Contracting Authority reserves the right to postpone the deadline for the receipt of Tenders so as to allow Tenderers sufficient time to respond.

## **2.8 Tendering Costs**

All costs and expenses incurred by Tenderers relating to their participation in this public procurement 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 public procurement competition:

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

2.9.2 The successful Tenderer must return the original signed confidentiality agreement, as set out in Appendix 7 (“Confidentiality Agreement”), to the Contracting Authority in accordance with paragraph 3.6 below. The Confidentiality Agreement must be in the form as set out at Appendix 7 and Tenderers may not amend the Confidentiality Agreement.

## 2.10 Pricing

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

2.10.2 Tenderers must confirm that all prices quoted in the Tender will remain valid for Ninety Days commencing from the closing date for the receipt of Tenders.

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

2.10.4 Payments for Services provided pursuant to this RFT shall be subject to and be made in accordance with the Services Contract at Appendix 6 to this RFT.

2.10.5 **This Clause 2.10.5 applies only to certain RFTs; it applies to this RFT.**  
All Tenderers must complete the Pricing Schedule at Appendix 2 to this RFT.

## 2.11 Employment Law

2.11.1 **This Clause 2.11.1 applies only to certain RFTs; it applies to this RFT.**  
Under Article 27 of Directive 2004/18/EC as implemented into Irish law by Regulation 27 of European Communities (Award of Public Contracts) Regulations 2006 (S.I. No. 329 of 2006), Tenderers must provide a statement confirming that they have taken account of their legal obligations relating to employment protection and working conditions relating to the provision of the Services sought under this RFT. Failure to make the statement at paragraph 7 of the Tenderer’s Statement of

Appendix 3 will render the Tender non-compliant.

Tenderers may obtain information regarding their obligations concerning:

- Taxation from the Irish Revenue Commissioners ([www.revenue.ie](http://www.revenue.ie));
- Environmental protection from the Environmental Protection Agency ([www.epa.ie](http://www.epa.ie));
- Employment protection and working conditions from the Department of Jobs, Enterprise and Innovation ([www.djei.ie](http://www.djei.ie)).

**2.11.2** The successful Tenderer shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of providing the Services.

**2.11.3** Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003 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.

## **2.12 Publicity**

No publicity regarding this public procurement competition, the award of a contract or the execution of the Services Contract is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

## **2.13 Registrable Interest**

Any Registrable Interest involving the Tenderer/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 their notice after the submission of a Tender and prior to the award of the contract, it should be communicated to the Contracting Authority immediately upon such information becoming known to the Tenderer/subcontractor. The terms 'Registrable Interest' and 'Relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act 1995, a copy of which is available to download at [www.finance.gov.ie](http://www.finance.gov.ie). The Contracting Authority will, at its absolute discretion, decide on the appropriate course of

action, which may in appropriate circumstances include eliminating a Tenderer from the competition or terminating any contract entered into by a Tenderer.

#### **2.14 Anti-Competitive Conduct**

Tenderers attention is drawn to the application of the Competition Act 2002. The 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**

**This Clause 2.16 applies only to certain RFTs; it applies to this RFT.**

- 2.16.1 Tenderers should be aware that, under the Freedom of Information Act 2014, information provided by them during this public procurement 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 commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its commercial sensitivity, Tenderers should, when providing such information, clearly identify same and specify the reasons for its commercial sensitivity. If Tenderers do not identify it as commercially sensitive, it is liable to be released in response to a Freedom of Information request without further consultation with you. The Contracting Authority will, where possible, consult with Tenderers about commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act.

#### **2.17 Tax Clearance**

- 2.17.1 It will be a condition of the award of any contract under this RFT that the successful Tenderer shall for the term of any such contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance. This Circular and further information is available at [www.finance.gov.ie](http://www.finance.gov.ie) and [www.revenue.ie](http://www.revenue.ie).
- 2.17.2 Prior to the award of any contract arising out of this public procurement competition the successful Tenderer shall be required to produce a Tax Clearance Certificate from the Irish Revenue Commissioners. Alternatively, the Tenderer may supply the

certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate online verification of their tax status by the Contracting Authority.

## **2.18 Conflicts of Interest**

Any conflict of interest or potential conflict of interest on the part of a Tenderer, individual employees, agents, or subcontractors of a Tenderer must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. In the event of any conflict or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict might be removed. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from the competition or terminating any contract entered into by a Tenderer.

## **2.19 Withdrawal from this Public Procurement Competition**

Tenderers are required to e-mail [morgan@waterfordcouncil.ie](mailto:morgan@waterfordcouncil.ie) immediately if at any stage they decide to withdraw from this public procurement competition.

## **2.20 Site Visit**

**2.20.1** This Clause 2.20.1 applies only to certain RFTs; it does NOT apply to this RFT. Should it be deemed necessary for the purposes of tendering, the Contracting Authority will facilitate Tenderers by permitting an inspection of the Contracting Authority's premises. A site visit to view the Contracting Authority's premises or facilities at [insert relevant addresses] shall be organised on [date] between the hours of [x and y]. Tenderers wishing to make an appointment to avail of this opportunity must confirm their attendance by contacting [name of person] at [insert email address] by [insert date and time]. Attendance at the Contracting Authority's premises will be subject to compliance with local security arrangements.

**2.20.2** 'Not used'.

## 2.21 Insurance

This Clause 2.21 applies only to certain RFTs; it applies to this RFT.

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
Public Liability	2,600,000
Professional Indemnity	N/A
Product Liability	N/A

2.21.2 By signing the Tenderer's Statement at Appendix 3, Tenderers confirm, that if awarded a contract under this public procurement competition, they will, from the Effective Date of the Services Contract (as defined in the Services Contract), obtain and hold the types and levels of insurance as specified at paragraph 2.21.1. A formal confirmation from the Tenderer's insurance company or broker to this effect will be requested from the successful Tenderer(s) prior to the award of (and shall be a condition of) any 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: Qualification and Award Criteria

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### 3.1 Compliant Tenders

Only those Tenderers who have submitted compliant Tenders pursuant to paragraph 2.2 above and have not been excluded under Article 45 of EU Council Directive 2004/18/EC as implemented into Irish law by Regulation 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (Statutory Instrument 329 of 2006) will be evaluated in accordance with the Qualification and Award Criteria in this Part 3.

### 3.2 Qualification Criteria

**3.2.A This Clause 3.2.A applies only to certain RFTs; it does NOT apply to this RFT.**

#### **Economic and Financial Standing**

All Tenderers must demonstrate that they can meet the following financial and economic standing requirement(s) and must be able to furnish the following documentation. Tenderers will either pass OR fail this qualification criterion.

Tenderers must provide the specified documentation 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 that valid reason as to why the documentation cannot be supplied and provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

Tenderers should note that economic operators relying on the capacity of other entities must, when requested by the Contracting Authority, submit an undertaking, duly evidenced, from those entities that they will place the necessary resources at the disposal of the Tenderer.

The documentation required under this paragraph 3.2.A will be requested by the Contracting Authority prior to (and shall be a condition of) the award of any contract.

**3.2.B This Clause 3.2.B applies only to certain RFTs; it applies to this RFT.**

#### **Technical and Professional Ability**

All Tenderers must demonstrate that they have the following technical and professional ability and must furnish the following documentation with their Tenders. Tenderers will either pass OR fail this qualification criterion:

Tenderer must demonstrate a sound experience of providing a service in this area.

**Rule 1: Previous Experience** Pass/Fail

**Rule to be satisfied by providing details of previous experience in the following form format for two projects of a similar nature and complexity:**

Form 1: Section 3.2B Technical and professional Ability – Previous Experience

Project/Programme Description:	
Main Service Provided:	

Effective Dates:			
From: (Start)		To: (completion)	

Programme Value: (All figures to be inclusive of VAT)			
Value of Total Programme:		Value of Service Provided (by tenderer):	

Name and Contact Details of referee			
Contracting Authority			
Contact Name:		Contact Number:	

Applicant Name:		Date:	
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Tenderers should note that economic operators relying on the capacity of other entities must submit with their Tender an undertaking, duly evidenced, from those entities that they will place the necessary resources at the disposal of the Tenderer.

**3.3 Award Criteria**

3.3.1 Only those Tenderers who have qualified in accordance with paragraph 3.2 of this RFT will proceed to be evaluated under this paragraph 3.3.

No commitment of any kind, contractual or otherwise shall exist unless and until a

formal written contract has been executed by or on behalf of the Contracting Authority. Any award of notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer. The Contracting Authority may cancel this public procurement competition at any time prior to a formal written contract being executed by or on behalf of the Contracting Authority. The Contracting Authority does not bind itself to accept the lowest priced or any Tender.

**3.3.2** The contract will be awarded on the basis of the most economically advantageous tender.

The Contracting Authority will apply the following award criteria:

	Award Criteria	Maximum Marks Available
AC1	<b>Proposed methodology:</b> Demonstrated understanding and proposed methodology to deliver the services required as outlined – to include a proposed timeline for delivery.	700
AC2	<b>Programme Delivery:</b>  Demonstrate how you believe that the expertise available to you differentiates you in providing arts strategies/development plans of a similar size and nature that could include arts programming, project management, producing, publicity and marketing.  <b>Two examples of written work</b> Specific examples that demonstrate a clear understanding of the brief and required deliverables should be provided with particular emphasis on arts strategies and commissioning strategies.	500
AC3	<b>Contact Hours:</b> Proposed total amount of contact/meeting hours (not including research, writing or travel)	200
AC4	<b>Any additional services/benefits</b>	100
AC5	<b>Proposed Costs</b>	500
	<b>TOTAL</b>	<b>2000</b>



Calculation of Ultimate cost AC5 will be based on the following calculation formula

**Ultimate cost** is based on the following formula:

Basis of Criterion

1. Formula based on difference between the **lowest price (LP)** and **what you are evaluating (EVP) multiplied by the amount of points (P) awarded**

**For example:**

- i. Lowest price (LP) 100
- ii. Price being Evaluated (EVP) 150
- iii. Points awarded (P) 500

Formula  $(LP * P) / EVP$   $(100 * 500) / 150$

**Answer: Points Awarded = 333 points**

- 3.3.3 The award of contract (if any) to the highest ranked Tenderer (as determined by paragraph 3.3), will be conditional upon:
- (a) the Tenderer submitting the documentation if required under paragraph 3.2.A within 10 days of notification by the Contracting Authority; and
  - (b) if required, the documentation submitted demonstrating that such Tenderer has the economic and financial capacity required under paragraph 3.2.A

### 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 Directive 2007/66/EC applies, no contract can or will be executed or take effect until at least fourteen (14) calendar days after the day on which the unsuccessful Tenderers have been sent the appropriate notice informing them of the result of this public procurement competition (“Standstill Period”). The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.

3.5.2 Tenderers should note that the Contracting Authority may, when notifying unsuccessful Tenderers of the results of this public procurement 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 Five days calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing. Please note the Contracting Authority cannot and will not enter into a contract until the Standstill Period has expired. 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 2.1.3 above.
- 3.6.2** Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period as specified at clause 3.6.1 then the Contracting Authority may proceed to award the contract to the next highest-ranked Tenderer

# Appendix 1: Requirements and Specifications

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## Part 1 – Service Specification

### 1. Introduction

This request for Tenders is to assist in the development of a new Arts Plan for Waterford from the period 2016 to 2021. Tenders are sought from suitably experienced consultants to work closely with the Arts Officers to develop a new Arts Plan for Waterford.

Waterford City Council and Waterford County Council amalgamated as a single authority *Waterford City & County Council* in June 2014. This will be the first Arts Plan for the new authority and as such it will address this new artistic landscape. It will articulate how working in this new context, areas will be prioritised for investment over the period of the plan and will take a policy approach which is driven by strategic objectives.

It will identify how to support the growth and continuing development of the arts, not only encompassing Waterford's needs and ambitions, but also placing them within the overall context of the South East region and the national strategy for the Arts. It will look at how the economic environment of recent times has necessitated working collaboratively to maximise resources.

### 2. Overview and Work Required

The consultant will be contracted by Waterford City & County Council's Arts Department to meet with the Arts Officers and appropriate managers within the Local Authority to determine the process.

They will assist the Arts Officers in designing the review process involving public consultation and open and inclusive engagement. They will facilitate consultation and dialogue with key stakeholders and will document and feedback in report format the associated findings.

They will look at the overall context of the arts in Waterford, taking into consideration the urban and rural, emerging issues and challenges and gaps in provision, so as to address necessary change and to complete the decision making process.

They will be cognisant of placing the Arts centrally within overall Council Policies and Plans.

They will assist the Arts Officers in structuring the new Arts Plan 2016 – 2021 document.

They will specify the mechanics of an ongoing evaluation process which can be implemented at regular intervals throughout the term of the Plan.

They may be required to present to the Strategic Policy Committee and at the Plenary session of Waterford City and County Council on behalf of the process.

### **3. Skills and Experience Required.**

Tenderers should have a wide ranging understanding and experience of contemporary arts practices across all arts forms and community and voluntary arts practices.

Consultants must demonstrate a knowledge of working within a Local Authority context and have the capacity to conduct their work in this environment. They should possess a competent overview of national Arts strategies and policies. They should demonstrate a proven track record in strategic development of the Arts.

Tenders should include clear details and experience of excellent communication, writing and facilitation skills.

#### **Selection Criteria:**

Submissions must be completed and submitted in accordance with the instructions set out in this Part in addition to the Pricing Schedule.

##### **a) *General information:***

- State names, titles and contact details of the principal contact with regard to this Tender.
- Provide details of your profile including a CV.
- Project management expertise

##### **b) *Previous experience***

Provide demonstrated experience of delivering Strategies/Development Plans of a similar size and nature in the following format Document form identified in 3.2B above):

##### ***Two Client references:***

- Company/Organisation:
- Address:
- Brief outline of contract/role:
- Contact name:
- Telephone number:
- E mail address:

#### **Award Criteria:**

##### ***AC1 Proposed Methodology (700 Marks) listed at 3.3.2:***

Tenderer is required to provide a letter of interest outlining the proposed methodology for providing and delivering the services required including confirmation of ability to commence contract as soon as it is awarded.

Tenders should include a proposed work plan/timeframe taking into account the term of the contract. Please note that the successful tenderer will be required to work effectively within the agreed timeframe and to work flexible hours including evenings and weekends as demand requires.

***AC2 Programme Delivery (500 Marks) listed at 3.3.2:***

Demonstrate how you believe that the expertise available to you differentiates you in providing arts strategies/development plans of a similar size and nature that could include arts programming, project management, producing, publicity and marketing.

The tenderer must provide **Two examples of written work** (As requested under **AC2 of the award criteria**) :

Detail and supply copies of written work undertaken recently in the arts, such as project plans, scoping documents, publicity materials, media reports, press releases or comparable work that could include the following:

- Example of a project planning document or successful funding application
- Example of a project report

***AC3 Contact Hours (200 Marks) listed at 3.3.2:***

The tenderer should demonstrate the number of contact hours appropriate to the delivery of this programme.

Consideration should be given to the following:

- a. Development meetings with stakeholders
- b. Public consultation requirements to include briefing sessions and information gathering
- c. Council workshops and presentations

***AC4 Additional skills or services (100 Marks) listed at 3.3.2:***

Please outline any proposed additional services or benefits.

***AC5 Ultimate Costs (500 Marks) listed at 3.3.2:***

Tenderer must complete the pricing document at appendix 2

**The programme must include all expenses, taxes and insurances (PL & Employers) and an indemnity excluding Waterford City & County Council from any claims as a direct result of negligence during the development of the Arts Plan.**

**Reference Section 2.1 Pricing: Please note the Pricing should be inclusive of all taxes including VAT.**

## Appendix 2: Pricing Schedule

Tenderers Pricing Schedules must be completed and submitted in accordance with the instructions set out in this Part.

### Budget:

The Arts Department has allocated a total budget not to exceed €10,000 for the proposed contract period. This amount is **inclusive** of all expenses and VAT. Tenderers are advised to take this into account in preparing their tender response.

Tenderers Pricing Submissions must be completed and submitted in accordance with the instructions set out in this Part.

- *Please submit a fixed price proposal (**inclusive** of all expenses and VAT showing VAT separately) for the requirements specified.*
- *Please confirm that all proposals include the full cost of service delivery (including any costs for sub-contracting of services if this is applicable), service delivery and all other relevant costs.*
- *Cost per week –please indicate proposed number of contact hours(not including travel time).*
- *Please quote any travel and other expenses on a per week basis*
- *All pricing must be quoted in Euro €.*

	Euro	Comment (if applicable)
<b>Fee Proposal – Per Week</b>	€	
Travel and other expenses – Per Week	€	
Other Costs – Per Week	€	
VAT – please indicate rate		
<b>WEEKLY TOTAL</b>	€	
<b>TOTAL PRICE (based on proposed 21 week contract period).</b>	€	

Proposed number of contact hours per week (not including travel time) per AC3 of the Award Criteria	Please insert total number of Contact Hours opposite	No. Of Hrs: _____
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Company Name: \_\_\_\_\_

Name (In Capitals) \_\_\_\_\_

Signature: \_\_\_\_\_

Date: \_\_\_\_\_

Note 1:

You are required to inset in the areas **highlighted** above the proposed costing, hours etc to be provided for the budget indicated. Failure to do so will invalidate your tender.

Note 2:

The purpose of the pricing document is to establish the most advantageous commercial offering for the Council.

In this regard the council will establish the marks for each of the above criterion individually and establish the most commercially viable offering based on the above pricing matrix.

Note 3: **DO NOT ALTER THE TABLE** If you have a query please contact the Arts Office.

## Appendix 3: Tenderers' Statement

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[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 Arts Department of Waterford City and County Council

**RE: Request for Tenders for the Provision of Services to assist in the development of a new Arts Plan for Waterford 2016 - 2021**

WCCC/A/374

Having examined your Request for Tenders (RFT) including the Instructions to Tenderers, Qualification and Award Criteria, Requirements and Specifications, 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 Services Contract and the Confidentiality Agreement and agree if awarded any contract to execute the Services Contract at Appendix 6 to the RFT.
3. We accept all the Qualification 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 confirm that we have complied with all requirements as set out at Part 2 of the RFT.
6. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the closing date for the receipt of Tenders as specified at paragraph 2.10.2 of the RFT.
7. **This Clause 7 is required only for certain Tenders; it is required for this Tender.**  
Our compliance with all relevant legal employment requirements as set out in the RFT, in particular but not exclusively paragraph 2.11.1 of the RFT.
8. We acknowledge that the RFT does not constitute an offer to enter into a contract and



neither this document nor any of the information set out therein should be regarded as a commitment or representation on the part of the Contracting Authority or any other person to enter into a contractual arrangement. No commitment of any kind, contractual or otherwise, shall exist unless and until a formal written contract has been executed by or on behalf of the Contracting Authority. The Contracting Authority may, at its absolute discretion, cancel this public procurement competition at any time prior to a formal written contract being executed by and on behalf of the Contracting Authority.

9. We satisfy the Qualification Criteria as set out at paragraph 3.2.A of the RFT and, if requested by the Contracting Authority, shall immediately furnish such evidence as may demonstrate our economic and financial capacity in accordance with the said paragraph 3.2.A.
10. We shall, if awarded any 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.

**SIGNED**

**Company**

**(Authorised Signatory)**

**Print name**

**Address**

**Date**

## Appendix 4: Tenderers' Aide-Memoire

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1. Have you addressed all the requirements in Part 2?
2. Have you signed and completed all the relevant pages where so required?
3. If required, have you completed the Pricing Schedule at Appendix 2?
4. If submitting the Tender by hand or by post, have you correctly addressed the Tender return package (including marking it 'Confidential' and setting out the RFT Title as per paragraph 1.2 of the RFT)?
5. Have you returned all the documentation required?
6. Have you noted the closing time and date for return of the Tender?
7. **If requested in paragraph 2.6 to submit** by eTenders ([www.etenders.gov.ie](http://www.etenders.gov.ie)), have you taken into account the extra time that may be required, to upload all documents? (See warning on large documents at paragraph 2.6.1 of the RFT).

## Appendix 5: Declaration as to Personal Circumstances of Tenderer

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### Re: Request for Tenders for the Provision of Services to assist in the development of a new Arts Plan for Waterford 2016 - 2021

WCCC/A/374

**NAME OF TENDERER:** \_\_\_\_\_

**ADDRESS:** \_\_\_\_\_

I, \_\_\_\_\_, having been duly authorised by the Tenderer, sincerely declare that:

1. The Tenderer is not bankrupt or being wound up, its affairs are not being administered by a court, it has not entered into an arrangement with its creditors, it has not suspended its business activities nor is it in any analogous situation arising from a similar procedure under national laws and regulations;
2. The Tenderer is not the subject of proceedings for a declaration of bankruptcy, for an order for compulsory winding up or administration by the court or for an arrangement with creditors or of any other similar proceedings under national laws and regulations;
3. Neither the Tenderer, nor any of its directors or partners, has been convicted of an offence concerning professional conduct by a judgment which has the force of res judicata or been guilty of grave professional misconduct (proven by any means which the Contracting Authority can demonstrate) in the course of its or their business;
4. The Tenderer has fulfilled its obligations relating to the payment of taxes or social security contributions in its country of establishment or any other state in which the Tenderer is located;
5. The Tenderer has not been guilty of serious misrepresentation or omission in providing information to a public buying agency, including the Contracting Authority;
6. The Tenderer (or any of its directors or partners) has not been convicted of fraud, money laundering, corruption, or of being a member of a criminal organisation; and

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

\_\_\_\_\_  
**Signature of Declarant**

\_\_\_\_\_  
**Name of Declarant in print or block capitals**

**Declared before me by** \_\_\_\_\_ **who is personally known to me**

(or who is identified to me by \_\_\_\_\_ who is personally known to me)  
at \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_

\_\_\_\_\_  
(signed)

**Practising Solicitor/Commissioner for Oaths**

## **Appendix 6: Services Contract**

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The Arts Department of Waterford City and County Council

and

[Insert successful Tenderer's full legal name – to be completed on signing.]

### **AGREEMENT**

Relating to the Provision of Services pursuant to

**Request for Tenders for the Provision of Services to  
assist in the development of a new Arts Plan for  
Waterford 2016 - 2021**

WCCC/A/374

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

The Arts Department of Waterford City and County Council, of [Address] (“the Client”); and  
[Contractor's full legal name: to be completed on signing], of [Contractor's address: to be completed on signing] (“the Contractor”)  
 (“the Parties”).

**WHEREAS:**

- A. By Request for Tender dated July 2015, the Client invited tenders for the provision of Services to assist in the development of a new Arts Plan for Waterford 2016 - 2021 WCCC/A/374 (“the RFT”) (which document is attached hereto in Schedule F), to be provided for its offices at specified locations throughout Ireland. References to the RFT shall include any clarifications issued by the Client and same are attached hereto in Schedule F.
- B. The Contractor submitted a response to the RFT dated the [Date of Tender: to be completed on signing.] which is attached hereto in Schedule G (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor and same are attached hereto in Schedule G.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. The Contractor agrees to provide the Services described in Schedule B (“the Services”) 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”).
2. The Client agrees to pay the Charges to the Contractor 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. 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: to be completed on signing.] of [Contractor contact address: to be completed on signing.]
3. This Agreement is governed by the terms and conditions as set out in Schedule A and consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - i. This Agreement and Schedules A to E attached hereto;
  - ii. The RFT (Schedule F);

iii. The Submission (Schedule G).

4. 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”).

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

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

## Schedule A: Terms and Conditions

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### 1. Contractor's Obligations

- A. The Contractor undertakes to perform its obligations arising from this Agreement 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 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 4 the Contractor shall:
1. provide the Services according to the Specification, in accordance with the RFT, in the manner set out in the Submission (as accepted by the Client) and in accordance with 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 arrangements as notified to it by the Client;
  4. provide the Services in accordance with good industry practice and comply with all applicable laws with particular but not exclusive regard to the requirements of the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the Data Protection Acts 1988 and 2003, Freedom of Information Act 2014 and Employment legislation. The Contractor will 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. The Contractor must comply with any applicable statutory terms relating to minimum pay and to any applicable legally binding sectoral agreements; and
  5. comply with the Special Conditions, if any, set out in Schedule D ("Special Conditions").
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the delivery of the Services 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 to the extent that it or they are retained by the Contractor.

- D. 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.
- E. 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 "Regulations") and failure to so comply shall constitute a material breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Client under the Regulations by any Affected Employees. Affected Employees shall mean those employees in respect of whom the Regulations may be deemed to apply in connection with this Agreement.

## **2. Delivery of the Services**

- A. The Contractor shall provide the Services at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties in accordance with clause 11.
- B. 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 11.

### 3. 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.

### 4. Payment

- A. Subject to the provisions of this clause 4 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 11A from time to time;
  2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the 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 Special Condition 3; and

4. The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at [www.finance.gov.ie](http://www.finance.gov.ie). The Contractor may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by the Client.
- C. The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and 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 expenses incurred by the Contractor, its employees, servants and agents in the performance of the Services.
- F. Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with clause 523 of the Taxes Consolidation Act, 1997 of any withholding taxes 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.

## **5. Warranties, Representations and Undertakings**

- A. The Contractor 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 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. where applicable, the status of the Supplier, declared in the “Declaration as to Personal Circumstances of Tenderer” in the Submission, which confirms that none of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities’ Contracts) Regulations 2006 (S.I. No. 329 of 2006) apply to the Supplier, remains unchanged;
  7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 7 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; and
  8. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 5A.8.
- B.** The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at clause 5A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

## **6. Remedies**

- A.** The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of

the Contractor, its employees, subcontractors or agents or any of them or as a result of the Contractor's failure to exercise care as outlined in clause 1. The terms of this clause 6A shall survive termination of this Agreement for any reason.

- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **7. 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 7 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.
- G. The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any liability loss damages claims costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

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

- (i) procure the necessary rights for the Client to continue use;
- (ii) replace the relevant deliverable with a non-infringing equivalent;
- (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or

- (iv) if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all direct losses thereby accruing to the Client as a result of the breach.

H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. As an exception to its obligations under this clause 7H the Contractor may retain one copy of the Materials, in paper form, in the Contractor's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement. The provisions of this clause 7 will survive the expiration or termination of this Agreement for any reason.

## 8. Confidentiality

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:
1. its professional advisers subject to the provisions of this clause 8; or
  2. as may be required by law; or
  3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 8; or
  4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement as exhibited in Schedule E to this Agreement ("the Confidentiality Agreement"). The obligations in this clause 8 will not apply to any Confidential Information:
1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or

2. which is or becomes public knowledge other than by breach of this clause; or
  3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
  4. is lawfully received 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, from time to time, during the currency of this Agreement as may be requested by the Client 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 Acts, 1997 and 2003, 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 commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the courts.
- E.** The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

## **9. Force Majeure**

- A.** A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of 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] 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.

## **10. Termination**

**A.** Notwithstanding the provisions of clause 12 and subject to the provisions of sub-clause 10B, this Agreement may be terminated by either Party by serving [insert period of time] written notice to the other Party. For greater certainty, neither Party shall be entitled to any additional amounts or compensation in the event that the Agreement is terminated in accordance with this clause 10A.

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

1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;

and/or

2. if the other Party becomes insolvent, becomes bankrupt, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect.
- C. Where applicable, 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 excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329/2006) apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Client which is in its possession. As an exception to its obligations under this clause 10E the Contractor may retain one copy of the Materials, in paper form, in the Contractor's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement.
- F. If requested, the Contractor shall, upon the termination of this Agreement for any reason or prior to the expiration of the Term, 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. The Contractor agrees to the Client releasing any such anonymised information to third party tenderers 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.

## **11. 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, including the time scale of completion of the key components of the Services;
  2. comply with the reporting arrangements and protocols required by the Client from time to time; and
  3. comply with all reasonable directions of the Client.
- 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.

## **12. Disputes**

Subject to clause 13A and to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement, amicably. The Parties may agree procedures and protocols for dispute resolution from time to time. The Client expects that the Contractor utilise the State's industrial relations procedures, including the Labour Relations Commission and/or the Labour Court, for the purpose of resolving employment disputes with its employees.

## **13. Governing Law, Choice of Jurisdiction and Execution**

- A.** This Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Parties hereby agree that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
- B.** This Agreement shall be executed in duplicate and each copy of the Agreement shall be signed by all the Parties hereto. Each of the Parties to this Agreement confirms that this Agreement is executed by their duly authorised officers.

## **14. Notices**

- A.** Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email or facsimile

transmission. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.

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

1. if personally delivered, at the time of delivery;
2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
3. if sent by electronic mail, telex or facsimile transmission, on the first day following successful transmission.

## **15. Assignment and Subcontract**

Subject to a Party's obligations at law, any assignment to a third party, subcontract or other transfer of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party. Prior to any such assignments, 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.

## **16. Entire Agreement**

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

## **17. Severability**

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

## **18. Waiver**

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

## **19. Non-exclusivity**

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

## **20. Media**

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

## **21. Conflicts, Registrable Interests and Corrupt Gifts**

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise the Client forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.
- B. Any registrable interest involving the Contractor (and any subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (subcontractor or agent as the case may be) and to comply with the Client's directions in respect thereof, to the satisfaction of the Client. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 21C or the commission of any offence by the Contractor, any subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

## **22. Inspection and Access to Premises**

- A. Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Client's premises, lands and facilities before submitting its Submission and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement.
- B. 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.

- C. 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.

## **Schedule B: Specification of Services**

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[Insert when completing contract]

## **Schedule C: Charges**

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[Insert when completing contract]

## Schedule D: Special Conditions

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A provision in this Schedule shall apply **ONLY IF** marked as ‘applies’.

### Special Condition 1 – Time of the Essence

**SC 1(A) Time of delivery shall be of the essence. This clause does not apply to this contract.**

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

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**SC 1(B) Right to Impose Liquidated Damages Claim where Delivery Dates not Complied with. This clause does not apply to this contract.**

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

### Special Condition 2 – Limitation of Liability

**SC 2 Contractor’s Limitation on Liability. This clause does not apply to this contract.**

Save in respect of fraud, personal injury or death (for which no limit applies), the limit of the Contractor’s aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed [number] per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims and in any event shall not be for a sum less than €[insert amount].



### Special Condition 3 – Remedies

#### SC 3 Retention for Cause. This clause does not apply to this contract.

If for any reason the Client is dissatisfied with the performance of the Contractor, an appropriate sum may be withheld from any payment otherwise due (“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 SC 3 shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

### Special Condition 4 – Equipment

#### SC 4 Contractor to provide Equipment. This clause does not apply to this contract.

- SC4(A) The Contractor shall provide all equipment and materials (“Equipment”) necessary for the provision of the Services.
- SC4(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 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.
- SC4(C) The Contractor shall maintain and store all items of Equipment within the Client’s premises in a safe, serviceable and clean condition.
- SC4(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.
- SC4(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.

## Special Condition 5 – Non Solicitation Clause

**SC 5 Non-Solicitation.** This clause does not apply to this contract.

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 Key Personnel without that other Party's prior written consent.

## Special Condition 6 – Change Control Procedure

**SC 6 Change Control.** This clause does not apply to this contract.

Both Parties agree that any request for change to the scope of the Services will be processed in writing according to the following Change Control Procedure.

- SC6(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.
- SC6(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.
- SC6(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").
- SC6(D) All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- SC6(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.
- SC6(F) On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- SC6(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.
- SC6(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.

### Special Condition 7 – Project Dependencies

SC7      **Additional Special Condition 7.** This clause does not apply to this contract.

### Special Condition 8

SC8      **Additional Special Condition 8.** This clause does not apply to this contract.

### Special Condition 9

SC9      **Additional Special Condition 9.** This clause does not apply to this contract.

## Schedule E: Confidentiality Agreement

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[Insert when completing contract]

## Schedule F: Client's RFT Including Any Clarifications Issued by the Client

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[Insert when completing contract]

## Schedule G: Contractor's Submission Including Any Clarifications Issued by the Contractor

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[Insert when completing contract]

## **Appendix 7: Confidentiality Agreement**

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

The Arts Department of Waterford City and County Council, of [insert Address] (hereinafter “the Client”) of the one part;

and

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

### **WHEREAS**

A.

**The Contractor has been identified as the preferred bidder in a public procurement competition entitled Request for Tenders for the Provision of Services to assist in the development of a new Arts Plan for Waterford 2016 - 2021**

WCCC/A/374 dated July 2015 (“the Competition”).

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

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

1. The Contractor acknowledges that Confidential Information may be provided to him by the Client 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 Client 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 provision of services under the Contract and or relating to the Client and all and any information supplied or made available to the Contractor (to include

agents, subcontractors, customers and suppliers) for the purposes of the Contract; and

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

3. Save as may be required by law (or any statutory regulation or order having the force of law) or for the purpose of any proceedings in court or any tribunal of fact or law; or by order, request, regulation of any person or body or authority with whose order or requests the Contractor is obliged to comply, the Contractor agrees in respect of the Confidential Information:

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

3.2 not, without the Client's prior written consent, to communicate or disclose any part of such Confidential Information to any person except

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

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

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

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

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

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

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

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

5. The Contractor undertakes:

5.1 to comply with all directions of the Client with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Acts, 1988 and 2003);

- 5.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Client including, if required, completion of documentation under the Official Secrets Act, 1963 and comply with any vetting requirements of the Client including by police authorities;
- 5.3 upon termination of the Competition (or Contract) for whatever reason to furnish to the Client, all Confidential Information or at the written direction of the Client to destroy in a secure manner all (or such part or parts thereof as may be identified by the Client) 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 Client so request in writing. As an exception to its obligations under this clause 5.3 the Contractor may retain one copy of the Confidential Information, in paper form, in the Contractor's legal files for the purpose of ensuring compliance with its obligations under this Agreement. For the avoidance of doubt "document" includes documents stored on a computer storage medium and data in digital form whether legible or not; and
- 5.4 to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:
- i Data Protection Acts, 1988 and 2003 and
  - ii All EU requirements arising (including, but not limited to, provisions relating to the processing of data, ensuring the security of data and restrictions on transfers of data abroad) and any legislation and regulations implementing same.
6. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by the Client and the Contractor so acknowledges and confirms.
7. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the Client's databases, data or ICT system(s) as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Client and in the manner agreed in writing between the Parties.
8. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.

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

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