



**Request for Tenders dated 8 April 2019
for the provision of
secretariat services for ACESA**

Tender procedure: Open procedure

Tender Deadline: 23 April 2019

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Part 1: Introduction

- 1.1 **The Association of Chief Executives of State Agencies** (ACESA - the “Contracting entity”) invites tenders (“Tenders”) to this Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the provision of the services as described in Appendix 1 to this RFT (the “Services”).

DEFINITION OF ACESA AND WHAT WE DO

- 1.2 In summary, the services comprise **the Provision of Secretariat Services to support**

ACESA.

The Association is registered a company limited by guarantee. It provides a forum for chief executives of non-commercial state agencies,

to discuss issues of mutual concern and enables them to develop and express a collective Voice on issues that affect the sector

ACESA’s Objectives are

To create networking opportunities, to identify and promote best management practice through information sharing and training, to initiate and share relevant research, to keep up date on relevant developments and to foster international links

ACESA’s **Secretariat will be responsible for**

- **Event management**
- **Supporting and advising ACESA sub-committees and project groups**
- **Member recruitment**
- **Maintaining the database and running the annual Membership Survey**
- **Identifying training and development opportunities**
- **Identifying opportunities and funding for cross border and international initiatives**
- **Promoting the profile of the Association**

- 1.3 Any contract that may result from this Competition (the “Services Contract”) will be issued for a term of **24 months** (“the Term”)

- 1.4 The contract will run for 24 months with an option to extend for a further period or periods of up to 12 months with a maximum of 2 such extension(s) on the same terms and conditions subject to its obligations at law. The Agreement shall not exceed four (4) years

in aggregate. It is anticipated that the commitment will be one day a week – 52 days per annum.

- 1.5 It is the policy of the Contracting entity to encourage participation on a fair and equal basis by Small and Medium Enterprises (“SME”s”) in this Competition.

Part 2: Instructions to Tenderers

2.1 Important Notices

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

2.1.2 The Contracting entity does not bind itself to accept the lowest priced or any Tender.

This RFT does not constitute an offer or commitment to enter into a Services Contract.

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

Any notification of preferred bidder status by the Contracting entity shall not give rise to any enforceable rights by the Tenderer.

The Contracting entity may cancel this Competition at any time prior to a formal written Services Contract being executed by or on behalf of the Contracting Authority.

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

2.2 Compliant Tenders

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

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

Tenderers are required:

- a. To submit all documentation which this RFT requires to be submitted with their Tender;
- b. To follow the format of this RFT and respond to each element in the order as set out in this RFT;
- c. To conform and comply with all instructions and requirements set out in this RFT;

- d. To submit the statement required under paragraph 2.4 below; and
- e. Not to alter or edit this RFT in any way.

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

2.3 Services Contract

- 2.3.1 Tenderers should note the terms and conditions of the Services Contract at Appendix 4 to this RFT.
- 2.3.2 Tenderers are required to confirm their acceptance of the terms and conditions of the Services Contract by signing the Tenderer's Statement at Appendix 3. Tenderers may not amend the Services Contract.

2.4 Acceptance of RFT Requirements

Each Tenderer is required to accept the provisions of this RFT. ALL TENDERERS MUST RETURN, with their Tender, a scanned signed copy of the Tenderer's Statement, as set out in Appendix 3. The Contracting entity must be able to read the scanned signature of the Tenderer. If possible, please sign documents using blue ink. If the Contracting entity cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderer's Statement.

2.5 Tender Submission Requirements

- 2.5.1 Tenders must be submitted via to the following email address ceo@coru.ie Only Tenders submitted to the email above will be Tenderers must ensure that they give themselves sufficient time to upload and submit all required tender documentation before the Tender Deadline (as defined in paragraph 2.5.2).
- 2.5.2 Tenders must be received not later than **17.00 (Irish Time) on 23 April 2019** (the "Tender Deadline"). Tenders that are received late will not ordinarily be considered in this Competition unless the Contracting entity decides otherwise
- 2.5.3 Tenders must be submitted in English.
- 2.5.4 Each Tenderer is limited to submitting one Tender.
- 2.5.5 All Tenders submitted must be compiled such that they can be read immediately using Microsoft Office or PDF readers. The Contracting entity is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

2.6 Queries and Clarifications

- 2.6.1 All queries relating to any aspect of this Competition or of this RFT can be directed to ceo@coru.ie. Queries will be accepted no later than **17.00 (Irish Time) on 12 April 2019**

unless otherwise published by the Contracting entity. For the avoidance of doubt, Tenderers may not contact the Contracting entity directly regarding any aspect of this Competition. Any queries answered and replies will be made available to those who request the same by email to ceo@coru.ie

2.6.2 The Contracting entity reserves the right to issue or seek written clarifications.

2.6.3 The Contracting entity reserves the right at any time before the Tender Deadline, to update or amend the information contained in this document and/or to extend the Tender Deadline. Tenderers will be informed of any such amendment or extension through the ACESA website.

2.7 Tendering Costs

All costs and expenses incurred by Tenderers relating to their participation in this Competition including shall be borne by and are a matter for discharge by the Tenderers exclusively.

2.8 Confidentiality

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

- a. are furnished for the sole purpose of replying to this RFT only;
- b. may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting entity;
- 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 entity upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.

2.9 Pricing

2.9.1 All Tenderers must complete the Pricing Schedule at Appendix 2 to this RFT.

2.9.2 All prices quoted must be all-inclusive be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.

2.9.3 Tenderers must confirm that all prices quoted in the Tender will remain valid for six months from the date that it is made.

The quoted prices shall be that amounts which are necessary to carry out all of the work required to satisfy the requirements set out in this RFT; this unit prices shall include all costs required to deliver those elements. Please refer to section 3.3 Award Criteria and Appendix 2 Pricing Schedule

- 2.9.4 Any currency variations occurring over the term of the Services Contract shall be borne by the Tenderer.
- 2.9.5 Payments for Services provided pursuant to this RFT shall be subject to and made in accordance with the Services Contract at Appendix 4 to this RFT.

2.10 Environmental, Social and Labour Law

- 2.10.1 In the performance of any Services Contract awarded, the successful Tenderers shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU of the European Parliament and of the Council on public procurement (the “Directive”).
- 2.10.2 Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees’ rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting entity for any claim arising or loss or costs incurred as a result of their failure or incapacity to fulfil their obligations under the said Directive and Statutory Instrument.
- 2.10.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the “2012 Act”) provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the Services will involve the provision to the Contracting entity of Agency Workers (within the meaning of the 2012 Act), Tenderers should ensure that they consider their obligations under the 2012 Act when pricing their Tender. The Contracting entity shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the Services.

2.11 Publicity

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

2.12 Registrable Interest

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

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

2.13 Anti-Competitive Conduct

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

2.14 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.

2.15 Tax Clearance

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

2.16 Conflicts of Interest

Any conflict of interest or potential conflict of interest, including within the meaning of Regulation 24 of the European Union (Award or Public Authority Contracts) Regulation 2016 {SI No. 284 of 2016}, on the part of a Tenderer, individual employee(s) or agent(s) of a Tenderer must be fully disclosed to the Contracting entity as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Contracting entity may invite Tenderers to propose

means by which the conflict of interest might be removed. The Contracting entity will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Services Contract entered into by a Tenderer.

2.17 Withdrawal from this Competition

Tenderers are required to notify the Contracting entity immediately via **ceo@coru.ie** if at any stage they decide to withdraw from this Competition.

2.18 Insurance

2.18.1 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	€ 12,700,000 Not Applicable (if no employees)
Public Liability	€2,600,000
Professional Indemnity	€325,000
Product Liability	Not applicable

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

2.18.3 The successful Tenderer will, during the term of the Services Contract, be required to:

- a. immediately advise the Contracting entity of any material change to its insured status;
- b. produce proof of current premiums paid upon request;
- c. produce valid certificates of insurance upon request.

Part 3: Selection and Award Criteria

3.1 Compliant Tenders

3.1 Only those Tenderers who have:-

- (a) Submitted compliant Tenders pursuant to part 2.2 above; and
- (b) Declared that they satisfy the selection criteria for this Competition as set out in part 3.2 below (the “Selection Criteria”);

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

The Contracting entity may decide to examine Tenders before verifying the fulfilment of the Selection Criteria.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting entity reserves the right to ask Tenderers at any moment during the Competition to submit any additional information for the purposes of verification of the status of the Tenderer.

If a Tenderer does not, upon request by the Contracting entity, and within the time prescribed for this purpose, provide evidence which is considered by the Contracting entity as sufficient to demonstrate its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFT it may be excluded from further participation in this Competition.

3.2 Selection Criteria

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

3.2.A Economic and Financial Standing

Tenderers must declare (in Appendix 3) that they satisfy the financial and economic standing requirement(s) set out below and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting entity in each case.

3.2.B Technical and Professional Ability

All Tenderers must demonstrate that they have the following technical and professional ability by providing the relevant details with their response.

- Details of two contracts of similar size and nature within the past three years or demonstrate evidence of similar work, either in employment or as an independent provider of services. These contracts / evidence of similar work should demonstrate that the Tenderer has a high level of knowledge and competence in the services relevant to this tender. Information must be provided in the following format

Contract/Client name:	
Details of services provided:	
Contract period as appropriate:	
Estimated value of contract, as appropriate:	
Describe how this work is comparable to the services required under this tender	
Clients contact details as appropriate:	

Note:

The Contracting entity reserves the right to contact any of the above clients without further contact with Tenderers.

3.3 Award Criteria

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

No:	Award Criteria	Maximum Marks Available
1.	Proposed methodology and approach, to deliver the required services as outlined in this RFT document (to include resources and timescales).	20%
2.	Qualifications and experience of proposed key personnel who will be assigned to manage and deliver the required services (evidenced by way of Curriculum Vitae's).	40%
3.	Quality assurance and quality control measures in place	10%
4.	Proposed pricing (in the format outlined in Appendix 2).	30%
Total		100%

Scoring methodology marks for Qualitative Award criteria 1 to 3 above will be allocated as follows:

Weighting	Meaning
5	A response with very few or no weaknesses that fully meets or exceeds requirements, and provides comprehensive, detailed, and convincing assurance that the Tenderer will deliver to an excellent standard.
4	A response that demonstrates real understanding of the requirements and assurance that the Tenderer will deliver to a good or high standard.
3	A response which demonstrates a reasonable understanding of requirements and gives reasonable assurance of delivery to an adequate standard but does not provide sufficiently convincing assurance to award a higher mark.
2	A response where reservations exist. Lacks full credibility/convincing detail, and there is a significant risk that the response will not be successful.
1	A response where serious reservations exist. This may be because, for example, insufficient detail is provided, and the response has fundamental flaws, or is seriously inadequate or seriously lacks credibility with a high risk of non-delivery.
0	Response completely fails to address the criterion under consideration.

Marks for pricing criteria 4 above, will be allocated using the following formula:

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

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

- (a) the Tenderer submitting the following evidence in respect of the Tenderer (including the Prime Contractor and any Subcontractors, as applicable in accordance with part 3.1 above) to the extent not already provided, within seven (7) days of request by the Contracting entity all or any of the supporting documents specified at part 3.2; and
- (b) the evidence specified at 3.3.2(a) above demonstrating that each entity concerned meets the Selection Criteria

3.4 Presentation of Proposals

Tenderers may be required to make a presentation of the proposal contained in their Tender. The Contracting entity 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 Return of Signed Contracts

3.5.1 The successful Tenderer must sign and return the Services Contract and the Confidentiality Agreement, no later than seven (7) calendar days from the date they are notified of their success in the competition by the Contracting entity. A signed Services Contract returned by the successful Tenderer is not binding on the Contracting entity until the Contracting entity has signed the Services Contract in accordance with paragraph 2.1.2 above.

3.5.2 Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting entity within the period as specified at clause 3.6.1 then the Contracting entity may proceed to award the Services Contract to the next highest-ranked Tenderer in accordance with paragraph 3.6.1 above.

Appendix 1: Requirements and Specifications

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

Tenderers must also satisfy the selection criteria and also address the award criteria as outlined in Part 3 above.

1. Background:

The Association of Chief Executives of State Agencies (ACESA - the “Contracting entity”) provides a forum for chief executives of non-commercial state agencies, to discuss issues of mutual concern and enables them to develop and express a collective voice on issues that affect the sector.

The ‘Association’ requires the provision of secretariat services to support the efficient running of the Association. Suitably qualified service providers are invited to tender their proposals for the provision of services as outlined below

2. Services required:

2.1. Consultancy Services

The ‘Association’ engages the Consultant to provide the consultancy services set out below on for an average of one day per week as required for the Contract Period and the Consultant agrees to provide such consultancy services upon and subject to the terms and conditions of this Agreement. It is expected that the services will be provided at the premises of the Consultant or at such other premises as may be agreed with the Association from time to time.

The successful candidate will provide the following core services:

The Core monthly duties required will include

2.2 On-going service requirements:

- Monthly Event management for 10 months of the year
- Supporting and advising ACESA Board of Directors, including monthly meetings,
- Maintaining the database and running the annual Membership Survey
- Member recruitment
- Identifying training and development opportunities
- Promoting the profile of the Association

The services provided to the Association of Chief Executives of State Agencies will include the following:

Support

- Providing support to the Chairperson in the day-to-day running of the Association
- Project-managing the Associations' activities as directed by the Chairperson

Company Secretary Duties

- maintaining the Association's registers including those of the members, the directors and secretaries and the interests of the directors and secretaries;
- arranging annual and extraordinary general meetings of the Association and circulating members with the documents for those meetings;
- organising meetings of the Board and sub-committees of the Board and ensuring that the directors have the papers they need to consider the issues that are to be discussed;
- preparing the minutes of Association general meetings and meetings of the Board and its sub-committees;
- making the Association's registers, minute book and other similar documents available for inspection by the board and the public;
- sending updated information and documents on time to the Companies Registration Office (CRO) and to other bodies;
- publishing legal notices in the media;
- keeping custody of the Association's seal

Finances

- Invoicing for and collecting annual membership fees
- Recording and monitoring all expenditure by the Association
- Maintaining appropriate bank accounts and preparing statements for the AGM, or at any time determined by the Board
- Supporting the Treasurer in the discharge of his/her duties.
- Ensuring that all financial activity is in compliance with the agreed protocol
- Managing creditor payments

Communications

- Maintaining a high level of member satisfaction with incoming and outgoing communications
- Managing member communications, including responding to member queries and producing membership and marketing materials
- Using all available channels and opportunities to promote the profile of the Association
- Managing the annual membership surveys
- Managing the ACESA website, on-line newsletter and other electronic communications

Membership Services

- Maintaining and updating accurate membership records and databases in line with GDPR
- Disseminating relevant material to the membership
- Preparing the Association's Annual Report
- Preparing, implementing and analysing the Association's Annual Survey
- Managing and delivering member events

Membership Development

- Researching the scope for further recruitment of members to the Association
- Developing proposals as to how such recruitment drive might be initiated
- Implementing these proposals as agreed

Advice

- supporting and providing advice to the Association sub-committees and reporting back to the Board
- developing a database on best practice and research on the management of public service organisations
- identifying opportunities and bringing forward proposals for structured training and development for Chief Executives
- identifying opportunities and funding for cross border and international initiatives

Performance Tracking and Reporting

- The Board will agree a programme of work with the Service Provider who will report monthly to the Chairperson with a formal report and to the committee on progress at each meeting of the Board. The Service Provider will also remain in regular contact with the Chairperson.

2.3 The services will be provided at the premises of the Consultant or at such other premises as may be agreed with the Association from time to time.

2.4. Reporting

- The Consultant shall provide the consultancy services under the direction of the Chairperson and shall report to and at all times keep the Chairperson promptly and fully informed (in writing if so requested) of his/her activities in relation to the business and affairs of the Association and provide such detail and information as the Chairperson may from time to time request.

The successful candidate will provide the following services as and when needed:

- Conference management
- Supporting and advising , sub-committees and project groups as required
- Identifying opportunities and funding for cross border and international initiatives

By agreement with the Chairperson the Service Provider will take on other related tasks that may be required from time to time

3. Contract award and contract commencement:

It is anticipated that this contract will be awarded during the Summer of 2019 with the contract commencing at the end of August 2019, but details will be negotiated between both parties to facilitate a smooth handover between the tenderer and the incumbent.

Note to Tenderers regarding tender format:

Tender responses should commence with the following information:

Tender title: Provision of secretariat service to support ACESA.

Tenderer:	
Name/Company name / Trading as:	
Nominated contact with regard to this tender:	
Address:	
E-mail address:	
Telephone number :	
Company/business information where applicable:	
a) Legal form of company (public, limited, partnership, etc.):	
b) Length of time in existence:	
c) Number of employees:	
d) Summary list of the company's principal areas of activities:	
Activity/Description:	
Total	

e) Brief profile including an organizational chart (if applicable):

(Please attach additional pages if required)

Note:

The above document is also provided in Word format as a separate attachment available for downloading.

Tenderers must then follow the format of this Request for Tender (RFT) as outlined in: Part 2 – Instruction to Tenderers.

Please also ensure to address each of the award criteria.

Appendix 2: Pricing Schedule

The following information in relation to the proposed costs for the provision of the required services should be provided in the format as outlined below:

It is anticipated that a fixed price will be paid on a monthly basis, to cover the core monthly duties, with drawdown as agreed and required for ad hoc services

Table 1-On-Going Service Requirements

Ref			Excluding VAT (€)
3.1	On-Going Service Requirements	Fixed Daily Rate	€
3.2	Additional Service Requirements		
TOTAL TABLE 1			€

ULTIMATE COST CALCULATION

Costs	Total excluding VAT
Total Cost Table 1-3.1 (Excluding VAT)	€0.00
Total Cost Table 2-3.2 (Excluding VAT)	€0.00
TOTAL ULTIMATE COST	€0.00

The following tables are not included in the Ultimate Cost calculation but should be completed to set out the **maximum rates** chargeable over the maximum duration of the framework (four years)

Table 2- Additional Service Requirements

Ref	Rate Card Costs	Hourly Rate	Excluding VAT (€)
	Additional Service Requirements		€
TOTAL TABLE 2			€

Appendix 3: Tenderers' Statement

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

To: ACESA

Re: Request for Tenders for the provision of secretariat services to support ACESA

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

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

SIGNED	Company
(Authorised Signatory)	
Print name	Address
Date	

Appendix 4: Draft Template for Services Contract to be agreed by both parties

To be completed in conjunction with the successful Tenderer

ACESA

and

[Insert successful Tenderer’s full legal name]

AGREEMENT

Relating to the provision of Services pursuant to

Provision of secretariat services to support ACESA

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

Insert Contracting Authorities name, of [address] (“the Client”);

and

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

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

WHEREAS:

- A. By Request for Tender entitled “Insert title of RFT” advertised via xxxx dated insert date of RFT (“the RFT”) the Contracting entity invited tenders from economic operators (“Tenderers”) for the provision of the services described in Appendix 1 to the RFT (the “Services”). References to the RFT shall include any clarifications issued by the Contracting entity via xxxxx between [insert date] and [insert date] (the “RFT Clarifications”). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date of Tender] (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting entity between [insert date] and [insert date] (the “Submission Clarifications”). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Agreement and Schedule A attached hereto;
 - ii. The RFT; and
 - iii. The Submission.
2. The Contractor agrees to provide the Services described in Appendix 1, paragraph 2.4 (“the Services”) to the Client in accordance with this Agreement (“Agreement”). Appendix 1, paragraph 2.4 details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT and the Submission (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.

- 4. For the purposes of this Agreement, the Client’s Contact is [name of contact person] of [address of contact person]; the Contractor’s Contact is [Contractor contact name] of [Contractor contact address.]

- 5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties or terminated in accordance with law, including pursuant to Regulation 73 of the European Union, (Award of Public Authority Contracts Regulations 2016 (SI No 284 of 2016)).

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

- 6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.

- 7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.

- 8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.

- 9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

SIGNED for and on behalf of the Client	SIGNED for and on behalf of the Contractor
<hr style="width: 20%; margin-left: 0;"/> (being a duly authorised officer)	<hr style="width: 20%; margin-left: 0;"/>
Witness	Witness

Schedule A: Terms and Conditions – DRAFT TEMPLATE – to be agreed by both parties

1. General

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.

- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
 - 1. provide the Services in accordance with the Submission and/or Specification, the RFT, the Client’s directions and the terms of this Agreement;
 - 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 - 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
 - 4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU. The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, and immigration and work permits of all personnel retained for the purposes of complying with this Agreement.

- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 184 above, 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 Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
- F. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may retain and use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- G. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the “TUPE Regulations”) and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Client under the TUPE Regulations by any Affected Employees. Affected Employees shall mean those employees in respect of whom the TUPE Regulations may be deemed to apply in connection with this Agreement.

2. Key Personnel

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

provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3. Payment

- A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner (including as to timing) specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
 - 1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 10A from time to time;
 - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and
 - 4. The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements.
- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), client may deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under

any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

4. Warranties, Representations and Undertakings

- A. The Contractor acknowledges, warrants, represents and undertakes that:
 1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
 5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 6. it owns, has obtained or is able to obtain, maintain or retain valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
 7. It retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for

inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.8.

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

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

5. Remedies

A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 5A shall survive termination of this Agreement for any reason.

B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6(G), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.

C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices or expenses which may be paid by the Client.

D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

E. Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6G for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed [insert amount – eg: [number] per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement] regardless of the number of claims.

- F. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows:

[Insert] (“the Retention Amount”) which Retention Amount shall not at any given time exceed [number] per cent of the Charges. In such event the Client shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5F shall be without prejudice to and not be in substitution for any other remedy of the Client under this Agreement.

- G.

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

6. Intellectual Property

- A. Intellectual Property Rights (“IPR”) means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor’s standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and

interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.

- D. The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client's Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.
- G. The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any liability loss damages claims costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

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

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

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

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

7. Confidentiality

A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:-

1. its professional advisers subject to the provisions of this clause 7; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or
4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 6 to the RFT ("the Confidentiality Agreement").

The obligations in this clause 7 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
2. which is or becomes public knowledge other than by breach of this clause; or
3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or

4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details of its personnel (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.
- D. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any Freedom of Information request received.
- E. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

8. Force Majeure

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
 1. the nature of the Force Majeure Event;
 2. the anticipated delay in the performance of obligations;

3. the action proposed to minimise the impact of the Force Majeure Event;

and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

- C. If the Force Majeure Event continues for 14 calendar days either Party may terminate at 14 days' notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

9. Termination

- A. Subject to the provisions of sub-clause 9B, this Agreement may be terminated by the Client, without liability for compensation or damages, by serving one month's written notice to the Contractor. Subject to the provisions of sub-clause 9B, this Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving one month's written notice to the Client.
- B. Either Party shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
 - 1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;

and/or
 - 2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the exclusion grounds set out in Article 57 of EU Directive 2014/24/EU apply to the Contractor.

- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Client which is in its possession save that which it may properly retain for administrative purposes.
- F. If requested by the Client, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client (“Employment Information”). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

10. Contract Management

- A. The Client’s Contact and the Contractor’s Contact shall liaise on a regular basis to address any issues arising which may affect the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
 - 1. liaise with and keep the Client’s Contact fully informed of any matter which might affect the observance and performance of the Contractor’s obligations under this Agreement;
 - 2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
 - 3. comply with all reasonable directions of the Client; and
 - 4. comply with the service levels and performance indicators set out in Schedule D.

11. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the “Dispute”), the Parties shall first seek settlement of the Dispute as set out below.

- B. The Dispute shall be referred as soon as practicable to [insert Contractor senior contact] within the Contractor and to [insert Contracting entity senior contact] within the Contracting entity respectively.
- C. If the Dispute has not been resolved within fifteen (15) business days, that is excluding weekends and public holidays in Ireland (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) business days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

12. Governing Law, Choice of Jurisdiction and Execution

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

13. Notices

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 13.
- B. All notices shall be deemed to have been served as follows:
 - 1. if personally delivered, at the time of delivery;
 - 2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 - 3. if communicated by email, on the next calendar day following transmission.

14. Assignment and Subcontract

Subject to a Party's obligations at law, any assignment to a third party, subcontract or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.

15. Entire Agreement

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

16. Severability

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

17. Waiver

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

18. Non-exclusivity

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

19. Media

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

20. Conflicts, Registrable Interests and Corrupt Gifts

- A. The Contractor confirms that it has carried out a conflicts of interest check, including within the meaning of Regulation 24 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI No. 284 of 2016), and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise the Client forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and to comply with the Client's directions in respect thereof, to the satisfaction of the Client. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

22. Equipment

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Services (“Equipment”).

23. Non Solicitation

- A. For the Term and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither the Client nor the Contractor shall employ or offer employment to any of the other Party’s employees without that other Party’s prior written consent.

24. Change Control Procedure

- A. At any time during the term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. A change control notice (“Change Control Notice”) shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment (“Impact Assessment”).
- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party’s Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client’s request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Contractor will not be liable for such

delay and will be entitled to an extension of time equal to not less than the period of the delay.

Appendix 5: Confidentiality Agreement

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

Insert Contracting Authorities name, of [insert Address] (hereinafter “the Contracting Authority”) of the one part;

and

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

WHEREAS

- A. By Request for Tenders dated [insert date] entitled [insert title] (the “RFT”) the Contracting entity invited tenders (“Tenders”) for the provision of the services described in Appendix 1 to the RFT (the “Services”) (“the Competition”). The Contractor submitted a response to the RFT dated the [Insert Date of Tender].

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

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

NOW IT IS HEREBY AGREED In consideration of the mutual obligations and benefits arising hereunder:

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

3. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:

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

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

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

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

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

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

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

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

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

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

5. The Contractor undertakes:

5.1 to comply with all directions of the Contracting entity 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) and the EU General Data Protection Regulation.

5.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting entity including, if required, completion of documentation under the Official Secrets Act, 1963 and comply with any vetting requirements of the Contracting entity including by police authorities;

- 5.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority, all Confidential Information or at the written direction of the Contracting entity to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting entity) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting entity so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not; and
- 5.4 to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:
- i Data Protection Acts, 1988 and 2003 and the General Data Protection Regulation; and
 - ii All EU requirements arising (including, but not limited to, provisions relating to the processing of data, ensuring the security of data and restrictions on transfers of data abroad) and any legislation and regulations implementing same.
6. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by the Contracting entity and the Contractor so acknowledges and confirms.
7. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting entity as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting entity and in the manner agreed in writing between the Parties.
8. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
9. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

SIGNED for and on behalf of the Contracting Authority

(being a duly authorised officer)

SIGNED for and on behalf of the Contractor

Witness

Witness