



Effectiveness and Renewal Group
for the Department of Justice & Equality
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30 September 2018

Mr Charlie Flanagan, T.D.
Minister for Justice and Equality

Received

- 2 OCT 2018

Minister's Office
Department of Justice and Equality

Dear Minister

In line with our Terms of Reference, I herewith enclose the second report of the Effectiveness and Renewal Group for the Department of Justice and Equality.

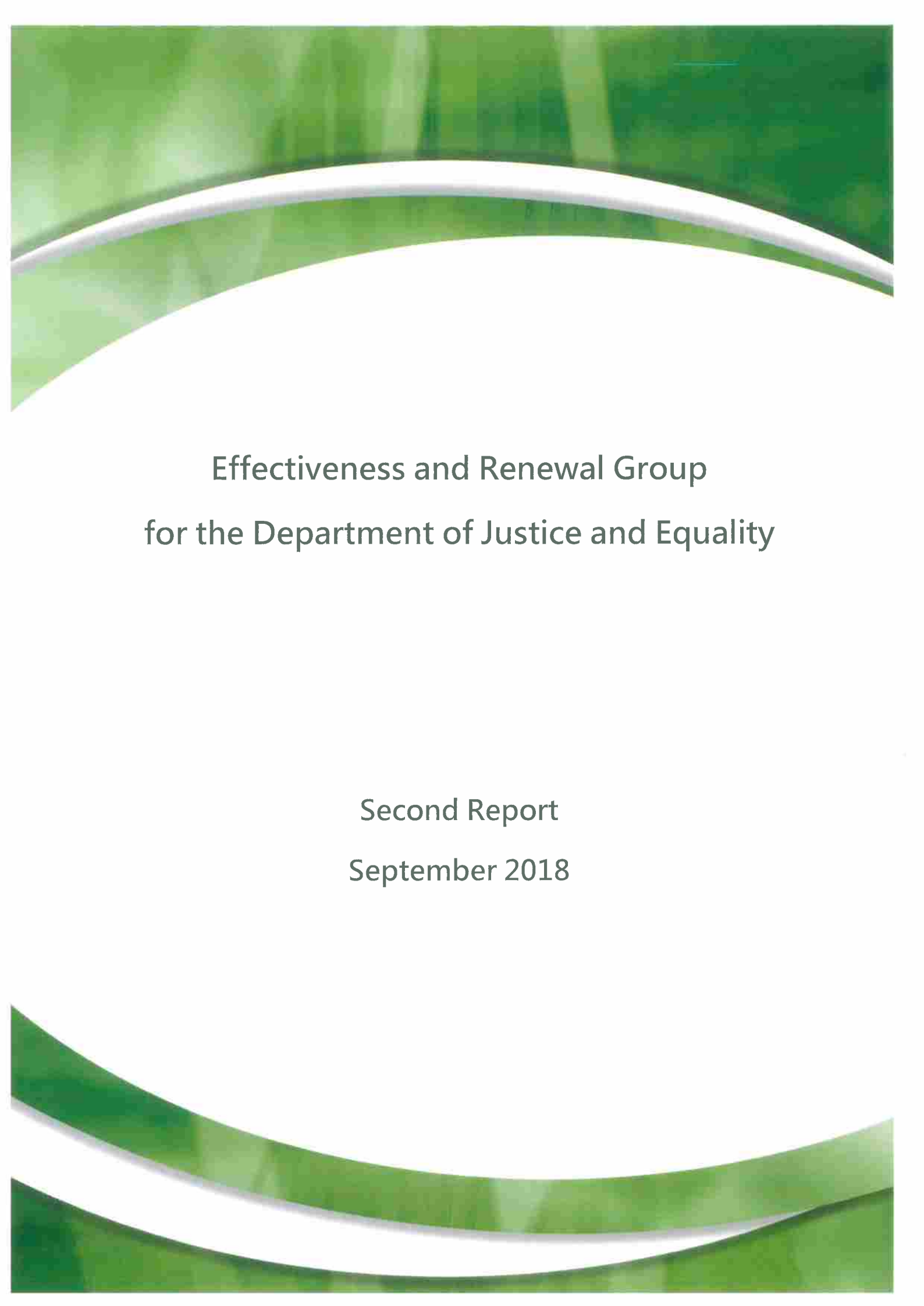
This quarterly report outlines the considerable progress which has been implemented since our first report was submitted in June, as well as the next steps which the Department of Justice & Equality will need to take in the coming weeks and months to successfully deliver the Transformation Programme.

We have also outlined the measures which we will use to form the basis for our future reports, and in accordance with our mandate, we will submit our next quarterly report by 31st December.

Yours sincerely

Pádraig Ó Riordáin
Chairman

[Leo Varadkar, T.D., Taoiseach]



Effectiveness and Renewal Group
for the Department of Justice and Equality

Second Report
September 2018

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Executive Summary

This is the Second Report of the Effectiveness and Renewal Group (ERG) for the Department of Justice and Equality. In accordance with our mandate, its purpose is to report on progress since our first report in June of this year as well as comment further on elements of the change programme we have described.

We indicated in our first report that the initial building blocks that are key to implementing the change and renewal we recommended in the Department included:

- Sponsorship at the most senior political and civil service levels;
- Expedited appointment of the new Secretary General of the Department;
- Communication of the rationale for the reorganisation plan both internally in the Department and to external stakeholders; and
- Procurement of external change management specialists.

We are happy to report that each of these building blocks were energetically put in place since the beginning of July.

The Government and the Minister assessed and endorsed our report on 10th July and on the same day appointed a new Secretary General to the Department, Aidan O'Driscoll, with a mandate to lead the implementation of the renewal programme. We very much welcome the appointment of Mr. O'Driscoll and recognise the significant support of the Government, the Minister and the Civil Service Management Board in adopting the renewal programme, funding it and propelling it forward.

Very commendably, the Department itself, under the acting leadership of Oonagh McPhillips, immediately embraced the change recommendations in our first report, notwithstanding their fundamental nature and their impacts on so many roles, and without delay set about communicating the renewal plan and planning for its implementation. This work included a comprehensive internal communications exercise in the Department, town-hall forums for questions and answers as well as preparation of the request for tender (see Appendix B) to appoint a change management firm to help effect the reorganisation.

In addition, on 19th July the Minister dedicated his annual roundtable conference with the Justice sector agencies and bodies to the renewal programme set out in our first report. He invited the ERG at that conference to present our vision, rationale and structure for the recommended change and to answer the questions which sector stakeholders more generally had in respect of the scope and impact of the proposed reorganisation. This was a particularly helpful exercise and we would like to thank the Minister for arranging it.

Mr. O’Driscoll formally joined the Department as Secretary General on 1st September and immediately set about taking ownership of the renewal agenda for the Department, working closely with the ERG. This has included meeting with all Assistant Secretaries General and Principal Officers to ensure full ownership of reform by senior management and to commence work on the internal communications plan.

On 21st September the request for tender for the external change management firm was issued and it is expected that the appointment of the successful firm will take place in November and immediately begin its work.

In the meantime, there is a material amount of ongoing preparatory work which is being undertaken by the Department which we describe in this report.

The ERG is consequently pleased to report that implementation progress to date has been good, with the primary foundations for change now in place. We expect that the pace of the more detailed development will now expedite over the coming months and we will continue to work closely with the Department over that period.

We will report again by 31 December 2018.

Progress 1 July – 30 September

Figure A summarises the developments over the past three months which are most important to the implementation of the recommendations in our first report.

In particular, we highlight the following developments:

Endorsement of the recommendations of our First Report by Government and the Minister

The early endorsement by the Government and the Minister of the recommendations in our first report has been of fundamental importance. This has given a clear mandate and direction to the Department and the Justice sector as a whole in relation to the required structure of change. This commitment has also been reflected in the consistent support and attention of the Civil Service Management Board throughout this process from the inception of the ERG.

Appointment of the new Secretary General

The immediate appointment by the Government of Aidan O’Driscoll as the new Secretary General of the Department, on publication of our first report, with a mandate to implement the recommended change is a cornerstone of the change process. We have worked closely with Mr. O’Driscoll from his appointment and since he formally took up the role on 1st September he has taken pro-active ownership of the change agenda, setting the tone for change and acting as its senior sponsor.

The Top Level Appointments Committee is in the process of completing the appointment of the additional Deputy Secretary General required, with the advice of the Secretary General as to the requirements for the role. This role that was advertised in July. He is also currently assessing the appointments of the Functional Heads as well as the composition of the Transformation Steering Committee and the other preparatory steps set out later on in this report.

Involvement of the Justice sector more broadly

The Department has approximately thirty agencies and bodies which operate under its aegis, all of which will be affected to varying degrees by the new ways in which the Department will operate.

Figure A

June	July	August	September	October	November	December
<ul style="list-style-type: none"> Effectiveness and Renewal Group's 1st report submitted to Government 	<ul style="list-style-type: none"> Effectiveness and Renewal Group report approved by Government and published Appointment of new Secretary General announced ERG report circulated to D/Justice staff and discussed at team meetings Roundtable event held with D/Justice agencies to discuss perspectives from the wider sector Competition for additional Deputy Secretary General post advertised Work commenced on the Request for Tender to engage external expertise 	<ul style="list-style-type: none"> Town-hall information event held for D/Justice staff Minister for Justice wrote to Oireachtas Committee on Justice and the Public Accounts Committee regarding reform in the Department Information on Town-hall event circulated in staff weekly e-bulletin 	<ul style="list-style-type: none"> New Secretary General commenced his role in the Department New Head of Communications started in the Department Report of the Commission on the Future of Policing in Ireland published Request for Tender for external change management consultants to help effect the reorganisation is published Meeting of all ASGs and POs convened by the new Secretary General to ensure full ownership of reform by senior management and to commence work on internal communications plan Effectiveness and Renewal Group's 2nd Report submitted to Government 	<ul style="list-style-type: none"> Senior Leadership Team to be established Programme Governance Structure and Resourcing to be established including the Transformation Programme Board, Transformation Programme Manager, and Steering Committee The culture required to successfully deliver the change programme to be determined Vision, guidelines, goals and objectives to be set Communications Strategy to be formulated Programme Managers for Home Affairs, and Justice & Equality to be appointed Additional Deputy Secretary General due to be appointed Tender responses due for submission Assessment and evaluation of tender submissions to commence 	<ul style="list-style-type: none"> Contract for external consultants to be awarded External change management consultants begin work First phase of transformation change programme to commence 	<ul style="list-style-type: none"> Effectiveness and Renewal Group's 3rd Report due to be submitted to Government

On 19th July, the Minister held his annual roundtable conference with the agencies and bodies which he dedicated to the renewal of the Department in accordance with our first report, under the theme *'Next Steps in Organisational Change: Justice and Equality Sector Perspectives'*.

The conference involved presentations and discussions around the recommendations of the report with a focus on impacts for agencies and bodies under the remit of the Department. The ERG presented at this conference and participated actively in it.

Some 70 people attended the conference and participants included the Minister, the Chief Justice, senior members of the Department and heads and senior management from the agencies and bodies (see Appendix A).

We welcomed the full engagement of all parties throughout the conference and the opportunity to clarify the recommendations in the report as well as to hear and respond first-hand to the concerns and questions of the agencies.

Internal Communications Programme

The Department pro-actively undertook a comprehensive internal communications programme from the date of publication of our first report. Our report was circulated to all staff with a message setting out the recommendations, advising staff of the appointment of the new Secretary General and outlining the next steps including the procurement of necessary external consultancy services.

The report was discussed at staff and team meetings throughout the organisation and staff were also invited to attend a town-hall event in August which was an opportunity for staff, across all grades, to familiarise themselves with the organisational changes outlined in the report, provide feedback and ask any questions they may have. The event was also live streamed to 15 other locations to ensure that it reached as many members of staff as possible.

A new Head of Communications, appointed from an outside specialist panel, has also recently started in the Department and will work on a communications strategy both internally and externally for the change management process.

The new Secretary General has also issued an introductory message to staff which emphasised the importance of the restructuring project and the opportunity it

presents to lead transformation in the Irish Civil Service. These themes were further developed by the Secretary General at a meeting of all Assistant Secretaries General and Principal Officers at the end of the September which focused on how to ensure full ownership for the restructuring by all senior managers and also workshopped ideas which will form the basis for internal communications with all staff.

Request for Tender for external consultants

The appointment of external change management consultants to assist the Department with the expertise and resource required to implement the recommended renewal is a key element of the implementation phase. The Department worked assiduously with the Office of Government Procurement on the preparation of the tender required to procure these services to meet the requirements of the restructuring process. The tender (see Appendix B) was published on 21st September with returns to be submitted by 26th October. It is intended that the successful tenderer will be appointed in mid-November and begin work immediately. This will mark the start of the nine month timeline for completion of the restructuring, with the initial three months dedicated to the preparatory phase of the project.

Commission on the Future of Policing in Ireland

The Commission on the Future of Policing in Ireland issued its report on 18th September and we note that its views in respect of the manner in which the Department and the Gardaí should interact align with ours. We strongly welcome the recommendation by the Commission of the establishment of a statutory board to strengthen the internal governance and management of the Gardaí. We believe that the introduction of this board will materially reinforce the effectiveness of the Department's new governance and oversight structures, which we set out in our June Report, as they relate to the Gardaí.

Appointment of Ministerial Programme Managers

The process to appoint the two Programme Managers to the Minister which we recommended in our first report is underway and is expected to be completed in October. These two additional roles, Programme Manager for Justice & Equality and Programme Manager for Home Affairs, are expected to be filled by experienced civil servants assigned by the Secretary General who will reinforce the Minister's immediate team and directly support the Minister in his or her work. These Programme Managers will work closely with the Deputy Secretaries in a manner to be settled by the Department.

The structure of the Department's Operational Services

In our June report we undertook to examine further the question of whether:

- (i) the Department should continue to provide directly substantial public-facing operational services, for instance in immigration, probation and prisons; or, alternatively
- (ii) the delivery of these operations should be devolved from the Department's direct remit to separate, dedicated and accountable organisations each responsible for their own service delivery

Having looked at this in some detail, we conclude that all of the large public-facing operational services currently provided by the Department should be reorganised into individually mandated and accountable organisations, each responsible for its own culture, strategy, operating model and performance.¹

These organisations should be directed and controlled by appropriately sized and skilled boards of directors in a manner consistent with government policy, within explicit budget constraints and the prescriptions of the *Code of Practice for Governance of State Bodies* (2016), Department of Public Expenditure & Reform. These boards could be comprised of a blend of civil servants and each should include at least one independent director acting as Chairperson. The governance and oversight by the Department of these organisations would be clearly delineated in accordance with the functional model we described in our June report.

We believe that this structure has a variety of material advantages for the public, the operating entity, the Department and the Minister which we outlined in our first report.² We are open-minded at this stage as to which form of structure or legal approach should be adopted to achieve these outcomes, for instance whether formal agencies need to be created in each case.

¹ e.g. Irish Naturalisation and Immigration Service (INIS), Irish Prison Service (IPS), The Probation Service, Data Protection Commissioner, Insolvency Service Ireland, Forensic Science Ireland

² Page 29, Section 4

We also recognise that the operational services may have differences which require different solutions, for example, in the scope of their functions and their exercise of functions on behalf of the Minister. We ask the Department to revert to us before our next report with an analysis of the optimal structure which should be adopted for each of the primary operational services.

Each of these proposed structures should create clear and delineated responsibility and accountability in the reorganised service for achieving the purposes defined by the Minister and Department. It should also support the efficient delivery of service to the public under the sole management of the newly reorganised operational entities', boards and executives.

We will continue to discuss with the Department the best means and timing of progressing these initiatives, in the context of the overall restructuring and the other demands on the Department.

Co-location as a Core Element of the Renewal of the Department

The Department's staff, including those working within its direct public service delivery functions, are currently located across a large number of distinct buildings and geographies. A core element of the successful implementation of the reorganisation and renewal of the Department, mandated by the Government in accordance with our June Report, is the physical consolidation of the Department to an organisationally optimal number of locations. This will encourage cross-functional co-operation, a key priority of the reorganised model, as well as enabling the senior management to build a cohesive and consistent Department across functional units.

The core Department across all of the functional units of Justice and Home Affairs should be located in one building. This is particularly important as the new ways of working and operational models of the Department are being bedded down. If necessary, the large operational entities described [above] which currently form part of the Department could be located separately, but optimally proximately.

Preparation between now and mid-November

Prior to the appointment of the external change management firm in mid-November there are tasks to be completed to ensure the transformation programme gets off to an optimal start. The senior leadership team will be responsible for leading the transformation programme and for delivering its outcomes.

To do so, between now and mid-November it should give clear direction to the project team based on the following core issues:

- *Project Vision* – what are the leadership team aiming to achieve, what does a successful solution look like?
- *Measures of Success* – what are the measurable goals and objectives?
- *Guiding Principles* – the principles on which the restructuring process will be undertaken, for example, the project team manages the transformation process with no disruption to the ‘business-as-usual’ obligations of the Department, which are critical.
- *Governance structure* – this includes the decision-making process, issue escalation process, responsibilities and accountabilities.
- *Culture* – this defines the behaviours which are required to successfully deliver the restructuring programme.

In addition, in preparing for the full initiation of the restructuring in mid-November, the Department has taken ownership of this process and is focusing on the following preparatory steps:

(a) Appoint the Senior Leadership Team

The role of the Senior Leadership Team is to lead the transformational change, together with the Secretary General, Deputy Secretary General Justice & Equality and Deputy Secretary General Home Affairs they create the vision & strategy, drive the culture change, make the change a priority, create accountability, decision-making and set the example for everyone else to follow.

The identification of as many of the Functional Heads as possible is essential to start the design of the operational model for which they will be responsible. Where it is not possible to identify all Functional Heads within the timeframe, it is critical that all functions in both divisions are led and represented from the beginning of the change process.

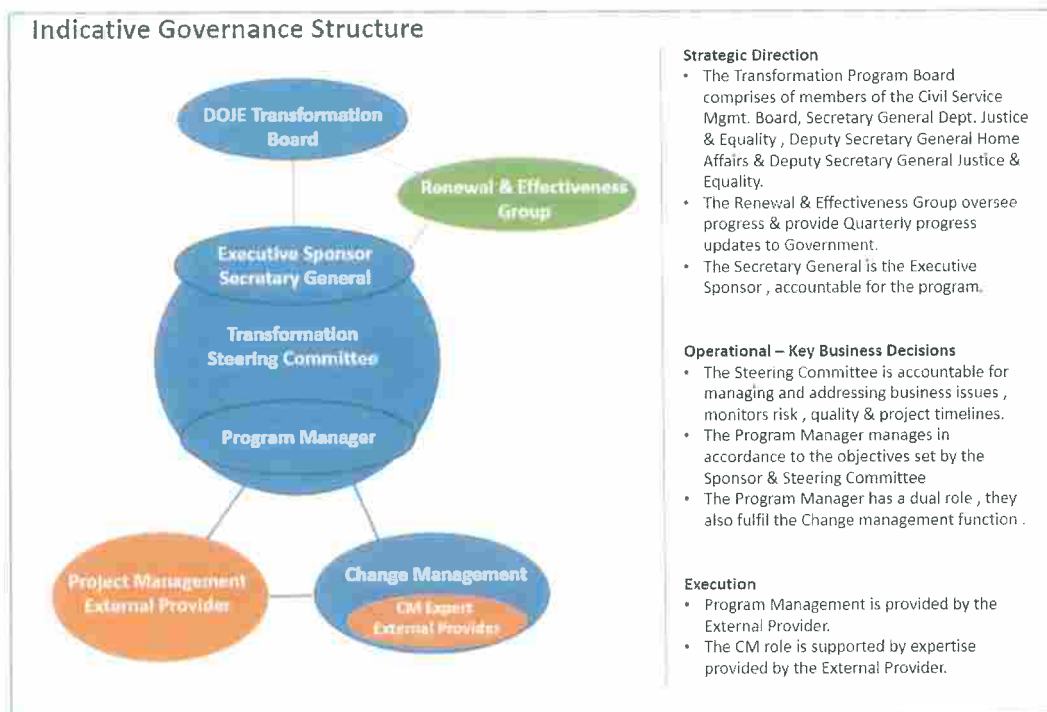
(b) Establish the Programme Governance Structure and Resourcing

We have discussed the proposed governance structure with the Secretary General which, indicatively, is set out in Figure B. Over the next weeks the Transformation Programme Board, the Steering Committee and Programme Manager role should be appointed and roles clarified.

We also strongly recommend assigning permanent internal resources to the Change Management Team with the objective of building an internal change management capability critical to sustaining change. This is important as change and evolution in the Department should become a permanent feature, outlasting the current transformation process and helping the Department adapt consistently to future challenges.

Guidance and advice on how to build the Change Management strategy, and manage and reinforce change should be provided by the External Provider. The separation of the change management role from the project management role in the indicative structure is to ensure the culture change is prioritised and gets the right level of focus. This is essential to success of the transformation and, as in any reorganisation, is likely to prove the greatest challenge for leadership.

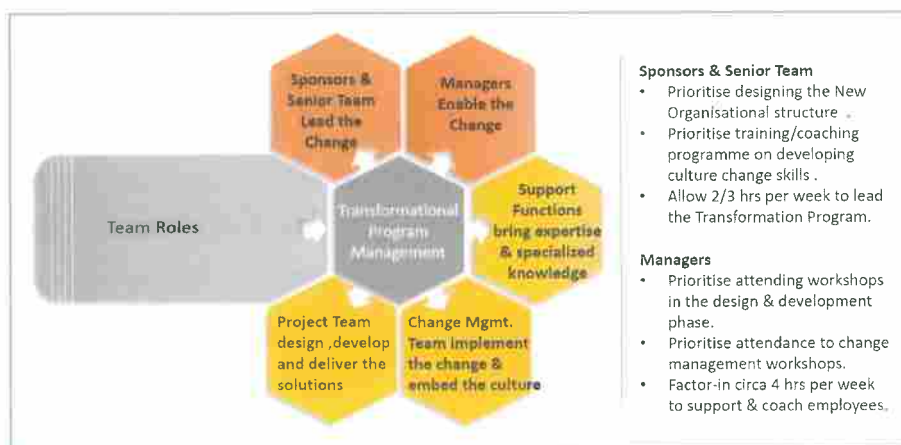
Figure B



In this structure, a co-ordinated system of five key team roles work together to design, develop and deliver the Transformation Programme.

Two of the roles are employee-facing: the Senior Leadership team leads change, and Managers enable change. Three of the roles are project enabling roles: The Project Team (External Provider) delivers the solution, the Change Management Team implements the change and the Project Support functions (HR, Internal communications, Training specialists, Subject matter experts) bring expertise and specialised knowledge. This is represented in Figure C.

Figure C



(c) Establish the culture required to successfully deliver the Transformation Programme

Generally, the single biggest failure which leadership teams encounter when leading transformational change is when adaptive or cultural challenges are treated like technical problems. When a Leadership Team is under pressure to lead transformational change and manage the day to day business there is a strong tendency to focus on delivering the structural elements (e.g. defining structures, roles, etc) and relegate the cultural challenges to a back seat.

The change the Department is undertaking is not just about doing things differently, it is also about *thinking differently* and so requires a change in behaviours.

The Leadership Team therefore needs to determine the cultural elements within the Department that will help or hinder the Transformation Programme and identify the shifts in mind-set that must happen.

We recommend focusing on a few key behaviours (e.g. accountability), describe the behaviours, establish how these behaviours will impact the organisation, and how they will be measured. The manner in which this new target culture and plans for its implementation is introduced, communicated on an individual basis and explained will be critical to the success of the project.

(d) Set the vision, guidelines, goals and objectives

The Senior Leadership team is accountable for setting a clear vision, guidelines, goals and objectives. This will drive focus, ownership, motivation and momentum. The team must be clear on what they want to achieve through this transformational change, what success looks like and how it will be measured.

(e) Formulate the Communications Strategy

The purpose of the Communications Strategy is to ensure that the organisation and stakeholders understand the programmes expected values and benefits, progress, challenges and achievements.

Communication in a change management project is successful when employees and stakeholders can articulate what is changing, how the change affects and benefits the organisation and how the change affects them individually. The communications strategy needs to include the roles, responsibilities, resources, message guidelines, channels, content review process and timelines.

How we will continue to report on progress

The reform and renewal of the Department will be successful if in the near future it efficiently fulfils its purposes of providing policy, transparency, governance, legislative change and management of situations for the public, its sectoral entities and the Minister. As a result, it is the measurement over time of those outputs and the costs necessary to deliver them which will demonstrate real progress or otherwise. This will require a meaningful development in the approach of the Department which, like other departments, traditionally has not been good at measuring its overall performance in meeting its purposes effectively. In order to create those measurements, the drivers of that performance in the Department's new model need to be understood as soon as is practical.

The Department's progress in performance and efficiency will be predicated on the extent of its renewed: i) culture, ii) prioritisation of resources, iii) optimised operating model, and iv) performance measurement and management; all aligned to its purposes. An assessment of progress on these pillars will form the framework of our future reports. Once they are available, we will report progress against a budget and programme management schedule for the transformation programme consistent with the programme's completion timeline as set out in our first report. We will report further on progress by 31 December 2018.

Appendix A

4th Annual Ministerial Roundtable with Agencies 19 July 2018

List of Attendees

Surname	Name	Agency
Baxter	Carol	D/Justice & Equality
Becker	Hilka	International Protection Appeals Tribunal
Burke	Ita	Probation Service
Burns	Paul	Courts Service
Carroll	Seamus	D/Justice & Equality
Cassidy	Marie Prof.	State Pathologist
Clarke	Mr. Justice Frank	Chief Justice
Clavin	Patrick	Criminal Assets Bureau
Croke	Garreth	Garda Síochána Ombudsman Commission
Daly	Theresa	Effectiveness and Renewal Group
Dixon	Helen	Data Protection Commissioner
Donnellan	Michael	Irish Prison Service
Dowling	Noel	D/Justice & Equality
Duffy	Joyce	D/Justice & Equality
Elliot	Iris	Irish human Rights and Equality Commission
Feehily	Josephine	Policing Authority
Flahive	Michael	D/Justice & Equality
Flanagan	Minister Charlie	Minister for Justice and Equality
Furey	Yvonne	D/Justice & Equality
Gilheaney	Patricia	Inspector of Prisons
Hannigan	Tom	Forensic Science Ireland
Heylin	Greg	D/Justice & Equality- Victims of Crime/Mental Health Review Board
Higgins	Edel	Irish Prison Service
Hogan	Maeve	Property Services Regulatory Authority
Howlin	John	Department of Public Expenditure & Reform
Johnston	Walter	D/Justice & Equality

Kavanagh	Sarah	Minister's Office - D/Justice & Equality
Kelly	Geraldine	Private Security Authority
Kelly	John	D/Justice & Equality
Kinsella	Marita	Office of the Data Protection Commissioner
Kirrane	Michael	D/Justice & Equality
Laffan	John	D/Justice & Equality
Lawlor	Gary	D/Justice & Equality
Leahy	Eileen	D/Justice & Equality
McCarthy	Dermot	Effectiveness and Renewal Group
McPhillips	Oonagh	D/Justice & Equality
Meenan	Deirdre	Commission on the Future of Policing in Ireland
Merriman	Brian	D/Justice & Equality
Murphy	Caroline	Minister's Office - D/Justice & Equality
Nugent	Joe	An Garda Síochána
Ó Ríordáin	Pádraig	Effectiveness and Renewal Group Chair
O'Sullivan	Doncha	D/Justice & Equality
O'Callaghan	John	D/Justice & Equality
O'Connor	Lorcan	Insolvency Service of Ireland
O'Driscoll	Aidan	D/ Justice and Equality
O'Dwyer	John	Office of the Data Protection Commissioner
O'Leary	Philip	Legal Aid Board
O'Neill	Michael	Irish human Rights and Equality Commission
O'Reilly	Declan	Criminal Assets Bureau
Ring	Ms. Justice Mary Ellen	Garda Síochána Ombudsman Commission
Ryan	Ultan	Legal Services Regulatory Authority
Ryan	Brendan	Courts Service
Ryan	Ben	D/Justice & Equality
Ryan	Sinead	Commission on the Future of Policing in Ireland
Scallan	Paul	Private Security Authority
Stanton	Minister David	Minister of State
Sutherland	Dale	Office of the Data Protection Commissioner

Toland	Mark	Garda Síochána Inspectorate
Tully	Eileen	D/Justice & Equality
Walsh	Marion	D/Justice & Equality
Ward	Neill	D/Justice & Equality
Willoughby	Tim	An Garda Síochána

Appendix B



Oifig um Sholáthar Rialtais
Office of Government Procurement

Office of Government Procurement (OGP)

Multi Supplier Framework Agreements for the Provision of
Business and Management and ICT Consultancy Services

RFT 128458 - PAS097F

Supplementary Request for Tender for Framework Agreement
Lot 08: Organisational Change Management and Transformation
Estimated Contract Value in excess of €144,000

Framework Client Name

Name: Department of Justice and Equality

Framework Client Detail

Contact Name for this SRFT: Martina Colville, HR Manager

Date: Friday, September 21, 2018

SRFT Title

Name: Provision of Services to Provide Detailed Design, Planning and Implementation of a New Structure and Operating Model for the Department of Justice & Equality

This Framework is only applicable for requirements that have a value in excess of €25,000 (exc. VAT)

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Part A: Instructions to Framework Members

1. Department of Justice and Equality (“the Client”) seeks Tender responses for the provision of **Services to Provide Detailed Design, Planning and Implementation of a New Structure and Operating Model for the Department of Justice & Equality** at the following premises 51 St. Stephen’s Green, Dublin 2. Detailed requirements and specifications are outlined in Part C of this SRFT.
2. This Supplementary Request for Tenders (SRFT) is issued in accordance with the Terms and Conditions of the OGP’s Multi Supplier Framework Agreements for the Provision of Business and Management and ICT Consultancy Services – RFT 128458 - PAS097F.
3. As one of the Framework Members (“Framework Members”) included for Framework Agreement **Lot 08: Organisational Change Management and Transformation** Estimated Contract Value in excess of €144,000 , you are now invited to consider this SRFT and send a formal Tender Response.
4. Any contract that may result from this Competition will be for a term of **Nine Months** (“the Term”). This nine month period is crucial and the successful provider will be expected to complete the work within this timeframe. Please note there will be a requirement for some post-implementation support, set out on page 21.
5. The Framework Client (“Contracting Authority”) reserves the right, at its discretion, to extend the Term of the contract for a further **six months** on the same terms and conditions, subject to Framework Client (“Contracting Authority”) obligations at law.
6. 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 Framework Client does not accept any liability or provide any express or implied warranty in respect of any such information. Framework Members must form their own conclusions about the solution(s) needed to meet the requirements set out in this SRFT and may wish to consult their legal advisers.

7. The Framework Client (“Contracting Authority”) may cancel this Competition at any time prior to a formal written Services Contract being executed by or on behalf of the Framework Client.
8. This SRFT does not constitute an offer or commitment to enter into a Services Contract.
9. No contractual rights in relation to the Framework Client (“Contracting Authority”) will exist unless and until a formal written Services Contract has been executed by or on behalf of the Framework Client.
10. Any notification of preferred bidder status by the Framework Client (“Contracting Authority”) shall not give rise to any enforceable rights by the Framework Member (“Framework Member”).
11. The Framework Client does not bind itself to accept the lowest priced or any tender.
12. The successful Framework Member (“Framework Member”) agrees to execute and comply with the terms and conditions of the Services Contract which was attached to the OGP’s Request for Tenders (RFT) to Establish Multi Supplier Framework Agreements for the Provision of Business and Management and ICT Consultancy Services at Appendix 7. Framework Members is required to confirm, in a statement as set out at **Part C of the Tender Response Document (“TRD”)** to this SRFT their acceptance of the terms and conditions of the Services Contract at Part D to this SRFT and the Confidentially Agreement at Part E to this SRFT. Framework Members may not amend the Services Contract or the Confidentially Agreement.
13. Any queries in relation to this SRFT and any of the requirements and specifications specified must be directed to the messaging facility on the contract workspace on www.etenders.gov.ie. Queries or requests for clarification will be **accepted no later than 3pm on Wednesday, October 10, 2018** unless otherwise published by the Framework Client. All clarifications and responses to queries/requests for clarifications will be transmitted to all Framework Members via the messaging facility on www.etenders.gov.ie. Where appropriate, questions or replies may be combined in the course of responding. For the avoidance of doubt, Framework Members may not contact the Framework Client regarding any aspect of this Competition by any other means other than the etenders messaging facility.
14. Your SRFT Tender Response document (“TRD”) must be submitted via the electronic post-box facility on www.etenders.gov.ie and Tender Responses **must be received not later than 12 noon on Friday, October 26, 2018**. Only TRDs submitted to the electronic post-box will be accepted.

TRDs submitted by any other means (including but not limited to by email, fax, post or hand delivery) will NOT be accepted. Tender Responses received after the deadline will not be considered.

Tender Response Document (“TRD”) must be submitted in soft copy and must be compiled such that they can be read immediately using Microsoft Office Readers or PDF. The Framework Client is not responsible for corruption in electronic documents. Framework Members must ensure documents are not corrupt.

Framework Members must ensure that they give themselves sufficient time to upload and submit the TRD before the Response Deadline. Framework Members should take into account the fact that upload speeds vary. There is a maximum of 4GB for the total (combined) document(s) sent to the electronic post-box. In order to submit a document to the electronic post-box, please note that you must click “Submit Response”. After submitting you can still modify and re-send your response up until response deadline. Framework Members should be aware that the “Submit Response” button will be disabled automatically upon the expiration of the response deadline.

15. The Framework Client reserves the right, at any time before the Tender Response Deadline, to update or amend the information contained in this SRFT or the Tender Response Document (“TRD”) and/or to extend the Tender Deadline. Participating Framework Members will be informed of any such amendment or extension through the etenders website.
16. The Framework Client (“Contracting Authority”) reserves the right to issue or seek written clarifications from the Framework Members (“Framework Members”).
17. The Framework Client (“Contracting Authority”) intends to award the contract to the **Most Economically Advantageous Tender Response** received. An outline of how the award marks are to be allocated is defined at **Part B Award Criteria** of this SRFT.
18. The fees or rates quoted in response to this SRFT cannot be increased throughout the duration of any contract awarded.
19. The fees proposed by the Framework Members in response to this Competition must match or improve on the maximum daily rate card charges per professional grade levels.

Maximum Daily Rate Card Charges for each Professional Grade Level tendered at RFT stage of the establishment of the *OGP's Framework for the Provision of Business and Management and ICT Consultancy Services* are capped for the Term of the Framework Agreement(s). Framework Members may quote discounted Daily Rates in this Competition, but may not quote a rate in excess of the submitted for admittance to the Framework(s).

20. The successful Framework Member shall be required to hold for the term of any Services Contract awarded pursuant to this Competition, insurances of the type and to the level specified in the table below:

Type of Insurance	Indemnity Limit
Employer's Liability	€12.7m limit for any one claim or series of claims arising out of a single occurrence, per insurance year
Public Liability	€6.5m limit for any one claim or series of claims arising out of a single occurrence, per insurance year
Professional Indemnity	€2m for any one claim or series of claims arising out of a single occurrence, per insurance year
Cyber Liability	€1m for any one claim or series of claims arising out of a single occurrence, per insurance year

In relation to RFT Schedule A: Terms and Conditions – 5. (E) Remedies - Limitation of Liability:

“Save in respect of fraud, personal injury or death or in respect of the Contractor’s indemnity under clause 6(G) and clause 25 (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 1.5 times the contract value regardless of the number of claims”

Framework Members is required to confirm, in a statement as set out at **Part C of the Tender Response Document (“TRD”)** to this SRFT that if awarded a Services Contract arising from this SRFT, 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 in section above. A formal confirmation from the Framework Member’s insurance company or broker to this effect will be requested by the Framework Client (“Contracting Authority”) prior to the award of (and shall be a condition of) any contract.

The successful Framework Member will, during the Term of the Services Contract, be required to:

- a) Immediately advise the Framework Client 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.
21. Framework Members is required to confirm, in a statement as set out at **Part C of the Tender Response Document (“TRD”)** to this SRFT that if awarded a Services Contract arising from this SRFT, they will, from the Effective Date of the Services Contract (as defined in the Services Contract), obtain and hold a current and valid Tax Clearance Certificate from a relevant taxation authority. Prior to the award of any contract arising out of this Competition the successful Framework Member shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Framework Client (“Contracting Authority”). By supplying these numbers the successful Framework Member acknowledges and agrees that the Framework Client (“Contracting Authority”) has the permission of the successful Framework Member to verify its tax cleared position online.
22. **Department of Justice and Equality** reserves the right to withhold payment where the successful Framework Member fails to meet his/her contractual obligations in relation to the delivery of services to an acceptable level of quality.
23. All costs and expenses incurred by the Framework Member relating to their participation in this competition including, but not being limited to, site visits, meetings, demonstrations and/or presentations shall be borne by and are a matter for discharge by the Framework Member exclusively.
24. Framework Members may be required to make a presentation of the proposal contained in their response. The Framework Client will not be responsible for the cost of such presentations (in accordance with paragraph 23). Performance at presentations will **NOT** be evaluated.
25. No publicity regarding this Competition or any Services Contract pursuant to this Competition is permitted unless and until the Framework Client (“Contracting Authority”) has given its prior written consent to the relevant communication.
26. Framework Members are advised that **Department of Justice and Equality** is subject to the Freedom of Information (FOI) Act, 2014. If a Framework Member considers that any of the information supplied in their response is either commercially sensitive or confidential in nature,

this should be highlighted and the reasons for its sensitivity specified. In such cases the relevant material will, in response to a request under the FOI Act, be examined in the light of the exceptions provided for in the Act.

27. Any conflict of interest or potential conflict of interest on the part of a Framework Member, individual employees or corporate or individual service providers (whether sub-contractors or third party retainers) of a Framework Member must be fully disclosed to the **Department of Justice and Equality** as soon as the conflict or potential conflict becomes apparent. In the event of any conflict or potential conflict of interest, the **Department of Justice and Equality** may invite Framework Members to propose means by which the conflict might be removed. The **Department of Justice and Equality** will, in its absolute discretion, decide on the appropriate course of action.
28. Any registrable interest involving a Framework Member and the **Department of Justice and Equality**, other members of the Government, members of the Houses of the Oireachtas (Parliament), or employees of the **Department of Justice and Equality** and/or divisions/agencies under the aegis of the relevant Ministers, and their relatives, must be fully disclosed in any Response. In the event of this information only coming to the notice of a Framework Member after the submission of a Response and prior to the award of any Contract, it must be communicated to the **Department of Justice and Equality** immediately upon such information becoming known. 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 Framework Client (“Contracting Authority”) will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Framework Member from this Competition or terminating any Services Contract entered into by a Framework Member.
29. Framework Members attention is drawn to the Competition Act 2002 (Updated in January 2018). The Act makes it a criminal offence for Tenderers to collude on prices or terms in a public procurement competition.
<http://revisedacts.lawreform.ie/eli/2002/act/14/front/revised/en/html>
30. In this clause 30 “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), the Data

Protection Acts 1988 to 2018 and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

31. The Framework Client “Contracting Authority” will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Tenderer in response to this SRFT.

32. The Framework Member (“Framework Member”), as Data Controller in respect of any Personal Data provided by it in its Tender Response Document (“TRD”), is required to confirm, in a statement as set out at **Part C of the TRD to this SRFT**, that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Framework Member have consented to the processing of such Personal Data by the Framework Member (“Framework Member”), the Framework Client “Contracting Authority”, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Framework Member (“Framework Member”) in this Competition or that the Framework Member (“Framework Member”) otherwise has a legal basis for providing such Personal Data to the Framework Client “Contracting Authority” for the purposes of its participation in this Competition .

Part B: Award Criteria

1. The Framework Client (“Contracting Authority”) will award the contract arising out of this Competition on the basis of Most Economically Advantageous Tender (“MEAT”).
2. The MEAT will be determined following a qualitative and cost assessment and marks will be awarded according to the Award Criteria as set out in the Table below:

Award Criteria	Marks Available	Minimum Qualifying Threshold	Tender Response Document Reference
B1.1 Ultimate Cost – Fixed Project Fee (Organisational Transformation Project)	270	N/A	Section D
B1.2 Ultimate Cost – Daily Rate (Post-Implementation Support)	30	N/A	Section E
B2 Approach and Service Methodology	300	180	Section E
B3 Contract Management	100	60	Section E
B4 Quality, Relevant Experience and Availability of Resources of Proposed Team	300	180	Section E
Total	1000		

3. Qualitative Assessment - Award Criteria B2, B3 and B4:

- Qualitative Award Criteria will be assessed first.
- Framework Members are required to complete the Qualitative Award Criteria Response Section - **Part E** of the Tender Response Document (“TRD”).
- Framework Members must achieve the minimum marks allocated to each of the qualitative criteria. Failure to achieve the minimum mark in any one of the qualitative criteria will result in the elimination of the Tender Response from the Competition.
- Those Framework Members that have not achieved the required Minimum Qualifying Marks for each of the qualitative award criteria will be eliminated from the Competition without having their costs assessed and their proposed prices will not be considered for the purposes of calculating the Cost Score.
- Those Framework Members that score a mark equal to or in excess of the Minimum Qualifying Threshold for each of the criteria, will proceed to be evaluated under the Cost Assessment Award Criteria.
- Scoring of the Qualitative Award Criteria will be based on an assessment of the information provided by the Framework Members in their completed Tender Response Document (“TRD”). The Evaluation Panel will assess the information provided for each criteria and marks will be awarded using the following scoring methodology:

Scoring Methodology Award Criteria B2, B3 and B4

Weighting	Meaning
91% - 100%	Excellent response with very few or no weaknesses exceeds requirements, and provides comprehensive, detailed, and convincing assurance that the Tenderer will deliver to an excellent standard.
80% - 90%	A very good response that demonstrates real understanding and fully meets the requirements and assurance that the Tenderer will deliver to high standard.
60% - 79%	A satisfactory 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.
30% - 59%	A response where reservations exist. Lacks full credibility/convincing detail, and there is a significant risk that the response will not be successful.
1% - 29%	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

4. Cost Assessment - Award Criteria B1:

- The cost element of the award criteria will be assessed on the basis of a **Combination of Fixed Fee and Daily Rate**.
- Framework Members are required to complete the Pricing Schedule Response Section - Part D of the Tender Response Document ("TRD").
- All prices quoted must be **inclusive of all costs** (excluding travel expenses and subsistence). Price quoted must be expressed in **Euro only** and exclusive of Vat.
- Marks for the Cost Criteria B1 will be allocated using the following formula:

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

5. Totalling of Marks

The total marks achieved for the Qualitative Assessment Award Criteria will be added to the Total marks achieved for the Cost Assessment Award Criteria to arrive at a Total Overall Score. The Tender Response with the highest Total Overall Score will be deemed to be the **Most**

Economically Advantageous Tender (“MEAT”) and will be deemed successful, subject to meeting all other requirements of this SRFT.

6. Tie Break Rules

In the event that there are two or more Tender responses are deemed to have the same highest Total Overall Score, the following tie-break rules will be adopted:

- A. The Tender which has been awarded the highest number of marks for the overall Qualitative Award Criteria B2, B3 and B4 combined will be deemed to be the most economically advantageous tender (“MEAT”).
- B. In the event of the application of this tie-break rule not resulting in the determination of a preferred MEAT, the following approach will continue to be applied to each of the award criteria in the descending order listed in below until such time as a MEAT can be determined:

Order of Tie Break Evaluation Criteria:

1. Total Marks for Qualitative Award Criteria (Criteria B2 to B4 combined)
2. Total Marks for B2 Approach and Service Methodology
3. Total Marks for B3 Contract Management
4. Total Marks for B4 Quality, Relevant Experience and Availability of Resources of Proposed Team
5. Total Marks for B1 Ultimate Cost

In the unlikely event of the rules set out above failing to determine a MEAT, the preferred Tender response shall be selected on the basis of random selection. In such a circumstances, representatives from Framework Member firms that achieved the same highest marks will be invited to attend a meeting at the Contracting Authorities premises to observe the random selection. Framework Members will be notified in advance of the time/date and location of the random selection procedure.

7. Travel and Subsistence Fees

Travel and subsistence fees incurred by Framework Members in the provision of Services shall be calculated in accordance with:

1. Department of Public Expenditure and Reform: Circular 06/2017: Domestic Subsistence Allowances. <http://circulars.gov.ie/pdf/circular/per/2017/06.pdf>
2. Department of Public Expenditure and Reform: Circular 07/2017: Subsistence Allowances Abroad. <http://circulars.gov.ie/pdf/circular/per/2017/07.pdf>
3. Department of Public Expenditure and Reform: Circular 05/2017: Motor Travel Rates. <http://circulars.gov.ie/pdf/circular/per/2017/05.pdf>

Dublin will be considered the home base for all travel and subsistence claims. All travel and subsistence must be agreed in advance with the Contracting Authority.

8. Professional Grade Levels and Descriptions for Business and Management and ICT Consultancy Services

Professional Grades and Descriptions as set out in the OGP’s Request for Tenders (RFT) to Establish Multi Supplier Framework Agreements for the Provision of Business and Management and ICT Consultancy Services:

Professional Grade Levels and Descriptions		
Grade Level	Consulting Profile	Indicative characteristics
Level 6	Managing Director/Partner/ Subject Matter Expert	Extensive achievement in their specialist field, and possessing a recognised record of consistently and extensively delivering valued services to clients in wide-ranging, complex and business-critical contexts. Highly-attuned to client needs and client contexts, consistently applying strategic insight and leadership qualities to both client contexts and consultancy teams. In depth knowledge of the public sector, of current policy, political issues affecting it and/or international perspective on industry or sector trends and challenges. Likely to have more than 15 years’ experience as a professional consultant.
Level 5	Director/Principal/ Senior Manager	Recognised expert in specialist field(s) with a proven and extensive track-record of valued and high-quality consultancy delivery. Highly experienced manager of a project and client portfolios, and a great familiarity and appreciation of the public sector, current policy and political issues. Fully engaged in all aspects of project planning, bidding, budgeting, project management, risk management, project delivery and quality assurance, and in leading and managing teams and developing the experience and capability of others. Likely to have more than 10 years’ experience as a professional consultant.
Level 4	Manager	Extensive experience in the planning, bidding and management of engagements and projects with responsibilities that include quality assurance and client satisfaction. Substantial proven experience in specialist fields of capability, and proven

		understanding of the needs of clients and how to ensure service value is delivered. Highly-proficient in project and client relationship management. Likely to have more than 7 years' experience as a professional consultant.
Level 3	Senior Consultant	Professional consultant with extensive experience and with areas of specialist capability and expertise. Well-practised in client-facing roles, and significant involvement in the management of projects and teams. Likely to have more than 3 years' experience as a professional consultant.
Level 2	Consultant	Professional consultant with areas of specialist capability and expertise. Well-practised in client-facing roles, and significant involvement in projects and working in larger teams. Likely to have 1-3 years' experience as a professional consultant.
Level 1	Junior Consultant/Analyst	Professional and capable junior professional, with demonstrable experience in consultancy projects, undertaking specific tasks and with specific responsibilities, including in project proposals and project delivery. Likely to have 0-1 years' experience as a professional consultant.

Further details about the Department and its work may be found on its website here: <http://www.justice.ie>

Current Context for the Department of Justice and Equality and this Request for Services

In January 2018, the Government appointed a Group to examine a number of aspects of the work of the Department. The Effectiveness and Renewal Group (ERG) submitted its first Report in June 2018. A copy of the Report of the ERG is available [here](#). This Report recommends the fundamental restructuring of the Department, which has been accepted and endorsed by Government.

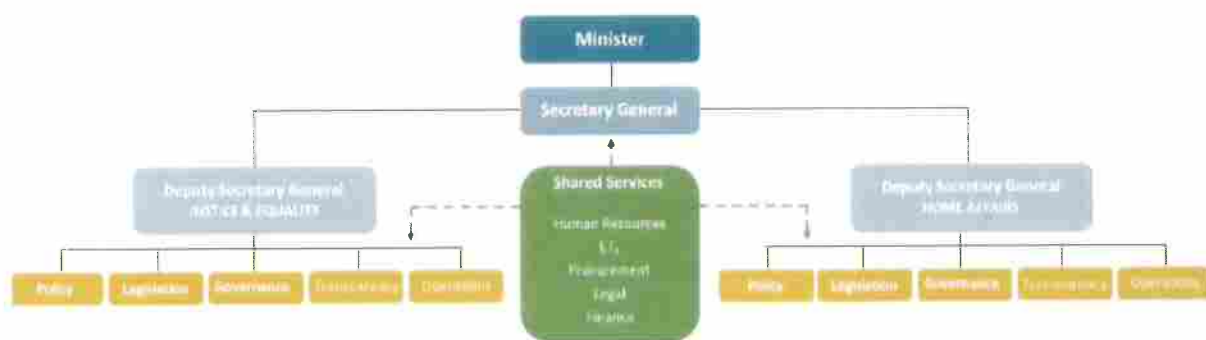
A new Secretary General has been appointed to lead the transformation process. He will sponsor and lead this process along with two Deputy Secretaries, one of whom is in place, with the other to be appointed shortly.

The ERG report notes that the current structure and organisation of the Department differs little in design from most other Departments, but concludes that it has been exposed by the demands of a rapidly changing and highly politicised world, aggravated by the complexity and depth of the Department’s portfolio.

The ERG report recommends that the Department should be fundamentally restructured including *inter alia* that it should be divided into two distinct divisions, Home Affairs and Justice & Equality with each Division led by a Deputy Secretary. Home Affairs will be responsible for crime, policing, prisons, probation, international policy and immigration. Justice & Equality will be responsible for civil law reform, courts, equality and integration.

It is envisaged that Corporate Affairs Division will continue to provide services to both areas of the Department. The transactional activity for the human resource and payroll functions of the Department is managed by the National Shared Services Office. A civil service wide project to move the Department’s financial transactional activity to the NSSO is currently underway.

Figure 2: Proposed new structure of Department:



An overall Departmental Management Board led by the Secretary General and including the two Deputy Secretaries and the Head of Corporate Affairs will provide top-level leadership of the Department including deciding on priorities, overseeing the operating model, managing talent, monitoring performance and budgeting. Each Division is to be overseen by a decision-focused Executive Board led by the relevant Deputy Secretary. The Executive Board in each Division will be responsible for ensuring that each of the functions in their area is effectively aligned and delivering on the strategic objectives of the Department and on the specific programme objectives of their respective Divisions. They will also be responsible for maintaining clarity in relation to accountabilities

and decision making in each of the functional areas but also on cross-functional, cross-divisional issues that arise. The members of the Departmental Management Board and the Executive Boards will model and drive the beliefs and behaviours to support the culture and values of the Department and will drive organisational and individual performance.

The second and most complex strand of this restructuring project will comprehensively reform the existing model on which this Department, in common with other Departments, operates. The report recommends a shift from a subject-based model to a new model structured around five key functions: Policy, Governance, Legislation, Transparency and Operations. Rather than a single Division fulfilling all of these functions for a single area of responsibility (as is currently the case), every official in each Unit is dedicated entirely to the function of that Unit. This change has been mandated by Government and the successful adoption of the new model is a key objective. The successful provider must identify the challenges associated with moving to a functional model and work with the Department to identify solutions to overcome these challenges.

The purpose of the reorganisation is to improve the Department's effectiveness and efficiency in the discharge of its key functions i.e. policy development; transparency; exercise of oversight of its agencies. A key consideration for the successful provider in the design and implementation of a functional model will be how subject based challenges, in any given area, for example in prisons, are dealt with in a functional model.

Section 2: Requirements and Specifications

Proposals are invited from suitably qualified and experienced providers in the area of organisational redesign, business performance review and operating models to partner with the Department of Justice & Equality in implementing the new Functional Operating Model. Providers should have strong knowledge of the Irish civil and/or public sector operating environment and should have experience delivering comparable projects in the private sector and/or in public sector in other jurisdictions.

The successful tenderer **will be required** to provide programme, project and change management, business analysis and other related services to enable the detailed design, planning and implementation of the new operating model for the Department.

This is a large and complex organisational transformation involving the radical restructuring of a key government department, with an ambitious nine month implementation timeline. During this time the Department will need to continue to deliver business as usual to Government, its stakeholders and clients. The successful provider will be expected to demonstrate clearly, in their response document, the appropriate capacity and capability to deliver this important project.

The following design principles underpin the client's expectations for the endpoint of the transformation process:

- Structures and people are aligned to the Department's culture and strategic objectives.
- All aspects of the new structure and functional model enable the effective functioning of Government, the Minister, Ministers of State and the Department's services to the public.
- At every level individuals understand their roles and relationships and collaborative working is enabled by the model.
- Decision points and accountabilities are identified.
- Existing good practice, procedures and processes are integrated in the new model.
- The functional model is capable of supporting the Department's response to future challenges and crises that arise and to enable that response to be quick and effective.

Detail of Requirements

The successful provider **will be required** to provide expert assistance across a range of domains to design and implement this new operating model. This will include:

1. Design and implementation of the DJE's new operating model, consistent with the outline in Section 2 above.
2. Design and implementation of the change program and its governance which will put the new operating model in place.
3. Programme management, change management and training support which ensures that the change program is completed by the Department on time and within budget.

To deliver this, the successful provider must ensure that they understand the new functional operating model, the unique operating environment of the Department of Justice & Equality and the overall (process, people and technology) needs for the organisation. More broadly the Department is working with colleagues and partners across the Civil Service and in the wider public service, contributing to the commitments set out in *Civil Service Renewal* and *Our Public Service 2020* to improve public services delivery.

The Operating Model design should stipulate at least:

- detailed organisational structures including functional unit sizes,
- job specifications including performance metrics and necessary knowledge and competencies,
- business processes and information flows within and between functional units, avoiding duplication of effort or output and clarifying key linkages between units,
- governance frameworks ensuring appropriate controls, performance measurement, resource allocation and prioritisation within both the DJE and its agencies
- identified skills gaps and training needs, referencing the new civil service wide learning and development programme
- the required internal and external communications skills, procedures, systems and structures,
- the activities within the operating model which can be supported efficiently through processes and technology, and an assessment of the current IT infrastructure with proposals for improvements, including functional specifications where new systems must be installed.
- scale and nature of change required in organisation culture, consistent with core civil service / Department values.
- assess the appropriate alignment of the model with office accommodation
- benefits identification and tracking
- provide a baseline cost for the model

The proposed new organisation sizing, structure and service delivery model should be flexible and scalable based on either expanding or decreasing requirements into the future.

The Department has a number of agencies which are staffed (c.500 staff) by the Department but are independent in their functions. The structure and design of these agencies is a matter for the boards and executives of these agencies and therefore the successful provider will not be required to design and implement the functional model in these areas. The successful provider however, **will be required** to map the relationships, governance and reporting structures, policy and legislative linkages between these agencies and the Department which is a critically important piece of work.

The Probation Service and Irish Prison Service (c.520 staff serviced by the Department's HR) deliver specific services to the criminal justice system and the structure and models for service delivery in both Probation and IPS reflect the nature of their business. The service provider will not be required to implement the functional model in these areas but, as with the agencies, they **will be required** to map

the relationships, governance and reporting structures, policy and legislative linkages between IPS, the Probation Service and the Department which is a critically important piece of work.

The Irish Naturalisation and Immigration Service (INIS) is a significant operational area within the Department with c.825 staff. The successful provider **will be required** to map the relationships, governance and reporting structures, policy and legislative linkages and also to examine the optimum alignment between INIS, Integration (Refugee Integration Agency and the Irish Refugee Protection Programme) and the two Divisions of the Department.

In addition, the successful service provider **will be required** to examine and assess the current operating model for INIS and recommend, if necessary, any changes to the model to optimise the effectiveness of service delivery into the future, including but not limited to business process improvement, ICT, the use of technologies such as AI and service design.

It should be noted that the Probation Service, IPS, and INIS will be subject to further work and recommendations by the ERG.

The service provider **will also be required** to map the relationships, governance and reporting structures, policy and legislative linkages between An Garda Síochána (AGS) and the Department, which is a critically important piece of work.

The proposed functional model is to be supported by shared services across a range of functions including human resources, ICT, finance, facilities, procurement etc. The successful **provider will be required** to examine the existing shared services (the internal Corporate Affairs and linkages with external shared services providers) and **recommend** the optimum approach to the sizing and alignment of the shared services to effectively deliver into the functional model in the two division structure set out in the ERG Report.

The nature of the Department's business is that there are important relationships with other organisations and bodies including a significant number of agencies operating under the aegis of the Department. The successful tenderer **will be required** to engage with stakeholders and agencies at design stage and seek input where appropriate.

Transformation Programme/Project Methodology

The Department is embarking on this very significant transformational change programme and critical to the success of this transformation is the commitment and expertise of the service provider and their ability to work with the Department and its internal team.

The programme will be overseen by a Transformation Change Board which will be responsible for all aspects of governance and oversight of the programme and underlying projects. Membership will be at a suitably senior level to support decision making and with relevant knowledge and expertise.

The Secretary General will be the programme Transformational Change Sponsor with each Deputy Secretary acting as Sponsors for their respective Divisions.

The Department will appoint a transformational change manager who will be supported by work stream leads.

Tenderers must **provide a detailed** prioritised programme roadmap and underlying project management plan and methodologies setting out critical activities and durations including the identification of quick win/no regret actions required for immediate implementation, project

resources to be used at each stage, and key milestones to set a baseline and monitor progress of delivery .

The provider **will be required** to develop an overarching change management strategy to manage the transition and people change including assisting with the overall change management process, consultations and on-going communications with staff, line management, stakeholders and heads of agencies. Tenderers are **required** to outline in detail their proposed approach to both the change management and communications strategies.

- Evaluation of the level of change, impact analysis and risk assessment
- Change Management plan including communications, sponsorship, ownership, resistance management, training and coaching
- Measurement and benefits, diagnosing gaps, implementing corrective actions

The successful tenderer will appoint a Programme/Project Manager. The successful tenderer's manager **will:-**

- Have the appropriate level of seniority in the firm to be in a position to promptly make any programme/project related decisions required.
- Have an appropriate level of programme/project management experience and qualifications commensurate with the complexity of the programme.
- Will be required to report on all aspects of programme/project design and implementation including reporting to the Transformational Change Board and must be in a position to report on issues relating to the provision of the service and management of the services contract, including the following:-
 - The planning, implementation, progress and completion of each phase in the delivery of the services.
 - Identifying risks to the Department or the project arising from aspects of the design or implementation which were not foreseen at the outset.
 - Manage the service providers own team and the relationships required to enable effective completion of the project.

The Department's programme manager will:-

- Manage the performance of the successful tenderer against the programme/project plan and performance indicators.
- Manage the Department's project team and the relationships required to enable effective completion of the project.

The Department's programme manager and the successful tenderer's programme manager **will work** together on issues and tasks associated with the programme, where appropriate e.g. Change and Communications planning. Each will be a single point of contact for the other on issues related to the programme.

Both programme managers **will be required** to attend Programme Board meetings and report to the Secretary General/Board as required. They will also be required to keep the ERG fully briefed on progress on the transformation project.

The tenderer should base their programme and project management methodologies on the Project Management Handbook for the Civil Service or other recognised best practice Programme/Project and Change management models.

All and any collateral produced as part of the services will be the property of the Department.

Post-Implementation Support

The successful tenderer **will be required to provide some immediate post-implementation** support to the Department in the context of the transition from the old to the new operating model. It is envisaged that this might include coaching support for senior management at assistant secretary and principal officer and training support for staff in each of the functional areas. This however, is not intended to be a prescriptive approach to post-transition support and tenderers should put forward the proposals they feel are most appropriate to ensure that the benefits of the functional model are embedded and realised as early as possible post adoption of the new model.

Project Review

On completion of the programme and underlying projects, the successful tenderer **will be required to** provide a comprehensive handover report to the Department. The report will encompass, at minimum, a project review, project learnings and any suggestions in relation to either the future of the new organisation structure or to the staffing resources which were not comprehended by the project but which could be an area of future focus to further optimise the Department's effectiveness.

Timeline for Completion

The transition to the new operating model must be completed in a period of **nine months** from initiation to completion. The tenderers **should clearly indicate** at tender stage any significant impediments, in their view, to the achievement of this implementation deadline. The tenderers should include **risk assessment and mitigation** as part of their programme/project methodology including identifying the risks associated with delivering business continuity whilst implementing and transitioning from current structure to functional model.

It should be noted that, in specific circumstances, the Department may wish to extend the contract for a period of time not exceeding six months. The service provider is **required** to indicate clearly the day rates applicable to any extension period.

Additional Information

Current Staffing Numbers for the Department of Justice and Equality

Summary Staff Profile in each area 2018

Organisation	Number of staff
Divisional Areas	496
Policing Division	49
Crime and Security*	99
Equality and Integration*	80
Criminal Law	23
Civil Law and Courts Policy*	40
International Policy	26
Corporate Affairs *	175
Offices/Agencies and Operational Areas	1840
Dublin Coroners Service	15
Garda Siochana Inspectorate	10
Irish Naturalisation and Immigration Service	825
Irish Prisons Service	124
Irish Film Classification Office	6
Office of Prisons Inspectorate	5
Data Protection Commission	90
Private Security Authority	41
State Pathology Service	7
Property Service Regulatory Authority	32
Probation Service	394
Insolvency Services Ireland	75
Financial Shared Services	106
Forensic Science Ireland	110
Total	2336

*Areas with operational activity

*Draft Service Contract to be completed on Award of Competition
(Post Mini-Competition)*

Department of Justice and Equality

And

Insert successful Framework Member full legal name

AGREEMENT

**Relating to the Provision of Services pursuant to
Request for Tenders (RFT) for the Establishment of a Multi Supplier
Framework for the Provision of Business and Management and ICT
Consultancy Services**

THIS AGREEMENT IS MADE ON THE [insert date] DAY OF [insert month] 20[insert year] BETWEEN:

Department of Justice and Equality, of [address] (“the Client”);

And

Insert successful Framework Member full legal name of [address] (“the Contractor”)

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

WHEREAS:

- A. By Request for Tender entitled “Multi Supplier Framework Agreement for the Provision of Business and Management and ICT Consultancy Services PAS097F” advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number 2018/S 035-076312 dated 17th February 2018 (“the RFT”) the Contracting Authority invited economic operators (“Tenderers”) to participate in a Framework Agreement for the provision of the services described in Appendix 1 to the RFT (the “Services”). References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie between 17th February 2018 and 13th March 2018 (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 and was received on 20th March 2018 (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between 23rd March 2018 and 31st May 2018 (the “Submission Clarifications”). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.
- C. The Contracting Authority and the Contractor entered into a framework agreement on 8th August 2018 (the “Framework Agreement”). The Framework Agreement is incorporated by reference into this Agreement.
- D. In accordance with the Framework Agreement, by way of Supplementary Request for Tenders dated [insert date of SRFT] (“the SRFT”), the Client invited responses from Framework Members for the provision of Services. References to the SRFT shall include any clarifications issued by the Client via the messaging facility on www.etenders.gov.ie between [insert date] and [insert date] (the “SRFT Clarifications”). The SRFT (including the SRFT Clarifications) is hereby incorporated by reference into this Agreement.
- E. The Contractor submitted a response to the SRFT dated the [Date of Response] (the “Response”). References to the Response shall include any clarifications issued by the Contractor in writing to the Client between [insert date] and [insert date] (the “Response Clarifications”). The Response (including the Response 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:
 - ii The Framework Agreement;

- iii. The RFT;
 - iv. The SRFT;
 - v. The Submission;
 - vi. The Response.
2. The Contractor agrees to provide the Services described in Schedule B (the “Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quantity, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT, the SRFT, the Submission and the Response (“the Specification”).
 3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
 4. For the purposes of this Agreement, the Client’s Contact is **[name of contact person]** of **[address of contact person]**; the Contractor’s Contact is **[Contractor contact name]** of **[Contractor contact address]**.
 5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on **[Insert date]**, unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

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

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

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement

SIGNED for and on behalf of the Client

SIGNED for and on behalf of the Contractor

(being a duly authorised officer)

Witness

Witness

Schedule A: Terms and Conditions

1. CONTRACTOR'S OBLIGATIONS

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
1. provide the Services in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
 4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in

every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the “TUPE Regulations”) and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

2. KEY PERSONNEL

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

3. PAYMENT

- A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:

1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 10A from time to time;
 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and
 4. The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all applicable EU and domestic taxation law and requirements.
- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

4. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- A. The Contractor acknowledges, warrants, represents and undertakes that:

1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
 5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 6. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated 20th March 2018 , which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
 7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
 8. *Delete and replace with "Not Used" if not applicable:*
it has inspected the Client's premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;
 9. the Client shall be under no obligation to purchase any minimum number or value of Services.
 10. it retains and shall maintain for the Term insurances for the nature and amount specified in the SRFT. 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.10.
- 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 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 6(G) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed the amount specified by the Contracting Authority/Framework Client in the SRFT (**Section 20 of the SRFT**) regardless of the number of claims.
- F. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows:

[insert]

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

- G. *You must select one or the other of either G or H. Delete and replace with "Not Used" if not applicable:*

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

- H. *You must select one or the other of either G or H. Delete and replace with "Not Used" if not applicable:*

Without prejudice to any general right to damages under this Agreement where the Contractor does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Client may, at his discretion, deduct [amount] per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of [amount] (the "Liquidated Damages Threshold").

Where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Client shall be entitled to:

1. claim any remedy available to it (whether under this Agreement or otherwise) for loss or damage incurred or suffered by it after the end of the Liquidated Damages Period; and
2. without prejudice to sub-clause (1), the Client shall be entitled to terminate the Agreement with immediate effect by giving notice in writing to the Contractor

6. INTELLECTUAL PROPERTY

- A. Intellectual Property Rights ("IPR") means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor's standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively "the Materials") (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.
- D. The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client's Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.

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

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

- (i) procure the necessary rights for the Client to continue use;
 - (ii) replace the relevant deliverable with a non-infringing equivalent;
 - (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
 - (iv) if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect or consequential) thereby accruing to the Client as a result of the breach.
- H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

7. CONFIDENTIALITY

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:-
 - 1. its professional advisers subject to the provisions of this clause 7; or
 - 2. as may be required by law; or

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

B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the Confidentiality Agreement between the contractor and the client date **[insert date]** and entered into pursuant to clause 13.2 of the Framework Agreement (“the Confidentiality Agreement”).

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

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

C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.

D. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

E. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

8. FORCE MAJEURE

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
1. the nature of the Force Majeure Event;
 2. the anticipated delay in the performance of obligations;
 3. the action proposed to minimise the impact of the Force Majeure Event;
- and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
- C. If the Force Majeure Event continues for **[insert number]** calendar days either Party may terminate at 14 days' notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

9. TERMINATION

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

2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
 3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
 4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. If requested by the Client, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client ("Employment Information"). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

10. CONTRACT MANAGEMENT

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
 2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
 3. comply with all reasonable directions of the Client; and
 4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure

compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

11. DISPUTES

- A. In the event of any dispute arising out of or relating to this Agreement (the “Dispute”), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to 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

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

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

15. ENTIRE AGREEMENT

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

16. SEVERABILITY

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

17. WAIVER

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

18. NON-EXCLUSIVITY

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

19. MEDIA

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

20. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

21. ACCESS TO PREMISES

- A. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

- B. The Contractor shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for the Client under this Agreement.

22. EQUIPMENT

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

23. NON SOLICITATION

- 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.

25. DATA PROTECTION AND SECURITY

- A. In this Agreement the following terms shall have the meanings respectively ascribed to them:
 - “Data” means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to his employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Client provided under this Agreement and includes any Personal Data;
 - “Data Controller” has the meaning given under the Data Protection Laws;
 - “Data Processor” has the meaning given under the Data Protection Laws;
 - “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.
 - “Data Subject” has the meaning given under the Data Protection Laws;
 - “Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;
 - “Personal Data” has the meaning given under Data Protection Laws;
 - “Processing” has the meaning given under the Data Protection Laws;
- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.

- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-
- (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
 - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - (2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - (3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. **(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)**
The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

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

the Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are

substantially similar to those set out in this clause 25 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

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

26. ADDITIONAL CONDITION(S)

[Delete and replace with 'Not Used' if not applicable: This is a free text area to allow the Client to include any additional conditions to the Contract, for example a price review clause. Such additional conditions can be set out here by the Client]

Schedule B: Services: Requirements and Specifications

[Insert when completing contract]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels

[Insert when completing contract]

Schedule E: Data Protection

[Complete when completing the contract]

Department of Justice and Equality

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1 Subject matter of processing: all information, whether in oral or written (including electronic) form, created by or in any way originating with by the Contracting Authority and/or any Framework Client (including but not limited to his/her employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with Contracting Authority and/or any Framework Client provided under the Agreement which relates to an identified or identifiable natural person;

1.2 Nature of processing [to be completed by the Framework Client]

1.3 Purpose of processing: to allow the Contractor to provide the services under the Framework Agreement or the Contract.

1.4 Duration of the processing: the Term of the Contract.

2. Types of personal data [to be completed by the Framework Client]

3. Categories of data subject [to be completed by the Framework Client]

Part E: Confidentiality Agreement

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

The **Department of Justice and Equality** of [insert address] (hereinafter “the Contracting Authority”) of the one part;

and

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

WHEREAS

- A. By Request for Tenders dated 17th February 2018 entitled “Multi Supplier Framework Agreement for the Provision of Business and Management and ICT Consultancy Services PAS097F” (the “RFT”) the Contracting Authority invited tenders (“Tenders”) to Request for Tenders dated 17th February 2018 (“RFT”) from invited economic operators (“Tenderers”) to participate in a Framework Agreement for the provision of the services described in Appendix 1 to the RFT (the “Services”), “Requirements and Specifications”, (“the Services”). The Contractor submitted a response to the RFT and was received on 20th March 2018 (“the Submission”).
- B. The Contracting Authority and the Contractor entered into a framework agreement 8th August 2018 (the “Framework Agreement”).
- C. By Request for Supplementary Tender dated [insert date of SRFT] (“the SRFT”), the Client invited responses from Framework Members to the SRFT for the provision of Services. The Contractor submitted a response to the SRFT dated the [Date of Tender] (the “Response”).
- D. The Contractor has been identified as the preferred bidder pursuant to the SRFT (“the Mini-Competition”).
- E. For the purposes of the tender process referred to in the RFT (the “Competition”), the Framework Agreement and any subsequent contract or contracts awarded thereunder (if any) (the “Contract(s)”) 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 Contracting Authority and the Framework Clients (as defined in the RFT).

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

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
 - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and

whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and

- 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time
4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
 - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
 - 4.2 not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to any person except:
 - i to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or
 - ii to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

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.
5. The obligations in this Agreement will not apply to any Confidential Information:
 - i in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority; or
 - ii which is or becomes public knowledge other than by breach of this clause; or
 - iii is independently developed by the Contractor without access to or use of the Confidential Information; or

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

6. The Contractor undertakes:
 - 6.1 to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);
 - 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;
 - 6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not.
7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:
 - “Data Controller” has the meaning given under the Data Protection Laws;
 - “Data Processor” has the meaning given under the Data Protection Laws;
 - “Data Subject” has the meaning given under the Data Protection Laws;

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

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

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

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 10(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
- (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled;
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
 1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 2. ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at

the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

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

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

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

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

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

SIGNED for and on behalf of the Client

SIGNED for and on behalf of the Contractor

(being a duly authorised officer)

Witness

Witness

Schedule A to the Confidentiality Agreement: Data Protection

[Complete when completing the contract]

Department of Justice and Equality

Processing, Personal Data and Data Subjects

1. Processing by the Contractor

1.1 Subject matter of processing: all information, whether in oral or written (including electronic) form, created by or in any way originating with by the Contracting Authority and/or any Framework Client (including but not limited to his/her employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with Contracting Authority and/or any Framework Client provided under the Agreement which relates to an identified or identifiable natural person;

1.2 Nature of processing [to be completed by the Framework Client]

1.3 Purpose of processing: to allow the Contractor to provide the services under the Framework Agreement or the Contract.

1.4 Duration of the processing: the Term of the Contract.

2. Types of personal data [to be completed by the Framework Client]

3. Categories of data subject [to be completed by the Framework Client]

End of Document