

**Request for Tenders dated 15 February 2017  
for the provision of  
Passenger & Light Cargo Ferry Service For Toraigh,  
Co Donegal 2018 - 2023**

**Tender procedure: Open procedure**

**Tender Deadline 22 March 2017**

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## Part 1: Introduction

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- 1.1 The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs (the “Contracting Authority”) invites tenders (“Tenders”) to this Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the provision of the services as described in Appendix 1 to this RFT (the “Services”).
- 1.2 In summary, the Services comprise: Passenger and Light Cargo Ferry Services between Toragh and Machaire Rabhartaigh, County Donegal, Ireland on the mainland.
- 1.3 *Not Used*
- 1.4 Any contract that may result from this Competition (the “Services Contract”) will be issued for a term of Five (5) years (“the Term”).
- 1.5 *Not Used*
- 1.6 The Contracting Authority estimates that the expenditure on the Services to be covered by the proposed Services Contract may amount to some €1.6 million (excl. VAT) over the Term. Tenderers must understand that this figure is an estimate only based on current and future expected usage.
- 1.7 Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises (“SME”)s in this Competition. SMEs that believe the scope of this Competition is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Services Contract that may result from this Competition and therefore increase their social and economic benefits.
- Larger enterprises are also encouraged, subject to paragraph 2.5, to consider the practical ways that SMEs can be included in their proposals to maximise the social and economic benefits of any Services Contracts that may result from this Competition.

## Part 2: Instructions to Tenderers

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### 2.1 Important Notices

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

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

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

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

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

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

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

2.1.3 This RFT supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence.

### 2.2 Compliant Tenders

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

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

procedural.

Tenderers are required:

- a. To complete and submit with their Tender the European Single Procurement Document (“ESPD”) attached at Appendix 4 - for Tenderers’ convenience, the form of ESPD at Appendix 4 is also provided with this RFT as a separate document in Word format and may be requested from the Contracting Authority in electronic format. Alternatively, Tenderers may submit an ESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that (i) the information contained in it continues to be correct and (ii) that they satisfy the Selection Criteria for this Competition as set out at part 3.2 below;
- b. To submit all documentation which this RFT requires to be submitted with their Tender;
- c. To follow the format of this RFT and respond to each element in the order as set out in this RFT;
- d. To conform and comply with all instructions and requirements set out in this RFT;
- e. To submit the statement required under paragraph 2.4 below; and
- f. Not to alter or edit this RFT in any way.

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

## **2.3 Services Contract**

**2.3.1** Tenderers should note the terms and conditions of the Services Contract at Appendix 6 to this RFT.

**2.3.2** Tenderers are required to confirm their acceptance of the terms and conditions of the Services Contract by signing the Tenderer’s Statement at Appendix 3. Tenderers may not amend the Services Contract.

## 2.4 Acceptance of RFT Requirements

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

## 2.5 Consortia and Prime / Subcontractors

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit a Tender in response to this RFT, the Contracting Authority will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the Services Contract only ("Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium members (the "Subcontractor"). The Tenderer must clearly set out the name, title, telephone number, postal address, facsimile number and e-mail address of the nominated contact personnel of the Prime Contractor authorised to represent the Tenderer and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person (including from any Subcontractor) will NOT be accepted, acknowledged or responded to.

## 2.6 Tender Submission Requirements

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

Tenderers must ensure that they give themselves sufficient time to upload and submit all required tender documentation before the Tender Deadline (as defined in paragraph 2.6.2). Tenderers should take into account the fact that upload speeds vary. There is a maximum of 4GB for the total (combined) documents sent to the electronic postbox. In order to submit a document to the electronic postbox, please note that you must click "Submit Response". After submitting you can still modify and re-send your response up until response deadline. Tenderers should be aware that the 'Submit Response' button will be disabled automatically upon the expiration of the response deadline.

**2.6.2** Tenders must be received not later than 12pm on 22 March 2017 (the "Tender Deadline"). Tenders that are received late WILL NOT be considered in this Competition.

**2.6.3** Tenders must be submitted in English OR Irish.

Section  
2.6.4 was  
amended on  
etenders on  
10 March  
2017 to only  
allow single  
tender  
submissions

2.6.4 Tenderers may submit more than one Tender. However any second or subsequent Tender must be prepared and presented under separate cover in a separate Tender.

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

## 2.7 Queries and Clarifications

2.7.1 All queries relating to any aspect of this Competition or of this RFT must be made **by email only** and directed to [www.etenders.gov.ie](http://www.etenders.gov.ie). Queries will be accepted no later than **12pm** on 3 March **2017** unless otherwise published by the Contracting Authority. For the avoidance of doubt, Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.

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

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

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

2.7.5 *Not used*

## 2.8 Tendering Costs

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

## 2.9 Confidentiality

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

- a. are furnished for the sole purpose of replying to this RFT only;
- b. may not be used, communicated, reproduced or published for any other purpose

- without the prior written permission of the Contracting Authority;
- c. shall be treated as confidential by the Tenderer and by any third parties (including subcontractors) engaged or consulted by the Tenderer; and
  - d. must be returned immediately to the Contracting Authority upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.

## 2.10 Pricing

- 2.10.1 All Tenderers must complete the Pricing Schedule at Appendix 2 to this RFT.
- 2.10.2 All prices quoted must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- 2.10.3 Tenderers must confirm that all prices quoted in the Tender will remain valid for six (6) months commencing from the Tender Deadline.
- 2.10.4 Any currency variations occurring over the term of the Services Contract shall be borne by the Tenderer.
- 2.10.5 Payments for Services provided pursuant to this RFT shall be subject to and made in accordance with the Services Contract at Appendix 6 to this RFT.
- 2.10.6 *Not Used*

## 2.11 Environmental, Social and Labour Law

- 2.11.1 In the performance of any Services Contract awarded, the successful Tenderers their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU of the European Parliament and of the Council on public procurement (the "Directive").
- 2.11.2 Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure



or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.

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

## **2.12 Publicity**

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

## **2.13 Registrable Interest**

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

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

## **2.14 Anti-Competitive Conduct**

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

## **2.15 Industry Terms Used in this RFT**

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

## 2.16 Freedom of Information

- 2.16.1 Tenderers should be aware that, under the Freedom of Information Act 2014, information provided by them during this Competition may be liable to be disclosed.
- 2.16.2 Tenderers are asked to consider if any of the information supplied by them in their Tender should not be disclosed because of its confidentiality or commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Tenderers must, when providing such information, clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Tenderers do not identify information as confidential or commercially sensitive, it is liable to be released in response to a Freedom of Information request without further notice to or consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about confidentiality or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act.

## 2.17 Tax Clearance

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

## 2.18 Conflicts of Interest

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

## 2.19 Withdrawal from this Competition

Tenderers are required to notify the Contracting Authority immediately via the etenders website if at any stage they decide to withdraw from this Competition

## 2.20 Site Visit

### 2.20.1 *Not Used*

## 2.21 Insurance

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

Type of Insurance	Indemnity Limit
Employer's Liability	€12,700,000 limit for any one claim or series of claims arising out of a single occurrence
Public Liability	€6,500,000 limit for any one claim or series of claims arising out of a single occurrence
Products Liability	€6,500,000 on any one occurrence and in the aggregate per insurance year. arising out of a single occurrence
Protection and Indemnity (Marine) Insurance to include pollution cover	€50,000,000 limit for any one claim or series of claims arising out of a single occurrence
Hull and machinery	For the full value of the ferry
Marine Cargo Liability	Limit of not less than €5,000,000 for each claim

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

prior to the award of (and shall be a condition of) any Services Contract.

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

- a. immediately advise the Contracting Authority of any material change to its insured status;
- b. produce proof of current premiums paid upon request;
- c. produce valid certificates of insurance upon request;
- d. Indemnify the Minister, the Department, its agents and representative on its insurance policies held by it for this service.

## Part 3: Selection and Award Criteria

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### 3.1 Compliant Tenders

3.1 Only those Tenderers who have:-

- (a) Submitted compliant Tenders pursuant to part 2.2 above; and
- (b) Declared by way of ESPD that no grounds for exclusion of the Tenderer pursuant to Article 57 of the Directive (the “Exclusion Grounds”) apply to them or that, where any such Exclusion Grounds apply, and where the Tenderer is not precluded from doing so under Article 57(6) (final paragraph) of the Directive, it can provide evidence to the effect that measures taken by the Tenderer are sufficient to demonstrate its reliability despite the existence of any relevant Exclusion Ground; and

- Declared by way of ESPD that they satisfy the selection criteria for this Competition as set out in part 3.2 below (the “Selection Criteria”);
- (c)

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

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

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

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

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

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

Competition to submit any or all of the following for the purposes of verification of the status of the Tenderer (including the Prime Contractor and any Subcontractor):

- (i) a Declaration in the form attached at Appendix 5;
- (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground; and
- (iii) in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, all or any of the supporting documents specified at paragraph 3.2 below.

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

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

## 3.2 Selection Criteria

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

### 3.2.A Economic and Financial Standing

Tenderers must declare by way of ESPD that they satisfy the financial and economic standing requirement(s) set out below *in Appendix 1 and 2* and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case.

	Qualification Required	Documentation / Evidence required
1.1	Tenderers must show that they have sufficient financial capacity to successfully provide the Shipping Service.	<p>Tenderers must provide copies of their audited accounts for the 3 most recent years. In cases where the Tenderer is a subsidiary, the parent company's audited accounts for the 3 most recent financial years should also be included.</p> <p>Tenderers must provide a cash flow statement for Year 1 of the proposed operation.</p> <p>Tenderers must provide a declaration, certified by their auditors, confirming the details of any financial or other circumstances relevant to the Tenderer which could interfere with their ability to provide the service. If no such circumstances exist, a declaration to this effect should be provided.</p>
1.2	Tenderers must demonstrate a capability to successfully operate all aspects of the Shipping Service.	<ul style="list-style-type: none"> <li>• Provide evidence that they will be able to provide a minimum of one Main vessel (Name of vessel(s), certificate of ownership, copy of lease/charter agreement if applicable) capable of meeting the likely demand on the route (The tables included at Schedule 1 1.b disclose monthly passenger numbers carried 2013 – September 2016 with a daily sailing average on the days of peak <u>daily</u> demand = 245 passengers) and a minimum of one backup vessel.</li> <li>• <u>It is essential that all main and backup vessels be owned, leased or chartered by the Tenderer for the duration of the Term.</u> Tenders must contain proof of ownership or a lease/charter agreement in respect of all main and backup vessels to be used on the service for the duration of the Term. Where a main or backup vessel is to be purchased, full details of the purchase agreement together with clear confirmation from her current owners that the vessel will be available from the start of Term shall be included with the Tender. <u>The ownership or interest in any vessel proposed for the service shall not be disposed of without the prior written consent of the Minister.</u></li> </ul>
1.3	Tenderers must demonstrate that they have suitable qualified crew to successfully deliver the Shipping Service	Tenderers must provide copies of crew qualifications including skippers' certificates for crew intending to act as skippers.
1.4	Tenderers must demonstrate the ability to distribute tickets for the service	Tenderers must provide a declaration confirming that they will be in a position to distribute tickets as per Appendix 1 section 10
1.5	Tenderers must demonstrate	Tenders must contain a statement describing how

	the capability to manage all aspects of security related to the Shipping Service	vessel security will be handled and how the requirements of any applicable sections of the International Ship and Port Facility Security Code will be met.
1.6	Tenderers must demonstrate the capability to provide monthly invoices and regular reports as per the requirements of the Contracting Authority	Tenderers must provide a declaration that confirming that they can provide daily sailing logs, monthly invoices and monthly reports. This information will be verified with the Successful Tenderer prior to contract award.
1.7	Tenderers must demonstrate their capability to handle the light cargo aspect of the service.	<u>Tenders must include a statement regarding the vessel(s) capacity and suitability to carry light cargo, including dry cargo, items of loose freight, frozen goods, refrigerated foodstuffs, perishables and fragile cargo.</u>

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

### 3.3 Award Criteria

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

<i>Award Criteria</i>	<i>Reference</i>	<i>Max Mark</i>
• Overnight Berthing of the main vessel	Appendix 1 Section 2.b	80
• Quality and suitability of vessels proposed	Appendix 1 Section 3.a,b	120
• Proposal and provision for the carriage of light cargo	Appendix 1 Section 3.c	80
• Additional Services Tendered	Appendix 1 Section 4.b	50
• Manpower Plan	Appendix 1 Section 5	100
• Customer Service and proposals for dealing with Customer Complaints and Consultation	Appendix 1 Section 6.a	80

N.B. Berthing criteria was removed from the award criteria on tenders on 9 March 2017



• Proposals for dealing with Passengers with Reduced Mobility	Appendix 1 Section 6.b	<b>100</b>
• Marketing Plan	Appendix 1 Section 7	<b>50</b>
• Risk Management	Appendix 1 Section 8.a	<b>80</b>
• Security	Appendix 1 Section 8.b	<b>80</b>
• Emergency Response Plan	Appendix 1 Section 8.c	<b>80</b>
• Environmental Plan	Appendix 1 Section 8.d	<b>80</b>
• Health and Safety	Appendix 1 Section 8.e	<b>80</b>
• Service Mobilisation Plan	Appendix 1 Section 9	<b>100</b>
• Irish Language	Appendix 1 Section 10	<b>100</b>
• Ticketing	Appendix 1 Section 11	<b>40</b>
• Financial viability of the proposed solution offered in the Submission	Appendix 2	<b>100</b>
• * Subsidy Required To Operate The Service (Year 1)	Bid For Subsidy	<b>300</b>
• <b>Total</b>		<b>1,800</b>

Following corrections  
1,620

Reference to  
"Appendix C"  
amended on etenders  
on 10 March 2017 to  
"Schedule 2"

\* The tender with the lowest Tender Subsidy<sup>†</sup> as stated on the Bid for Subsidy form contained in **Appendix C** will be awarded full marks for the Price criterion. All other tenders will be awarded marks for the Price criterion by dividing the Total Subsidy of the lowest tender by the Total Subsidy of the tender being considered and multiplying the result by the maximum mark for the Price criterion.

If for any reason it is not possible to award the contract to the designated successful Tenderer emerging from this competitive process, or if having awarded the contract, the contracting authority considers that the successful Tenderer has not met its obligations, the contracting authority reserves the right to award the contract to the next highest scoring Tenderer on the basis of the terms advertised. This shall be without prejudice to the rights of the contracting authority to cancel this competitive process and/or initiate a new contract award procedure at its sole discretion.

<sup>†</sup> Please see the Instructions to Tenderers for circumstances which permit the Contracting Authority to amend the Tender Subsidy.

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

conditional upon:

- (a) the Tenderer submitting the following evidence in respect of the Tenderer (including the Prime Contractor and any Subcontractors, as applicable in accordance with part 3.1 above) to the extent not already provided, within seven (7) days of request by the Contracting Authority: (i) a Declaration in the form attached at Appendix 5; (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant ground for exclusion; (iii) all or any of the supporting documents specified at part 3.2; and
- (b) the evidence specified at 3.3.2(a) above demonstrating that each entity concerned meets the Selection Criteria and that no Exclusion Grounds apply.

### **3.4 Presentation of Proposals**

Tenderers may be required to make a presentation of the proposal contained in their Tender. The Contracting Authority will not be responsible for the cost of such presentations (in accordance with paragraph 2.8). Performance at presentations will NOT be evaluated.

### **3.5 Standstill Period**

- 3.5.1** In circumstances where Directive 89/665/EEC as amended by Directive 2007/66/EC (the “Remedies Directive”) applies, no contract can or will be executed or take effect until at least fourteen (14) calendar days after the day on which the Tenderers have been sent a notice informing them of the result of this Competition (the “Standstill Period”) if such notice is sent by electronic means. The Standstill Period shall be sixteen (16) calendar days if such notice is sent by other means. The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.
- 3.5.2** Tenderers should note that the Contracting Authority may, when notifying Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the preferred bidder in respect of each award criterion assessed by the Contracting Authority.

### **3.6 Return of Signed Contracts**

- 3.6.1 The successful Tenderer must sign and return the Services Contract and the Confidentiality Agreement, both in duplicate, to the Contracting Authority no later than 30 calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing by the Contracting Authority. A signed Services Contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Services Contract in accordance with paragraph 2.1.2 above.
- 3.6.2 Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period as specified at clause 3.6.1 then the Contracting Authority may proceed to award the Services Contract to the next highest-ranked Tenderer in accordance with paragraph 3.6.1 above.

## **Appendix 1: Requirements and Specifications**

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

Any reference made to Department of Arts, Heritage, Regional Rural and Gaeltacht Affairs should be taken as a reference to the Minister for Arts, Heritage, Regional Rural and Gaeltacht Affairs

### **1. INTRODUCTION**

#### **a. Background**

Economic Operators are invited to tender for the provision of a passenger and light cargo service which attracts a subsidy, in respect of Toraigh, Co Donegal. The ferry service is Toraigh's lifeline and a critical part of its ability to attract visitors.

The provision of safe access to populated offshore islands is a key objective of the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs. There are now in excess of 20 state-funded island ferry services, compared to five in 1997.

The Department's current strategy focuses on getting the best value to maintain and improve the quality of transport services to the offshore islands within the financial resources available to it. Over recent years the Department has invested substantially in island capital infrastructure projects which included major investment on improving ferry landing facilities, both on the islands and on the mainland serving them.

The objectives of this procurement process are:

- to provide a "life-line" service for Toraigh;
- to offer a contract term for the service of 5 years; and
- to ensure that the total amount of subsidy to be made available for the support of the service is based on the most economically advantageous tender.

Apart from the existing ferry service between Toraigh and Machaire Rabhartaigh on the mainland there is also a limited helicopter service run in conjunction with funding from the Department of Arts, Heritage, Regional, Rural and Gaeltacht Affairs and the Health Service Executive between An Fál Carrach on the mainland and Toraigh. This service is only available each year over the period from November to early March and is primarily made available to provide Toraigh with access to medical services over the winter months.

The assistance envisaged is a subsidy to supplement the operators' revenue earned from servicing the route in accordance with the requirements of a contract which may be awarded as a result of this procurement process.

The Contracting Authority will not be offering or providing assistance for capital expenditure for the purchase or upgrading of any vessels, vehicles or equipment used to provide contracted services.

Tenderers are encouraged to find ways of maximising the revenue opportunities and minimising the costs involved in providing the service.

Tenderers cannot rely on any previous experience which the Department may have of them either as a Tenderer or as a result of current or previous contracts. Tenderers will only be evaluated on the information provided in their Tender.

Tenders should contain details of the Tenderer's experience in providing ferry services of a similar nature on an all year round basis. Where a Tenderer proposes to subcontract elements of the service, full details of the subcontractors experience shall be included in the Tender.

Where the Tenderer has no current involvement in the operation of passenger ferries, or where a joint venture/sub-contract arrangement is proposed, full details of the allocation of the experience and responsibilities of the various parties to the joint venture/sub-contract should be provided along with clear details of the proposed management structure. The Department reserves the right to request further details, which would not materially alter a Tender, in respect of any Tenderer's current and past shipping experience following receipt of their Tender.

#### **b. 4 Year Summary of Passenger and Cargo Statistics**

Passengers & Cargo Carried from 01/01/2013 to 30/09/2016									
2013					2015				
Month	Islanders	Other	Total	Cargo (Tonne)	Month	Islanders	Other	Total	Cargo (Tonne)
January	275	86	361	92.05	January	158	43	201	34.6
February	398	107	505	75.85	February	321	83	404	75
March	613	266	879	80.6	March	353	98	451	49.6
April	518	281	799	63.0	April	679	681	1360	67.0
May	551	575	1126	72.9	May	589	750	1339	60.1
June	743	1287	2030	111.2	June	668	1374	2042	71.8
July	1317	3917	5234	127.55	July	1097	3228	4325	76.6
August	1186	3900	5086	108.4	August	946	3475	4421	105.4
September	621	752	1373	90.55	September	714	1118	1832	105.4
October	605	384	989	73.45	October	560	521	1081	82.5
November	298	65	363	68.8	November	260	66	326	46.7
December	313	68	381	70.75	December	271	6	277	38.7
<b>Total</b>	<b>5869</b>	<b>8696</b>	<b>14576</b>	<b>911.15</b>	<b>Total</b>	<b>6616</b>	<b>11443</b>	<b>18059</b>	<b>813.40</b>

2014				
Month	Islanders	Other	Total	Cargo (Tonne)
January	308	58	366	76.85
February	267	67	334	71.65
March	463	286	749	74.05
April	638	848	1486	88.70
May	798	1064	1862	64.8
June	855	1692	2547	92.1
July	1021	3017	4038	110.42
August	910	3234	4144	114.3
September	690	1176	1866	92.1
October	429	181	610	72.2
November	465	96	561	66.2
December	287	32	319	57.3
Total	5549	8527	14076	868.05

2016				
Month	Islanders	Other	Total	Cargo (Tonne)
January	314	79	393	69.3
February	307	91	398	65.83
March	585	427	1012	73
April	471	387	858	106.0
May	557	1073	1630	91.8
June	741	2005	2746	58.8
July	933	3102	4035	76.0
August	1027	3577	4604	84.9
September	475	864	1339	82.70
October	523	481	1004	45.4
November	362	111	473	35
December	405	176	581	37.1
Total	6700	12373	19073	825.83

## 2. PORTS

a. **The mainland port is Machaire Rabhartaigh.** The operator may however, use other ports on the mainland from time to time where such usage enhances the level of service provided, but only with the prior written consent of the Minister. Tenderers must list all ports (island and mainland) which they intend to use to provide the service. It is a matter for Tenderer's to satisfy themselves that any vessel proposed is capable of berthing and unberthing at specified ports.

b. It is the Department's view that islands are best served by vessels which are based overnight on the island, due to their availability for emergency evacuation and the flexibility of service provided. Tenderers must state, in response to this point, the location of the overnight berth for the main vessel. The award criteria contains marks in this regard.

## 3. VESSELS

a. Tenderers must submit details of the Main vessel proposed to provide the service including;

- Vessel Name
- Flag
- Reg or IMO Number
- Year of Build
- Manning Scale
- Passenger Carriage Capacity
- Cargo Carriage Capacity
- LOA
- Beam

- Load Draft
- Horse Power
- Service Speed
- Fuel Type
- Average Fuel Consumption (per return sailing)
- Current Survey Status
- Dry Docking Schedule
- Date of last dry docking
- Details of conversion / modifications planned to vessel for use on the route. Include timescale for carrying out the planned work. If no work is required enter “NO CONVERSION / MODIFICATION REQUIRED”
- Details of detentions or withdrawal of class in the past five years
- Location where vessel is available for inspection

b. Tenderers must provide details of the contractual access (to include documentary evidence) to the backup vessel AND also provide the backup vessel details as outlined in this schedule at 3.a above.

**c. Light cargo handling capacity**

Tenders should include a statement which details the capacity of the vessels tendered to comply with the following heads of light cargo:

carriage of - dry cargo, items of loose freight, frozen goods, refrigerated foodstuffs, perishables and fragile cargo.

**4. OPERATIONS**

**a. Commencement / Frequency of Funded Service**

Services are to commence on 1 April 2018.

Tenders must provide a minimum of two return sailings per day between Toraigh and Machaire Rabhartaigh each day of the week.

The period of operation must be 12 months of each year. A service must be provided on each and every day of the year, including Public Holidays subject to agreed conditions and exemptions.

The successful Tenderer shall be required to agree a ferry timetable with the island community as soon as practicable, after award of contract. It will be a condition of any Contract that the level or frequency of the service provided will be subject to review during the period of the Contract and may be revised in the light of service usage or other relevant factors.

Tenders should contain a statement that this condition is accepted.

**b. Additional Sailings/Services**

Tenderers are encouraged to propose additional sailings in excess of the minimum requirements, in order to maximise the overall capacity deliverable. Accordingly, marks will be awarded for sailings above the minimum sailing requirements as set out above in marking the Award Criteria. Tenderers should take note of the *Summary of Passenger and Cargo Statistics* above in order to structure appropriate sailing schedules. Sailing timetables, once agreed with the island community and

confirmed by the Contracting Authority, must be strictly adhered to following award of the Services contract.

Any further information which would assist the Department in assessing the Tender may also be provided with the submission. Information supplied by Tenderers will be treated as contractually binding. However, the Department reserves the right to seek clarification or verification of any such information.

**c. Non Compliance with Agreed Schedules**

Tenderer's must confirm their agreement that the monthly subsidy shall be subject to reduction by the Minister in circumstances where:-

the frequency and or standard of the Shipping Service is less than the minimum required to be provided in accordance with this Agreement and in such circumstances shall be reduced on a pro rata basis having regard to the actual number of sailings provided as against the scheduled sailings;

or

- following a review of the Shipping Service, the Operator fails over the review period to reach the agreed target performance levels and in such circumstances the subsidy shall be reduced by such percentage rate as may be advised by the Minister from time to time in respect of the relevant performance target level set.
  
- where a sailing has been cancelled due to a relief event, there will be no reduction in the subsidy paid to the Operator save for a reduction to allow for the cost of fuel which the Operator did not incur. This amount to be determined by the Minister from time to time based on the average fuel consumption for the main vessel.

**5. MANPOWER PLAN**

Tenderers should provide an organisation chart, showing the roles, responsibilities and location of key personnel involved in the operation and maintenance of the ship and the delivery of the service. The person responsible for day to day customer issues should be nominated. CV's should be provided for key personnel.

The following must also be provided:

- The name of the person responsible for health and safety issues in the Company;
  
- A vessel manning plan (this should contain details of the manning scale which will be maintained) and the hours of work of the ship's crew. Tenderers should ensure that the information provided in their submission in this regard is tied to the level of service to be provided;
  
- Details of pay scales. It is a condition of Contract that the ship's crew are paid in accordance with the pay scales quoted in the submission and will be at a level equal to or above the Irish national minimum wage. Tenderers should ensure that the information provided in their submission in this regard is tied to the level of service to be provided;



- A training matrix for ship's crew showing the level of training which will be in place for each crew member. It will be a condition of Contract that the ship's crew are qualified to the levels set out in their submission;

The operator shall ensure that members of the crew can be easily identified through a suitable form of identifiable clothing.

## **6. CUSTOMER SERVICE, CONSULTATION AND MOBILITY**

### **a. Customer Service and Consultation**

Tenderers should include details of their plans for dealing with customer complaints and for consultation with Islanders on matters affecting the quality of the service provided.

Tenderer's should, at a minimum, address the following:

1. The process from receipt and logging of the initial complaint;
2. How the complaint will be recorded;
3. Who is the responsible contact person for complaint handling;
4. The mechanism for escalation if required;
5. The timelines for the process.

The successful Tenderer must, as a minimum, provide 'Comment Cards' inviting feedback from service users. The cards must be readily available to service users along with a collection box and secured pens. The cards must be collected no less than weekly and the feedback analysed and reported back to the Contracting Authority on a quarterly basis. The original cards must be retained for a minimum period of 12 months and be available to the Contracting Authority for inspection. The information required to be printed on the card will be agreed with the successful Tenderer prior to contract signature.

In addition to the above, Tenderers must provide details of their proposed procedures for regular ongoing consultation with Islanders on matters affecting service quality.

### **b. Mobility**

The operator must consider and make suitable arrangements for access by disabled persons and persons of reduced mobility to and from any vessel and during the sailing. In doing so, the Guidelines for Accessible Maritime Passenger Transport which have been issued by the Department of Transport, Tourism and Sport and the National Disability Authority should be taken into account and complied with, as appropriate.

Where the levels at which embarkation and disembarkation to/from the main vessel(s) could exceed 1.5m, taking account of the level of the existing facilities available at the various harbours to be used, suitable equipment shall be available on board the vessel to allow passengers with reduced mobility to move from one level to another.

The design of this equipment will be such that it can be accessed and operated by a person with reduced mobility without assistance from a crew member. Where constraints of design with an existing vessel prevent full compliance, the closest possible alternative may be acceptable for the backup vessel. Such constraints and alternatives, where such applies to a backup vessel, must be detailed in the Tenderer's technical submission.

## **7. MARKETING PLAN**

It is expected that Tenderers will consult with local interests when considering marketing issues associated with the service. Tenderers should provide a detailed marketing plan containing details of their marketing proposals for the service to Islanders and Visitors, in particular, but not limited to a passenger growth strategy for the service. The successful Tenderer will be required to maintain an active website containing full details of the service.

## **8. RISK, SECURITY, EMERGENCY, ENVIRONMENTAL POLICY AND HEALTH & SAFETY**

### **a. Risk Management**

Tenderers should carry out an outline risk assessment for the operation prior to submitting their Tender. Details of this should be provided with the Tender, showing the particular areas of risk examined, the perceived level of risk and the steps which the Tenderer intends to take to mitigate the risk. The types of risk covered should include those which might jeopardise the operational feasibility, continuity or commercial success of the service, such as vessel breakdown, withdrawal from service, staff sickness/shortage, industrial relations difficulties, risk of fuel shortage, competition risk.

### **b. Security**

The Operator will be responsible for all security aspects of the service. Attention is drawn to the requirements of the International Ship and Port Facility Security Code. Tenders should contain a statement describing how vessel security, both onshore and at sea, will be handled and how the requirements of any applicable sections of this code will be met.

### **c. Emergency Response Plan**

Tenderers should detail the arrangements they have in place to deal with an emergency such as a vessel evacuation, or disablement. The plan should clearly illustrate the arrangements for co-ordinating communications with local authorities, the emergency services, next of kin, passenger interests and the media.

### **d. Environmental Considerations**

The area in which the service operates is one of great natural beauty and Tenderers should provide full information on their environmental protection policy and of any specific steps they intend to take to safeguard the operating environment to include how they will comply with relevant environmental legislation and specific measures to be employed in regard to the reduction of pollution, emissions and waste.

### **e. Health and Safety**

Tenderers should submit information regarding their record and policy in relation to relevant health and safety matters applicable to the service, together with:

- a list of the items of personal protective equipment which will be supplied to each crew member should be provided;
- details of the oil spill response capability to be provided and maintained by the Operator, both on board, and at each berth. The Contracting Authority reserves the right to liaise with the port authorities to ensure that they are satisfied with the proposed oil spill

response capability. Tenderers are advised to consult with the port authorities prior to submitting their tender to ensure that the oil spill response capability will be acceptable to the port authority.

- a copy of the Company's Safety Policy.

## 9. SERVICE MOBILISATION PLAN

Tenderers must provide a mobilisation plan which demonstrates their ability to commence all required services on 1 April 2018, including timelines for each specific deliverable identified. For the purpose of responding to this RFT only, Tenderers may assume that a contract will be awarded in mid-January 2017. The plan should also take account of vessel issues, such as trial berthings, crewing issues and regulatory survey and certification issues which may arise in relation to the Department of Transport, Tourism and Sport, should the vessels proposed not be currently operating in Irish waters.

Amended to  
"June 2017"  
on tenders  
on 7 March  
2017

## 10. IRISH LANGUAGE

Having regard to the primacy of the Irish language amongst the inhabitants of Toraigh in particular and the prevalence and importance of the Irish language in general, Tenderers must set out their proposals for ensuring that all staff and crew provided for the service will be competent and willing at all times to converse and to conduct business in the Irish language. The successful Tenderer must use Irish as the default spoken language in the course of providing all elements of this service.

All advertising and signage must be bilingual, with Irish and English given equal prominence, except for the use of Gaeltacht placenames, which must be in the Irish language only.

Tenderers should note that, during the course of the contract, the Contracting Authority reserves the right to enter the vessel or any building or space used in conjunction with provision of the service for the purpose of auditing compliance with this mandatory requirement.

## 11. TICKET SALES

The successful Tenderer must have in place a system whereby passengers will be facilitated to purchase tickets at least 30 minutes prior to the scheduled departure time of the sailing, although this does not guarantee a place on the vessel.

## 12. CONTRACT REPORTS AND INVOICING

In order to qualify for a monthly subsidy (to be calculated in accordance with the Pricing Schedule), the successful Tenderer must submit monthly invoices, together with daily sailing logs, submitted on a monthly basis, similar to the sample format provided below – see Sample Report 1 (unless otherwise agreed by the Contracting Authority).

Tenderers must have in place systems which enable detailed monthly invoices and reports to be generated, which should include the ability to:

- Calculate the level of costs incurred, revenue generated and profit/loss made;



**SAMPLE REPORT 2**

	Quarter	Year to Date
<b>ESTIMATED PASSENGERS</b>		
Islanders (Number of)		
Other (Number of)		
<b>ESTIMATED REVENUE</b>		
Passenger Revenue		
Cargo Revenue		
Other Revenue (Details Required)		
<b>Total</b>		
<b>SERVICE OPERATING COSTS – MAIN VESSEL COSTS</b>		
Vessel charter costs		
Depreciation		
Interest on loans		
Crew Costs		
Fuel & lubes		
Maintenance (routine)		
Docking and survey		
Port dues		
Insurance		
Other (please specify)		
<b>SERVICE OPERATING COSTS – BACKUP VESSEL COSTS</b>		
Vessel charter costs		
Depreciation		
Interest on loans		
Crew Costs		
Fuel & lubes		
Maintenance (routine)		
Docking and survey		
Port dues		
Insurance		
Other (please specify)		
<b>OTHER SERVICE COSTS</b>		
Shore wages		
Office costs		
Administration, finance and accounting		
Interest on operating loans		
Insurance		
Marketing		
Other (please specify)		
<b>PROFIT/(LOSS) BEFORE SUBSIDY</b>		
<b>SUBSIDY RECEIVABLE</b>		
<b>PROFIT/(LOSS) AFTER SUBSIDY</b>		

## Appendix 2: Pricing Schedule

### 1. FARE AND CHARGES STRUCTURE

Tenders must be priced based on the fare and charges structure listed in the following tables.

The Minister also has the discretion to alter the fare and charges structure.

The maximum fares/charges for different categories of passenger and cargo carried to and from the Island shall be those specified in the tables of passenger fares and cargo charges set out below. These fares/charges shall be made available to the Public by the successful Tenderer on request and without charge.

The direct cost of any charges imposed by harbor authorities for the use of island piers and/or mainland piers may be levied as an additional charge on users of the service by the successful Tenderer without the prior consent of the Minister, provided that the successful Tenderer displays prominently, where fares/cargo charges are advertised, the amount of and a description of the additional charge being applied.

#### a. MAXIMUM PASSENGER FARES IN RESPECT OF THE SERVICE

Passenger Category	Single Fare	Return Fare
Islander	€	€
Adult	<b>7.00</b>	<b>12.00</b>
Student Card Holder/Child 5 – 18 years	<b>4.00</b>	<b>7.00</b>
Child under 5 years	<b>0.00</b>	<b>0.00</b>
Pensioner (with Travel Pass)	<b>0.00</b>	<b>0.00</b>
Non-Islander		
Adult	<b>14.00</b>	<b>28.00</b>
Student Card Holder	<b>8.50</b>	<b>17.00</b>
Child 5 – 18 years	<b>7.50</b>	<b>15.00</b>
Child under 5 years	<b>0.00</b>	<b>0.00</b>
Pensioner (with Travel Pass)	<b>0.00</b>	<b>0.00</b>

**b. MAXIMUM TARIFFS FOR CARRIAGE OF CARGO**

<b>MAXIMUM TARIFFS (EXCLUSIVE OF VAT) FOR CARRIAGE OF GOODS</b>		
THE FOLLOWING MAXIMUM TARIFFS (EXCLUSIVE OF VAT) MAY BE SUBJECT TO REDUCTIONS AS APPROPRIATE DEPENDING ON QUANTITY		
Description of Merchandise	Single €	Return €
BICYCLE	3.00	5.00

Description of Merchandise	PRICE PER ITEM €
JERRY CANS (up to 25 litres)	2.00
OIL	2.5c PER LITRE WHEN PUMPED OFF BOAT
DIESEL	
FEEDSTUFF, NUTS, MEAL	0.60
WHEELBARROWS	3.00
GATES charged per 100mm (e.g.3000mm = €3.00)	0.10 per 100mm
LADDERS	6.00
LAWNMOWER - PUSH	6.00
BUCKETS OF PAINT (CHARGED PER LITRE)	0.125
WHEELIE BINS	6.00
COOKERS, HOUSEHOLD APPLIANCES ETC	6.00
ROLLS OF CARPET AND VINYL	10.00
DOUBLE BEDS	7.00
DOUBLE BASE/MATTRESS	2.50
SINGLE BED	5.00
SINGLE BED/MATTRESS	2.50
BUNK BED SET	10.00
SINGLE HEADBOARDS	2.50
DOUBLE HEADBOARDS	2.50
CONTINENTAL HEADBOARDS	2.50
BEDSIDE LOCKER	2.50
1m COMBINATION WARDROBE	12.00
DOUBLE WARDROBE	7.50
SMALL CHEST OF DRAWERS (maximum length, height or depth not exceeding 1.5m)	3.50

LARGE CHEST OF DRAWERS (any dimension (i.e. length, height or depth) exceeding 1.5m)	6.00
COFFEE TABLE	2.50
KITCHEN TABLE	6.00
KITCHEN CHAIR	1.20
THREE PIECE SUITE	20.00
THREE SEATER COUCH	12.00
TWO SEATER COUCH	8.00
ARMCHAIR	6.00
BOOKCASE	3.50
DRESSING TABLE	9.00
LARGE KITCHEN CABINETS	18.00
TELEVISIONS (ALL SIZES)	6.00
VIDEO/DVD PLAYER	5.00
OFFICE FURNITURE	20.00 (based on combination wardrobe)
GROCERIES, HARDWARE ETC. (UP TO 20KG BOXED)	2.75 (PER BOX)
FRUIT, VEGETABLES & EGGS (UP TO 10KG BOXED)	1.50
MEAT (UP TO 6KG), FISH (UP TO 6KG)	2.25
CASES OF ICE CREAM	0.60
CASES OF BEERS, MINERALS	0.60
CASES OF WINE	1.25
CASES OF SPIRITS	2.80
CASES OF CIGARETTES	2.80
BOXES OF BREAD, CAKES	1.10
BAGS OF CARRAGEEN, SEAWEED	1.50
BAGS OF POTATOES (up to 25kg)	1.50

## 2. SUBVENTION LEVELS

Tenderers should note that subvention levels in years 2 – 5 of the contract will be determined with reference to movement in the Consumer Price Index excluding that portion of the index which is related to fuel costs.



### **3. FUEL PRICE VARIATION CLAUSE**

The successful Tenderer should note that provision shall be made to take account of movements in the fuel oil price.

In the event that the average fuel oil price for the previous 12 months is more than 10% greater than the price at the Designated Day\* (\* if a price is not available for that day, then a price on the nearest day for which a price is available shall be used), both prices to be determined by reference to the wholesale price for MGO issued by the Rotterdam Market ("the Rotterdam Wholesale Price"), then the Minister shall (upon receipt and certification of a balancing statement produced by the Operator which details the fuel usage in the previous 12 months and the price paid [excluding VAT] for marked gas oil on the Designated Day), pay to the Operator an amount determined in accordance with the provisions of the Fourth Schedule (Part I).

Payment of any amount becomes due to the Operator under this Clause shall be made within 30 days of the receipt of an acceptable balancing statement from the Operator (or as may be agreed between the parties from time to time in writing).

Provided always the Minister's obligation under this Clause shall not apply in the event that a balancing statement which is acceptable to the Minister has not been provided by the Operator within 3 months of the end of the year to which the balancing statement is applicable.

For the purpose of this Clause the term 'Designated Day' means the day which is two calendar weeks before the Tender Submission Date as defined in the Request for Tender.

In the event that the average fuel oil price for the previous 12 months is more than 10% lower than the price at the Designated Day (\* if a price is not available for that day, then a price on the nearest day for which a price is available shall be used), both prices to be determined by reference to the wholesale price for MGO issued by the Rotterdam Market ("the Rotterdam Wholesale Price"), then the Operator shall (upon receipt and certification of a balancing statement produced by the Operator which details the fuel usage in the previous 12 months and the average price paid [excluding VAT] for marked gas oil on the Designated Day) refund to the Minister an amount determined in accordance with the calculation of Fuel Price Variation set out below if the Operator has not produced a balancing statement within 3 months of the start of the relevant year, the Minister may determine, by reference to the fuel consumption rates of the vessels used to provide the service and the typical fuel prices in the retail market at the Designated Date, the amount of any refund which may be due to the Minister from the Operator and may recover that amount as a deduction from next or subsequent monthly payments due to the Operator or in the event that no further monthly payments are due to be paid may recover the refund as a debt which is due to be paid by the Operator within 30 days of a demand for payment issued by the Minister.

This debt may (without prejudice to the rights of the Minister as to right to recover as a contract debt at law) be recovered by way of set-off under any other current or subsequent subsidy agreement with the Minister and the Operator so acknowledges and confirms.

#### **CALCULATION OF FUEL PRICE VARIATION**

##### **PART I**

$FU \times BP \times \{([AFP/PDD] - 1) - 0.1\}$

## **PART II**

$FU \times BP \times \{(1 - [AFP/PDD]) - 0.1\}$

where, in each formula:

FU is the fuel usage contained in the balancing statement certified by the Minister;

BP is the average price paid [excluding VAT] for marked gas oil during the month in which the Designated Day occurred as contained in the balancing statement certified by the Minister;

AFP is the average fuel oil price as determined by reference to the Rotterdam Wholesale Price;

PDD is the fuel oil price on the Designated Day\* as determined by reference to the Rotterdam Wholesale Price.

## **4. FINANCIAL PROJECTIONS**

Tenders must include detailed estimated forecasts containing projected operational costs and revenue streams for the first year of the Term to include evidence of the price per litre of fuel on which the projections are based.

These must be submitted in the format provided in the Financial Projections table provided in this Appendix below. In general, the Contracting Authority considers up to 8% of turnover to be a reasonable level of profit applicable to services of this type. Tenderers may make allowance for this profit level in their forecasts and subsidy requirement. Where the company's annual profit levels under the contract exceed 8% of the turnover the Contracting Authority shall, as part of the tender assessment, reduce the annual profit to 8% of the annual turnover and change the amount entered on the Bid for Subsidy form to take account of the change.

Tenders should note that the subsidy payable in year 2 – 5 will be based on the subsidy for the first year adjusted to take account of the movement in the CPI (see CPI clause details detailed above in this schedule).

Tenderers should note that supporting documentation must be provided for all projected income and operational costs for the first year of the Term. Failure to do so will render the Submission incomplete and the Tender may be deemed to be invalid.

Tenderers must ensure that their projections in relation to income and costs are both realistic and achievable and consistent with other information given in the Tender. Tenderers should note the manner in which the Financial Projections will be dealt with in this competition and the changes to subsidy costs calculations from previous competitions.

The inclusion of the capital portion of loan repayments (in particular but not limited to loans for vessels) as a cost in completing the Financial projections table below shall not be acceptable.

Tenderers may include the interest portion of loans repayments (e.g. for vessels or operating costs) as a cost in completing the Financial projections table below. Tenderers should also note that only costs associated with the delivery of the service will be accepted in the projections.

**FINANCIAL PROJECTIONS TABLE YEAR 1**

	Q1	Q2	Q3	Q4	TOTAL
<b>ESTIMATED PASSENGERS</b>					
Islanders (Number of)					
Other (Number of)					
<b>ESTIMATED REVENUE</b>					
Passenger Revenue					
Cargo Revenue					
Other Revenue (Details Required)					
<b>Total</b>					
<b>SERVICE OPERATING COSTS</b>					
<b>MAIN VESSEL COSTS</b>					
Vessel charter costs					
Depreciation					
Interest on loans					
Crew Costs					
Fuel & lubes					
Maintenance (routine)					
Docking and survey					
Port dues					
Insurance					
Other (please specify)					
<b>SERVICE OPERATING COSTS</b>					
<b>BACKUP VESSEL COSTS</b>					
Vessel charter costs					
Depreciation					
Interest on loans					
Crew Costs					
Fuel & lubes					
Maintenance (routine)					
Docking and survey					
Port dues					
Insurance					
Other (please specify)					
<b>OTHER SERVICE COSTS</b>					
Shore wages					
Office costs					
Administration, finance and accounting					
Interest on operating loans					
Insurance					
Marketing					
Other (please specify)					

<b>PROFIT/(LOSS) BEFORE SUBSIDY</b>					
<b>SUBSIDY SOUGHT</b>					
<b>PROFIT/(LOSS) AFTER SUBSIDY</b>					

**5. BID FOR SUBSIDY**

The Tenderer’s Bid for Subsidy should be made in the format provided below. Tenderers should note that the Contract contains a provision which permits increases to and deductions from payments made to the operator as a result of movement in fuel prices and changes in the Consumer Price Index. Tenderers are asked to note the acceptable 8% profit levels referred to in the clause above regarding Financial Projections. If the information contained in the Bid for Subsidy does not correspond with the information contained in the Financial Projection table, the details contained in the Bid for Subsidy will be used for Tender evaluation except where the RFT permits the Contracting Authority to amend the amount on the Bid for Subsidy document.

**TORAIGH PASSENGER AND LIGHT CARGO FERRY SERVICE BID FOR SUBSIDY**

I/We the undersigned offer to provide the Passenger and Light Cargo Ferry Service to Toraiigh in accordance with the tender submission, its appendices, and the Contract documentation. This bid for subsidy is based on the financial projections shown in the Financial Plan contained in Appendix 2. By submitting this Tender I/we confirm that I/we have read and understand the Tender document and I/we further confirm that we accept the requirements set out in, or reasonably inferred from the Tender.

I/We agree that, if my/our tender is successful, payment of subsidy will be in accordance with the terms of the Contract.

<b>Subsidy Requirement</b>	<b>€</b>
<b>Year 1</b>	

Signed: \_\_\_\_\_ Name: \_\_\_\_\_

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

Position in organisation: \_\_\_\_\_

Authorised signatory, on behalf of:

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

## Appendix 3: Tenderers' Statement

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

### TENDERERS' STATEMENT

**TO:** The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs

**RE:** Request for Tenders for the Provision of a Passenger & Light Cargo Ferry Service For Toraigh, Co Donegal 2018 - 2023

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

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

8. We shall, if awarded any Services Contract under the RFT, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFT.

**SIGNED**

**Company**

**(Authorised Signatory)**

**Print name**

**Address**

**Date**

## Appendix 4: European Single Procurement Document (ESPD)

### Part I: Information concerning the procurement procedure and the contracting authority

Reference of the relevant notice (<sup>1</sup>) published in the *Official Journal of the European Union*:

OJEU S number Click here and insert details , date Click here and insert date, page Click here and insert page

Notice number in the OJ S: Click here and insert notice number

If there is no call for competition in the OJEU, then the contracting authority or contracting entity must fill in the information allowing the procurement procedure to be unequivocally identified:

In case publication of a notice in the *Official Journal of the European Union* is not required, please give other information allowing the procurement procedure to be unequivocally identified (e.g. reference of a publication at national level):

#### INFORMATION ABOUT THE PROCUREMENT PROCEDURE

This information must be filled in by the Contracting Authority

Identity of the procurer( <sup>2</sup> )	Answer
Name:	The Minister for Arts, Heritage , Regional, Rural and Gaeltacht Affairs
Which procurement is concerned?	Provision of Passenger and Light Cargo Service for Toraigh, Co Donegal, Ireland
Title or short description of the procurement( <sup>3</sup> ):	Provision of Passenger and Light Cargo Service for Toraigh, Co Donegal 2018 - 2023
File reference number attributed by the contracting authority or contracting entity (if applicable)( <sup>4</sup> ):	OF/B18

All other information in all sections of the ESPD to be filled in by the economic operator

<sup>1</sup> For contracting authorities: either a prior Information Notice used as a means for calling competition or a Contract Notice

<sup>2</sup> Information to be copied from Section 1, point I.1, of the relevant notice. In case of joint procurement, please indicate the names of all involved procurers.

<sup>3</sup> See points II.1.1 and II.1.3 of the relevant notice

<sup>4</sup> See point II.1.1 of the relevant notice

## Part II: Information concerning the economic operator

### A: INFORMATION ABOUT THE ECONOMIC OPERATOR

Identification:	Answer
Name:	Click here and insert details
VAT-number, if applicable : If no VAT-number is applicable, please indicate another national identification number, if required and applicable	Click here and insert details
Postal Address:	Click here and insert details
Contact person or persons <sup>(5)</sup> :	Click here and insert details
Telephone:	Click here and insert details
E-mail:	Click here and insert details
Internet address (web address) (if applicable)	Click here and insert details
General Information:	Answer:
Is the economic operator a Micro, a Small or a Medium-Sized Enterprise <sup>(6)</sup> ?	Yes <input type="checkbox"/> No <input type="checkbox"/>
Only in case the procurement is reserved <sup>(7)</sup> : is the economic operator a sheltered workshop, a 'social business' <sup>(8)</sup> or will provide for the performance of the contract in the context of sheltered employment programmes?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, What is the corresponding percentage of disabled or disadvantaged workers? If required, please specify which category or categories of disabled or disadvantaged	Click here and insert details

<sup>5</sup> Please repeat the information concerning contact persons as many times as needed.

<sup>6</sup> Commission Recommendation of 6 May 2003 concerning the definition of micro, small and medium sized enterprises, (OJ L 124, 20.5.2003, p36)  
This information is required for statistical purposes only

**Micro enterprises:** enterprise which **employs fewer than 10 persons** and whose annual turnover and/or annual balance sheet total does **not exceed EUR 2 million**.

**Small enterprises:** an enterprise which **employs fewer than 50 persons** and whose annual turnover and/or annual balance sheet total does not exceed EUR10 million

**Medium enterprises:** enterprises **which are neither micro nor small and which employ fewer than 250 persons** and which have an **annual turnover not exceeding EUR 50million, and/or an annual balance sheet total not exceeding EUR 43 million**.

<sup>7</sup> See contract notice point III.1.5

<sup>8</sup> i.e. its main aim is the social and professional integration of disabled or disadvantaged persons.



workers the employees concerned belong to?	
If applicable, is the economic operator registered on an official list of approved economic operators or does it have an equivalent certificate (e.g. under a national (pre)qualification system)?	Yes <input type="checkbox"/> No <input type="checkbox"/> Not Applicable <input type="checkbox"/>
If yes: Please answer the remaining parts of this Section, Section B and, where relevant, C of this part, complete Part V, where applicable, and, in any case, fill in and sign Part VI.	
(a) Please provide the name of the list r certification and the relevant registration or certification number, if applicable:	Click here and insert details
(b) If the certificate of registration or certification is available electronically, please state:	(web address, issuing authority or body, precise reference of the documentation)
(c) Please state the references on which the registration or certification is based, and, where applicable, the classification obtained in the official list ( <sup>9</sup> ):	Click here and insert details
(d) Does the registration or certification cover all of the required selection criteria?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If no: (e) In addition, please complete the missing information in Part IV Will the economic operator be able to provide a certificate with regard to the payment of social security contributions and taxes or provide information enabling the contacting authority or contracting entity to obtain it directly by accessing a national database in any Member State that is available free of charge?	Click here and insert details
If the relevant documentation is available electronically, please indicate:	(web address, issuing authority or body, precise reference of the documentation)

<sup>9</sup> The references and the classification, if any, are set out on the certification.

Form of Participation:	Answer:
Is the economic operator participating in the procurement procedure together with others <sup>(10)</sup> ?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please ensure that the others concerned provide a separate ESPD form.	
If yes:	
(a) Please indicate the role of the economic operator in the group (leader, responsible for specific tasks.):	Click here and insert details
(b) Please identify the other economic operators participating in the procurement procedure together:	Click here and insert details
(c) Where applicable, name of the participating group:	Click here and insert details
Lots:	Answer:
Where applicable, indication of the lot(s) for which the economic operator wishes to tender:	Click here and insert details

#### B: INFORMATION ABOUT REPRESENTATIVES OF THE ECONOMIC OPERATOR

*Where applicable, please indicate the name(s) and address(es) of the person(s) empowered to represent the economic operator for the purposes of this procurement procedure:*

Representation, if any:	Answer:
Full Name:	
Accompanied by the date and place of birth, if required	Click here and insert details
Position/Acting in the capacity of:	Click here and insert details
Postal Address:	Click here and insert details
Telephone:	Click here and insert details
E-mail:	Click here and insert details
If needed, please provide detailed information on the representation (its forms, extent, purpose...):	Click here and insert details

<sup>10</sup> Notably as part of a group, consortium, joint venture or similar.

**C: INFORMATION ABOUT RELIANCE ON THE CAPACITIES OF OTHER ENTITIES**

Reliance:	Answer:
Does the economic operator rely on the capacities of other entities in order to meet the selection criteria for this Competition as set out in part 3.2 of the RFT and the criteria and rules (if any) set out under Part V below?	Yes <input type="checkbox"/> No <input type="checkbox"/>

If yes, please provide a separate ESPD form setting out the information required under Sections A and B of this Part and Part III for each of the entities concerned, duly filled in and signed by the entities concerned.

Please note that this should also include any technicians or technical bodies, not belonging directly to the economic operator’s undertaking, especially those responsible for quality control and, in the case of public works contracts, the technicians or technical bodies upon whom the economic operator can call in order to carry out the work.

Insofar as it is relevant for the specific capacity or capacities on which the economic operator relies, please include the information under Part IV for each of the entities concerned <sup>(11)</sup>.

**D. INFORMATION CONCERNING SUBCONTRACTORS ON WHOSE CAPACITY THE ECONOMIC OPERATOR DOES NOT RELY**

Subcontracting:	Answer:
Does the economic operator intend to subcontract any share of the contract to third parties?	Yes <input type="checkbox"/> No <input type="checkbox"/> If yes and in so far as known, please list the proposed subcontractors Click here and insert details

Please provide the information required under Section A and B of this part *[Delete if not applicable: and Part III]* for each of the subcontractors concerned.

<sup>11</sup> E.g. for technical bodies involved in quality control: Part IV, Section C, point 3.

## Part III: Exclusion grounds

### A: GROUNDS RELATING TO CRIMINAL CONVICTIONS

Article 57 (1) of Directive 2014/24/EU sets out the following reasons for exclusions:

1. Participation in a criminal organisation <sup>(12)</sup>;
2. Corruption <sup>(13)</sup>;
3. Fraud<sup>(14)</sup>;
4. Terrorist offences or offences linked to terrorist activities <sup>(15)</sup>;
5. Money laundering or terrorist financing <sup>(16)</sup>;
6. Child labour and other forms of trafficking in human beings <sup>(17)</sup>.

Grounds relating to criminal convictions under national provisions implementing the grounds set out in Article 57(1) of the Directive:	Answer:
Has the economic operator itself or any person who is a member of its administrative, management or supervisory body or has powers of representation, decision or control therein been the subject of a conviction for one of the reasons listed above, by a conviction rendered at the most five years ago or in which an exclusion period set out directly in the conviction continues to be applicable?	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If the relevant documentation is available electronically, please indicate: (web address, issuing authority or body, precise reference of the documentation)<sup>(18)</sup>:</p>
If yes, please indicate <sup>(19)</sup> :	
(a) Date of conviction, specify which of points 1 to 6 is concerned and the	date, point(s), reason(s)

<sup>12</sup> As defined in Article 2 of Council Framework Decision 2008/841/JHA of 24 October 2008 on the fight against organised crime (OJ L 300, 11.11.2008, p. 42).

<sup>13</sup> As defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, OJ C 195, 25.6.1997, p. 1, and in Article 2(1) of Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector (OJ L 192, 31.7.2003, p. 54). This exclusion ground also includes corruption as defined in the national law of the contracting authority (contracting entity) or the economic operator.

<sup>14</sup> Within the meaning of Article 1 of the Convention of the protection of the European Communities' financial interests (OJ C 316, 27.11. 1995, p. 48).

<sup>15</sup> As defined in Articles 1 and 3 of Council Framework Decision of 13 June 2002 on combating terrorism (OJ L 164, 22.6.2002, p.3). this exclusion ground also includes inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 3 of that Framework Decision.

<sup>16</sup> As defined in Article 1 of the Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing (OJ L 309, 25.11.2005, p. 15).

<sup>17</sup> As defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims and replacing Council Framework Decision 2002/629/JHA (OJ L 101, 15. 4.2011 p. 1).

<sup>18</sup> Please repeat as many times as needed.

<sup>19</sup> Please repeat as many times as needed.

reason(s) for the conviction,	
(a) Identify who has been convicted:	Click here and insert details
(b) Insofar as established directly in the conviction:	Click here and insert length of the period of exclusion and the point(s) concerned If the relevant documentation is available electronically, please indicate: (web address, issuing authority or body, precise reference of the documentation) <sup>(20)</sup> :
In case of convictions, has the economic operator taken measures to demonstrate its reliability despite the existence of a relevant ground for exclusion <sup>(21)</sup> ('Self Cleaning')	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please describe the measures taken <sup>(22)</sup>	Click here and insert details

#### B: GROUNDS RELATING TO THE PAYMENT OF TAXES OR SOCIAL SECURITY CONTRIBUTIONS

Payments of taxes or social security contributions:	Answer:	
Has the economic operator met all its obligations relating to the payment of taxes or social security contributions, both in the country in which it is established and in the Member State of the contracting authority if other than the country of establishment?	Yes <input type="checkbox"/> No <input type="checkbox"/>	
If the relevant documentation concerning payment of taxes or social contributions is available electronically, please indicate:	Click here and insert details (web address, issuing authority or body, precise reference of the documentation) <sup>(23)</sup> :	
If not, please indicate:	Taxes:	Social Contributions:
(a) Country or Member State concerned	Click here and insert details	Click here and insert details
(b) What is the amount concerned?	Click here and insert details	Click here and insert details
(c) How has this breach of obligations been established:	Click here and insert details	Click here and insert details

<sup>20</sup> Please repeat as many times as needed.

<sup>21</sup> In accordance with national provisions implementing Article 57(6) of Directive 2014/24/EU.

<sup>22</sup> Taking into account the character of the crimes committed (punctual, repeated, systematic....) the explanation should show the adequacy of the measures to taken.

<sup>23</sup> Please repeat as many times as needed

(1) Through a judicial or administrative decision		
• Is this decision final and binding?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
• Please indicate the date of conviction or decision.		
• In case of a conviction, insofar as established directly therein, the length of the period of exclusion:	Click here and insert details	Click here and insert details
(2) By other means? Please specify:	If Yes, click here and insert details	If Yes, click here and insert details
(d) Has the economic operator fulfilled its obligations by paying or entering into a binding arrangement with a view to paying the taxes or social security contributions due, including, where applicable, any interest accrued or fines?	Yes <input type="checkbox"/> No <input type="checkbox"/>	Yes <input type="checkbox"/> No <input type="checkbox"/>
If the relevant documentation concerning payment of taxes or social contributions is available electronically, please indicate:	Click here and insert details (web address, issuing authority or body, precise reference of the documentation) <sup>(24)</sup> :	

**C: GROUNDS RELATING TO INSOLVENCY, CONFLICTS OF INTEREST OR PROFESSIONAL MISCONDUCT**  
(<sup>25</sup>)

Please note that, for the purpose of this procurement, some of the following exclusion grounds may have been defined more precisely, in national law, in the relevant notice or the procurement documents. Thus, national law may for instance provide that the notion of ‘grave’ professional misconduct’ may cover several different forms of conduct.

Information concerning possible insolvency, conflict of interest or professional misconduct	Answer:
	Yes <input type="checkbox"/> No <input type="checkbox"/>
Has the economic operator, to its knowledge, breached its obligations in the fields of environmental, social and labour law ( <sup>26</sup> )?	If yes, has the economic operator taken measures to demonstrate its reliability despite the existence of these grounds for exclusion (‘Self Cleaning’)?

<sup>24</sup> Please repeat as many times as needed

<sup>25</sup> See Article 57(4) of Directive 2014/24/EU

<sup>26</sup> As referred to for the purposes of this procurement in national law, in the relevant notice or the procurement documents or in Article 18(2) of Directive 2014/24/EU.

	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If it has, please describe the measures taken: Click here and insert details</p>
Is the economic operator in any of the following situations:	
<p>(a) Bankrupt, or</p> <p>(b) The subject of insolvency or winding-up proceedings, or</p> <p>(c) In an arrangement with creditors, or</p> <p>(d) In any analogous situation arising from a similar procedure under national laws and regulations <sup>(27)</sup>, or</p> <p>(e) That its assets are being administered by a liquidator or by the court, or</p> <p>(f) That its business activities are suspended?</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
If yes: Please provide details:	Click here and insert details
Please provide the reasons for being able nevertheless to perform the contract, taking into account the applicable national rules and measures on the continuation of business in those circumstances <sup>(28)</sup>	Click here and insert details
If the relevant documentation is available electronically, please indicate:	Click here and insert details (web address, issuing authority or body, precise reference of the documentation):
Is the economic operator guilty of grave professional misconduct <sup>(29)</sup> ?	Yes <input type="checkbox"/> No <input type="checkbox"/>
If yes, please provide details	Click here and insert details
	<p>If yes has the economic operator taken self-cleaning measures?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
	<p>If it has, please describe the measures taken: Click here and insert details</p>
Has the economic operator entered into agreements with other economic operators	Yes <input type="checkbox"/> No <input type="checkbox"/>

<sup>27</sup> See national law, the relevant notice or the procurement documents

<sup>28</sup> This information need not be given if exclusion of economic operators in one of the cases listed under letter a to f has been made mandatory under the applicable national law without any possibility of derogation where the economic operator is nevertheless able to perform the contract.

<sup>29</sup> Where applicable, see definitions in national law, the relevant notice or the procurement documents.

<p>aimed at distorting competition?</p> <p>If yes, please provide details:</p>	<p>Click here and insert details</p>
	<p>If yes has the economic operator taken self-cleaning measures?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>
	<p>If it has, please describe the measures taken:</p> <p>Click here and insert details</p>
<p>Is the economic operator aware of any conflict of interest <sup>(30)</sup> due to its participation in the procurement procedure?</p> <p>If yes, please provide details</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Click here and insert details</p>
<p>Has the economic operator or an undertaking related to it advised the contracting authority or contracting entity or otherwise been involved in the preparation of the procurement procedure?</p> <p>If yes, please provide details</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Click here and insert details</p>
<p>Has the economic operator experienced that a prior public contract or a prior concession contract was terminated early, or that damages or other comparable sanctions were imposed in connection with that prior contract?</p> <p>If yes, please provide details:</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>Click here and insert details</p> <p>If yes has the economic operator taken self-cleaning measures?</p> <p>Yes <input type="checkbox"/> No <input type="checkbox"/></p> <p>If it has, please describe the measures taken:</p> <p>Click here and insert details</p>
<p>Can the economic operator confirm that:</p> <p>(a) It has not been guilty of serious misinterpretation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment if the selection criteria,</p>	<p>Yes <input type="checkbox"/> No <input type="checkbox"/></p>

<sup>30</sup> As indicated in national law, the relevant notice or the procurement documents.



<p>(b) It has not withheld such information,</p> <p>(c) It has been able, without delay, to submit the supporting documents required by a contracting authority or contracting entity, and</p> <p>(d) It has not undertaken to unduly influence the decision making process of the contracting authority or contracting entity, to obtain confidential information that may confer upon it undue advantages in the procurements procedure or to negligently provide misleading information that may have a material influence on decisions concerning exclusion, selection or award?</p>	
--	--

## Part IV: Selection Criteria

Concerning the selection criteria (Section  $\alpha$  of this part), the economic operator declares that:

$\alpha$ : GLOBAL INDICATION FOR ALL SELECTION CRITERIA

Meeting all required selection criteria	Answer
It satisfies the required selection criteria for this Competition as set out in part 3.2 of the RFT:	Yes <input type="checkbox"/> No <input type="checkbox"/>

## Part V: Reduction of the number of qualified candidates

Not applicable

## Part VI: Concluding statements

*The undersigned formally declare that the information stated under Parts II – III above is accurate and that it has been set out in full awareness of the consequences of serious misrepresentation.*

*The undersigned formally declare to be able, upon request and without delay, to provide the certificates and other forms of documentary evidence referred to, except where:*

- (a) The contracting authority has the possibility of obtaining the supporting documentation concerned directly by accessing a national database in any Member State that is available free of charge<sup>31</sup>, or*
- (b) As of 18 October 2018 at the latest (<sup>32</sup>), the contracting authority or contracting entity already possesses the documentation concerned.*

*The undersigned formally consent to [identify the contracting authority as set out in Part 1, Section A], gaining access to documents supporting the information, which has been provided in [identify the Part/Section/Point(s) concerned] of this European Single Procurement Document for the purposes of [identify the procurement procedure: (summary description, reference of publication in the Official Journal of the European Union, reference number)].*

*Date, place and signature(s):*

Signed: (Authorised Signatory)	
Block Capitals:	Click here and insert name
Position:	Click here and insert details
Company:	Click here and insert details
Registered Office:	Click here and insert address
	Click here and insert address
Date:	Click here and insert date

<sup>31</sup> On condition that the economic operator has provided the necessary information (web address, issuing authority or body, precise reference of the documentation) allowing the contracting authority or contracting entity to do so. Where required, this must be accompanied by the relevant consent to such access.

<sup>32</sup> Depending on the national implementation of the second subparagraph of Article 59(5) of Directive 2014/24/EU

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

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Re: Request for Tenders for the Provision of a Passenger & Light Cargo Ferry Service For Toragh, Co Donegal 2018 - 2023

**NAME:** \_\_\_\_\_

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

I, \_\_\_\_\_, *[insert name of Declarant]* having been duly authorised by \_\_\_\_\_ *[insert name of entity]*, sincerely declare that \_\_\_\_\_ *[insert name of entity]* itself or any person who has is a member of the administrative, management or supervisory body of \_\_\_\_\_ *[insert name of entity]* or has powers of representation, decision or control in \_\_\_\_\_ *[insert name of entity]*:

- (a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
- (b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or \_\_\_\_\_ *[insert name of entity]*.
- (c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
- (d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
- (e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
- (f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.
- (g) Is not in breach of its obligations relating to the payment of taxes or social security contributions.

- (h) Has, in the performance of all public contracts, complied with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the services provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU.
- (i) Is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.
- (j) Is not guilty of grave professional misconduct.
- (k) Has not entered into agreements with other economic operators aimed at distorting competition.
- (l) Is not aware of any conflict of interest due to its participation in the Competition.
- (m) Has not had any prior involvement in the preparation of the Competition.
- (n) Is not guilty of significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
- (o) Is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Article 59 of Directive 2014/24/EU.
- (p) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition, or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

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

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

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

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

\_\_\_\_\_  
**(signed)**  
**Practising Solicitor/Commissioner for Oaths**

## Appendix 6: Services Contract

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The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs

and

[Insert successful Tenderer's full legal name]

### **AGREEMENT**

Relating to the provision of Services pursuant to

Request for Tenders for the provision of Passenger & Light Cargo Ferry Service For Toraigh, Co

Donegal 2018 - 2023



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

The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs, of 23, Kildare Sreet, Dublin 2 (“the Client”);

and

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

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

**WHEREAS:**

- A. By Request for Tender entitled “Insert title of RFT” advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number \_\_\_\_\_ of \_\_\_\_\_ dated insert date of RFT (“the RFT”) the Contracting Authority invited tenders from economic operators (“Tenderers”) for the provision of the services described in Appendix 1 to the RFT (the “Services”). References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on [www.etenders.gov.ie](http://www.etenders.gov.ie) between [insert date] and [insert date] (the “RFT Clarifications”). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date of Tender] (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the “Submission Clarifications”). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - i. This Agreement and Schedules A to D attached hereto;
  - ii. The RFT; and
  - iii. The Submission.
2. The Contractor agrees to provide the Services described in Schedule B (“the Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT and the Submission (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the

Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.

4. For the purposes of this Agreement, the Client’s Contact is [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 31 March 2023, unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

*Delete if not applicable:*

The Client reserves the right to extend the Term for a period or periods of up to 6 months with a maximum of 2 such extensions permitted subject to its obligations at law.

6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

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

## Schedule A: Terms and Conditions

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### 1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
1. provide the Services in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
  2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
  3. comply with all local security and health and safety arrangements as notified to it by the Client; and
  4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Annex X of Directive 2014/24/EU. The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Contractor.

- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Article 57 of EU Directive 2014/24/EU apply to any Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the “TUPE Regulations”) and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Client under the TUPE Regulations by any Affected Employees. Affected Employees shall mean those employees in respect of whom the TUPE Regulations may be deemed to apply in connection with this Agreement.

## 2. Key Personnel

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

## 3. Payment

- A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 10A from time to time;
  2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
  3. Invoices being submitted to the Client’s Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client’s Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and
  4. The Client being in possession of the Contractor’s current Tax Clearance Certificate.

The Contractor shall comply with all EU and domestic taxation law and requirements.

- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

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

- A. The Contractor acknowledges, warrants, represents and undertakes that:
  - 1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
  - 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
  - 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
  - 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
  - 5. it has taken all and any action necessary to ensure that it has the power to execute

and enter into this Agreement;

6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” dated [insert date] , which confirms that none of the excluding circumstances listed in Article 57 of EU Directive 2014/24/EU apply to the Contractor, remains unchanged;
7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
8. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.8; and
9. *Delete and replace with “Not Used” if not applicable:*  
  
*it has inspected the Client’s premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement.*
10. the Client shall be under no obligation to purchase any minimum number or value of Services.

Section 4.A.9 was amended on tenders on 10 March 2017 to read “Not used”

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

## 5. Remedies

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

survive termination of this Agreement for any reason.

- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death, neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E. *Not Used*
- 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 ("the Retention Amount") which Retention Amount shall not at any given time exceed 10 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. 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. Logs and relevant paperwork received one month late will attract a financial penalty equivalent to 5% of a monthly subsidy per month late, i.e. January logs not received by 15 March will attract a penalty



## 6. Intellectual Property

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

templates, methodologies and techniques that are acquired or used in the course of providing the Services.

- G. The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any liability loss damages claims costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

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

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

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

## **7. Confidentiality**

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

1. its professional advisers subject to the provisions of this clause 8; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or
4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 7 to the RFT (“the Confidentiality Agreement”).

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

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

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

D. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The

Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any Freedom of Information request received.

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

## **8. Force Majeure**

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
  1. the nature of the Force Majeure Event;
  2. the anticipated delay in the performance of obligations;
  3. the action proposed to minimise the impact of the Force Majeure Event;and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party, provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
- C. If the Force Majeure Event continues for 28 consecutive calendar days either Party may terminate at 14 days notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

## 9. Termination

- A. Subject to the provisions of sub-clause 9B, this Agreement may be terminated by the Client, without liability for compensation or damages, by serving three months written notice to the Contractor. Subject to the provisions of sub-clause 9B, this Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving six months written notice to the Client.
- B. Either Party shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;  
and/or
  2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the exclusion grounds set out in Article 57 of EU Directive 2014/24/EU apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Client which is in its possession.
- F. If requested by the Client, the Contractor shall promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client ("Employment Information"). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of

the Term or earlier termination of this Agreement for whatever cause.

## 10. Contract Management

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

## 11. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor senior contact] within the Contractor and to [insert Contracting Authority contact] within the Contracting Authority respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

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

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

## **13. Notices**

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

returned undelivered); and

3. if communicated by email, on the next calendar day following transmission.

#### **14. Assignment and Subcontract**

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

#### **15. Entire Agreement**

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

#### **16. Severability**

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

#### **17. Waiver**

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

#### **18. Non-exclusivity**

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

#### **19. Media**

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

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

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to advise the Client forthwith should any



conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof.

- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and to comply with the Client's directions in respect thereof, to the satisfaction of the Client. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Client to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

## **21. Access to Premises**

- A. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.
- B. The Contractor shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Services are being performed for the Client under this Agreement.

## **22. Equipment**

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Services ("Equipment").
- B. All Equipment brought onto the Client's premises shall be at the Contractor's own risk and

the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.

- C. The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.
- D. The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
  - i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
  - ii. replace such item with a suitable substitute item of Equipment.
- E. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

### **23. Non Solicitation**

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

### **24. Change Control Procedure**

- A. At any time during the term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").

- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client's request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

**Schedule B: Services: The Specification**

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[Insert when completing contract]

# Schedule C: Charges

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[Insert when completing contract]

# Schedule D: Service Levels

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

## Appendix 7: Confidentiality Agreement

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

The Minister for Arts, Heritage, Regional, Rural and Gaeltacht Affairs, of 23 Kildare Street, Dublin 2 (hereinafter “the Contracting Authority”) of the one part; and [Contractor's legal name: to be completed on signing.], of [Contractor's address: to be completed on signing.] (hereinafter called “the Contractor”) of the other part.

### WHEREAS

- A. By Request for Tenders dated 15 February, 2017 entitled Provision of Passenger and Light Cargo Service for Toraigh, Co Donegal 2018 - 2023 (the “RFT”) the Contracting Authority invited tenders (“Tenders”) for the provision of the services described in Appendix 1 to the RFT (the “Services”) (“the Competition”). The Contractor submitted a response to the RFT dated the [Insert Date of Tender].

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5. The Contractor undertakes:

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

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



requirements of the Contracting Authority including by police authorities;

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

SIGNED for and on behalf of the Contracting Authority

SIGNED for and on behalf of the Contractor

(being a duly authorised officer)

Witness

Witness