

**Request for Tenders to establish a  
Multi Supplier Framework  
for the Provision of**

**Machine Road Condition Survey  
Services for Regional and Local  
Roads**

**Tender Procedure; Open Procedure**

**Tender Deadline; 12 noon 4<sup>th</sup> March 2019**

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## Part 1: Introduction

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- 1.1 The Road Management Office (RMO) acting as a Central Purchasing Body (CPB) under the auspices of Donegal County Council invites responses (“Tenders”) to this Request for Tenders (“RFT”) from economic operators (“Tenderers”) for participation in a framework for the provision of the services (“Framework”) as described in Appendix 1 to this RFT, “Requirements and Specifications”, (“the Services”). The Road Management Office (RMO) on behalf of the Contracting Authorities listed in 1.10 is the contracting authority for this public procurement competition (“the Contracting Authority”). References to RMO will be deemed to be references to the Contracting Authority.
- 1.2 The title of this RFT is Request for Tenders to establish a Multi Supplier Framework for the Provision of Machine Road Condition Survey Services for Regional and Local Roads (“RFT Title”).
- 1.3 This public procurement competition (“Competition”) relates to the establishment of a Framework Agreement for the provision of Machine road condition survey services for the regional and local road network in Ireland.  
The provision of services may include, but shall not be limited to, the following;
- Collection of SCRIM data
  - Collection of visual surveys - PSCI
  - Collection of road surface profile characteristics such as IRI, MPD, LPV & Rutting
  - Collection of road geometry
  - Road surface material inventory
  - Collection and analysis of FWD
  - Cracking Survey

The Contracting Authority is conducting this Competition by way of open competition. The number of Framework Agreement members that will be appointed, is not limited, pursuant to this competition, provided sufficient Tenderers qualify.

Mini Competitions will be conducted in accordance with the provisions of this RFT, the Framework Agreement (as set out in Appendix 6 of this RFT) and the Supplementary Request for Tenders as defined at Clause 6 of the Framework Agreement (“SFRT”). Services Contracts awarded pursuant to Mini-Competitions shall be awarded based on the award criteria as set out in clause 6 of the Framework Agreement. Framework Members successful at Mini-Competition shall provide the services in accordance with the terms and conditions of the contract set out in Appendix 7 of this RFT (the “Services Contract”).

- 1.4 Any framework agreement (“Framework Agreement”) that may result from this

Competition will be for a term of 24 months (“the Term”). The Term will not exceed four (4) years in aggregate.

**1.5 This Clause 1.5 applies only to certain RFTs; it applies to this RFT.**

The Contracting Authority reserves the right to extend the Term for a period or periods of up to 12 months with a maximum of 2 such extension or extensions on the same terms and conditions, subject to the Contracting Authority’s obligations at law.

**1.6 Tenders must be received not later than 12.00 noon on Monday 4<sup>th</sup> March 2019.**

Tenders that are received late WILL NOT be considered in this public procurement competition.

**1.7 This Clause 1.7 applies only to certain RFTs; it does NOT apply to this RFT.**

**1.8** Tenderers should note that the Contracting Authority shall be under no obligation to purchase any minimum value of Services under this Framework.

**1.9** If clause 1.10 is marked as “applies” by the Contracting Authority, the Framework Agreement will be open to the parties listed at 1.10 of this RFT. The procurement of Services, if any, will be at the discretion of the Framework Clients in accordance with paragraph 2.3 of the RFT and clause 2 of the Framework Agreement. The Framework Clients are not and will not be under any obligation to avail of the Framework in place, if any, pursuant to this Competition. No contract or Framework Agreement awarded pursuant to this Competition will confer exclusivity on a successful Tenderer. Tenderers should note and by submission of Tenders shall be deemed to so acknowledge that the Contracting Authority intends (but shall be under no obligation financial or otherwise) to work closely with the successful Tenderers to promote the Framework Agreement and to encourage use of the Framework Agreement by the Framework Clients.

**1.10 Parties eligible to participate in this Framework –  
This Clause 1.10 applies only to certain RFTs; it applies to this RFT.**

The Framework Clients are:

The Department of Transport, Tourism and Sport (DTTAS),  
The Road Management Office (RMO) and all local authorities in Ireland;  
Carlow County Council  
Cavan County Council  
Clare County Council  
Cork County Council  
Cork City Council  
Donegal County Council

Dublin City Council  
Dún Laoghaire-Rathdown County Council  
Fingal County Council  
Galway County Council  
Galway City Council  
Kerry County Council  
Kildare County Council  
Kilkenny County Council  
Laois County Council  
Leitrim County Council  
Limerick City and County Council  
Longford County Council  
Louth County Council  
Mayo County Council  
Meath County Council  
Monaghan County Council  
Offaly County Council  
Roscommon County Council  
Sligo County Council  
South Dublin County Council  
Tipperary County Council  
Waterford City and County Council  
Westmeath County Council  
Wexford County Council  
Wicklow County Council

1.11 This Clause 1.11 applies only to certain RFTs; it does NOT apply to this RFT.

1.12 The Contracting Authority policy seeks to encourage participation by Small and Medium Enterprises (“SME”s) in this procurement exercise. SMEs that believe the scope of this Competition is beyond their technical or business capacity are encouraged 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 contracts, agreements or arrangements that result from this Competition and therefore increase their social and economic benefits.

Larger enterprises are also encouraged to consider the practical ways that SMEs can be included in their proposals to maximise the social and economic benefits of the contracts that result from this tendering exercise.

## Part 2: Instructions to Tenderers

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### 2.1 Introduction to this RFT

- 2.1.1 While every effort has been made to provide comprehensive and accurate background information and requirements and specifications, Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT. Tenderers and recipients of this RFT may wish to consult their own legal advisers in relation to this RFT or the subject matter thereof.
- 2.1.2 All information supplied by Tenderers may be treated as contractually binding on the Tenderers if accepted by the Contracting Authority.
- 2.1.3 This RFT does not constitute an offer to enter into a Framework Agreement and/or any Services Contract (as hereinafter defined) or contract. For the avoidance of doubt, the conclusion of a Framework Agreement with a Framework Member does not guarantee the awarding of any Services Contract or contract whatsoever. Neither this document nor any information set out herein shall be regarded as a commitment or representation on the part of the Contracting Authority to enter into a contractual arrangement.

No commitment of any kind, contractual or otherwise will exist unless and until a formal written contract has been executed by or on behalf of the Contracting Authority / Framework Client arising as a result of a mini-competition (“Mini Competition”) initiated by way of a supplementary request for tender (“SRFT”) in accordance with the process set out at clauses 5 and 6 of the Framework Agreement furnished at Appendix 6 to this RFT. The Contracting Authority / Framework Client may cancel a Mini Competition at any time prior to a contract being executed by it.

Any notification of preferred bidder status by the Contracting Authority / Framework Client 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 Framework Agreement being executed by or on behalf of the Contracting Authority. The Contracting Authority / Framework Client does not bind itself to accept the lowest priced or any Tender.

- 2.1.4 This RFT supersedes and replaces all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence. Tenderers to this RFT should study the contents of this RFT carefully, including the information and documents contained in the Appendices. The Tenderers attention is drawn to the Tenderers’ aide-memoire at Appendix 4.

## 2.2 Compliant Tenders

2.2.1 Failure to comply with the requirements of this paragraph 2.2.1 may render the Tender non-compliant and the Tender may be rejected. Tenderers must:

- a. Include all documentation specified in this RFT;
- b. Follow the format of this RFT and respond to each element in the order as set out in this RFT;
- c. Comply with all requirements as set out within this RFT.

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

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

- a. Be received by the Contracting Authority in accordance with paragraphs 2.6.1 and 2.6.2 below;
- b. **This Clause 2.2.3(b) applies only to certain RFTs; it applies to this RFT.** Include a statement, confirming whether any of the excluding circumstances listed in Article 45 of EU Council Directive 2004/18/EC as implemented into Irish law by Regulation 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (Statutory Instrument 329 of 2006), apply to the Tenderer. Tenderers from Ireland and the United Kingdom must include with the Tender, the declaration at Appendix 5 to this RFT ("Declaration"). Where submitting by eTenders, a scanned signed copy of the Declaration may be submitted electronically via the eTenders postbox. The Contracting Authority must be able to read the scanned signature of the Tenderer. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. For all Tenderers outside Ireland and the United Kingdom the statement must be evidenced, as required;
- c. Include the statement required under paragraph 2.4 below; and
- d. Be submitted in the English or Irish languages only.

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

## 2.3 Framework Agreement and Services Contract

- 2.3.1 The Contracting Authority will, subject to the right of cancellation of this Competition (as set out at paragraph 2.1.3 above and at paragraph 3.3 below), select the successful Tenderer(s) to be included in the Framework to provide the Services sought under this RFT up to a maximum of five (5) Framework Members.
- 2.3.2 The Framework shall operate pursuant to the rules as set out in the Framework Agreement as set out at Appendix 6 to this RFT.
- 2.3.3 The procedure for SRFT and the procedure by which contracts shall be awarded at Mini Competition pursuant to the Framework are set out at sections 5 and 6 of the Framework Agreement.

Tenderers are required to confirm their acceptance of the terms of the Framework Agreement in the Tender Statement at Appendix 3. Tenderers may not amend the Framework Agreement.

- 2.3.4 **This Clause 2.3.4 applies only to certain RFTs; it applies to this RFT.**

Tenderers are requested to take into account the framework management provisions as set out in Annex 1 of the Framework Agreement. Framework Members will be bound to comply with the framework management provisions.

- 2.3.5 Framework Members successful at Mini-Competition shall provide the Services in accordance with and on the terms and conditions of the contract as set out at Appendix 7 to this RFT (“the Services Contract”). The successful Framework Members shall be required to enter into the Services Contract with the Framework Client. Tenderers should take account of the provisions of the Services Contract in the preparation of their Tenders. Tenderers are required to confirm their acceptance of the Services Contract in the Tenderers’ Statement at Appendix 3. Tenderers may not amend the Services Contract.
- 2.3.6 Tenderers should be aware that any or all of the Special Conditions as set out at Schedule D to the Services Contract will apply (in addition to the Terms and Conditions in Schedule A to the Services Contract) to the provision of the Services if they have been marked as “applies” by the Contracting Authority in this Competition and/or by a Framework Client in the SRFT.

## 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 cope of the Tenderer’s Statement, as set out in

Appendix 3, printed on the Tenderer's letterhead. If requested in paragraph 2.6 to submit by eTenders (www.etenders.gov.ie), a scanned signed copy of the Tenderer's Statement shall be submitted electronically via the eTenders postbox. The Contracting Authority must be able to read the scanned signature of the Tenderer. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderer's Statement at Appendix 3.

## **2.5 Consortia and Prime / Subcontractors**

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

- a. The full legal name of the Prime Contractor together with its registered business address (where applicable), registered business name (where applicable), company registration number (where applicable), telephone and e-mail contact details;
- b. The names of all subcontractors and/or consortium members who will be involved in the provision of the Services;
- c. A description of the role to be fulfilled by each subcontractor and/or consortium member; and
- d. The name, title, telephone number, postal address, facsimile number and e-mail address of the nominated contact personnel authorised to represent the Prime Contractor, within the organisation of the Prime Contractor, to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person (including from any subcontractor and/or consortium member) will NOT be accepted, acknowledged or responded to.

## **2.6 Tender Submission Requirements**

**2.6.1** Tenders must be submitted electronically via the electronic postbox via eTenders. Only Tenders submitted to the electronic postbox will be accepted. Tenders submitted by 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.

The Contracting Authority must be able to read the scanned signatures 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 submit hardcopy.

**2.6.2 Tenders must be received not later than 12.00 noon on Monday 4<sup>th</sup> March 2019.**

Tenders that are received late WILL NOT be considered in this Competition.

2.6.3 Each Tenderer is limited to submitting one Tender in his own capacity and one Tender as part of a consortium/group of undertakings under this RFT.

2.6.4 In responding to this RFT all Tenders must follow the format of the RFT and respond to each element of the RFT in the order as set out in this RFT. If requested to submit Tenders to a specified postal address, Tenderers must submit an original signed document.

2.6.4a **This Clause 2.6.4a applies only to certain RFTs; it does NOT apply to this RFT.**

2.6.5 The Contracting Authority is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

## 2.7 Queries and Clarifications

2.7.1 All queries or requests for clarification relating to any aspect of this Competition or of this RFT must be directed to the Contracting Authority using the messaging function on the contract workspace on [www.etenders.gov.ie](http://www.etenders.gov.ie). Queries or requests for clarifications will be accepted no later than 15.00 on Friday 15<sup>th</sup> February 2019 unless otherwise published by the Contracting Authority.

2.7.2 All clarifications and responses to queries/requests for clarification will be transmitted using the messaging functionality on [www.etenders.gov.ie](http://www.etenders.gov.ie). Where appropriate, questions may be amalgamated. Tenderers should note that the Contracting Authority will not make responses or clarifications to individual Tenderers privately.

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

2.7.4 The Contracting Authority reserves the right to update or alter the information

contained in this document at any time up to 7 days before the final date for receipt of Tenders. Participating Tenderers will be so informed through the eTenders website. In the event of such updates or alterations the Contracting Authority reserves the right to postpone the deadline for the receipt of Tenders so as to allow Tenderers sufficient time to respond.

## 2.8 Tendering Costs

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

## 2.9 Confidentiality

- 2.9.1 All documentation, data, statistics, drawings, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this Competition:
- a. are furnished for the sole purpose of replying to this RFT only;
  - b. may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;
  - c. shall be treated as confidential by the Tenderer and by any third parties (including subcontractors) engaged or consulted by the Tenderer; and
  - d. must be returned immediately to the Contracting Authority upon cancellation or completion of this Competition if so requested by the Contracting Authority.

- 2.9.2 The successful Tenderer(s) must:

**This part of Clause 2.9.2 applies only to certain RFTs; it applies to this RFT.**

Return the original signed confidentiality agreement, as set out in Appendix 8 (“Confidentiality Agreement 8.1”) to the Contracting Authority in accordance with paragraph 3.6 below.

and/or

**This part of Clause 2.9.2 applies only to certain RFTs; it applies to this RFT.**

In the event of a Framework Member being successful at a Mini-Competition the Framework Member must return the original signed Confidentiality Agreement as set out in Appendix 8 (“Confidentiality Agreement 8.2”) to the Framework Client at the time of execution of the Services Contract.

The Confidentiality Agreement(s) must be in the form(s) as set out at Appendix 8 and Tenderers may not amend the Confidentiality Agreement(s).

## 2.10 Pricing

This Clause 2.10 applies only to certain RFTs; it applies to this RFT.

- 2.10.1 All prices quoted must be all-inclusive (i.e. including but not being limited to all costs/expenses/indexation), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- 2.10.2 Tenderers must confirm that all prices quoted in the Tender will remain valid for 180 days commencing from the closing date for the receipt of Tenders.
- 2.10.3 Any currency variations occurring over the term of the Services Contract shall be borne by the Tenderer.
- 2.10.4 Payments for Services provided pursuant to this RFT shall be subject to and be made in accordance with the Services Contract at Appendix 6 to this RFT.
- 2.10.5 This Clause 2.10.5 applies only to certain RFTs; it applies to this RFT.  
All Tenderers must complete the Pricing Schedule at Appendix 2 to this RFT.

## 2.11 Employment Law

- 2.11.1 This Clause 2.11.1 applies only to certain RFTs; it applies to this RFT.  
Under Article 27 of Directive 2004/18/EC as implemented into Irish law by Regulation 27 of European Communities (Award of Public Contracts) Regulations 2006 (S.I. No. 329 of 2006), Tenderers must provide a statement confirming that they have taken account of their legal obligations relating to employment protection and working conditions relating to the provision of the Services sought under this RFT. Failure to make the statement at paragraph 8 of the Tenderer's Statement of Appendix 3 will render the Tender non-compliant.  
Tenderers may obtain information regarding their obligations concerning:
- Taxation from the Irish Revenue Commissioners ([www.revenue.ie](http://www.revenue.ie));
  - Environmental protection from the Environmental Protection Agency ([www.epa.ie](http://www.epa.ie));
  - Employment protection and working conditions from the Department of Jobs, Enterprise and Innovation ([www.djei.ie](http://www.djei.ie)).
- 2.11.2 The successful Tenderer shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of providing the Services.
- 2.11.3 Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in

the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003 European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.

## **2.12 Publicity**

No publicity regarding this Competition, the establishment of the Framework, the execution of the Framework Agreements, a Mini Competition, the award of a contract or the execution of the Services Contract is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

## **2.13 Registrable Interest**

Any Registrable Interest involving the Tenderer/subcontractor and the Contracting Authority, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority and their relatives must be fully disclosed in the Tender or, in the event of this information only coming to their notice after the submission of a Tender and prior to the award of the contract, it should be communicated to the Contracting Authority immediately upon such information becoming known to the Tenderer/subcontractor. The terms 'Registrable Interest' and 'Relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act 1995, a copy of which is available to download at [www.finance.gov.ie](http://www.finance.gov.ie). The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from the competition or terminating any contract entered into by a Tenderer.

## **2.14 Anti-Competitive Conduct**

Tenderers attention is drawn to the application of the Competition Act 2002. The Act makes it a criminal offence for Tenderers to collude on prices or terms in a public procurement competition.

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

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

## **2.16 Freedom of Information**

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

**2.16.1** Tenderers should be aware that, under the Freedom of Information Acts 1997 and

2003, 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 commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its commercial sensitivity, Tenderers should, when providing such information, clearly identify same and specify the reasons for its commercial sensitivity. If Tenderers do not identify it as commercially sensitive, it is liable to be released in response to a Freedom of Information request without further consultation with you. The Contracting Authority will, where possible, consult with Tenderers about commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Acts.

## **2.17 Tax Clearance**

**2.17.1** It will be a condition of the award of any contract under this RFT that the successful Tenderer shall for the term of any such contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance. This Circular and further information is available at [www.finance.gov.ie](http://www.finance.gov.ie) and [www.revenue.ie](http://www.revenue.ie).

**2.17.2** Prior to the award of any contract arising out of this Competition the successful Tenderer shall be required to produce a Tax Clearance Certificate from the Irish Revenue Commissioners. Alternatively, the Tenderer may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate online verification of their tax status by the Contracting Authority.

## **2.18 Conflicts of Interest**

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

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

Tenderers are required to e-mail [contact@rmo.ie](mailto:contact@rmo.ie) and also withdraw their submission on [www.etenders.gov.ie](http://www.etenders.gov.ie) immediately if at any stage they decide to withdraw from this

competition.

**2.20 Site Visit**

2.20.1 This Clause 2.20.1 applies only to certain RFTs; it does NOT apply to this RFT.

2.20.2 Not Used

**2.21 Insurance**

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

2.21.1 The successful Tenderer shall be required to hold for the term of any Services Contract awarded pursuant to Mini-Competition insurances of the type and to the level specified in the SRFT. Tenderers should note that they are not obliged to have insurances in place in order to enter into a Framework Agreement with the Contracting Authority. The types of and levels of insurance required are not likely to exceed the following insurances:

Type of Insurance	Indemnity Limit
Employer’s Liability	€ 13,000,000
Public Liability	€ 6,500,000
Professional Indemnity	€ 50,000
Product Liability	n/a

Prior to appointment, the successful Tenderer will be required to produce evidence from their Insurance Company in the form of a copy of the policy confirming that the Tenderer has insurance cover complying with the requirements set out above.

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

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

- a. immediately advise the Contracting Authority and if applicable the

Framework Client of any material change to its insured status;

- b. produce proof of current premiums paid upon request;
- c. produce valid certificates of insurance upon request.

## Part 3: Qualification and Award Criteria

### 3.1 Compliant Tenders

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

### 3.2 Qualification Criteria

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

#### **GROUNDS FOR EXCLUDING SERVICE PROVIDERS FROM A TENDER COMPETITION**

- (i) **Mandatory Exclusion Rule is:** Service providers are excluded who have been convicted by final judgement of participation in a criminal organization, corruption, fraud, money-laundering. The exclusion must be put into effect as soon as the Contracting Authority becomes aware of the conviction.
- (ii) **Discretionary Exclusion Rules are:** If a service provider:
  - a. is bankrupt or whose affairs are being wound up;
  - b. is subject to proceedings leading to a declaration of bankruptcy;
  - c. has been found guilty of professional misconduct;
  - d. has committed grave professional misconduct by mean the Contracting Authority can demonstrate;
  - e. has defaulted in payment of taxes or social insurance contributions; or;
  - f. has provided false or misleading information or failed to provide required information.

#### **Economic and Financial Capacity**

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

##### **(i) Annual Turnover**

Tenderers must have a certified annual turnover relevant to road condition surveys of not less than €100,000 for each of the last three financial years. However, where a multi-disciplinary firm is applying, evidence of the overall turnover of the firm should also be provided. Where a consortium is applying, combined total turnover for all members must meet the minimum turnover. If a firm cannot provide evidence for the entire period (e.g. a firm has not been trading for the whole period) this will not be used as a reason to reject its application.

The minimum turnover must have been achieved in each of the three most recent years of audited accounts or where the date of establishment is more recent, for each year the entity has been established.

*Details of Tenderer's turnover for each of the last three financial years must be provided in your tender and should use the following format;*

	Most Recent Financial Year	Most Recent Financial Year -1	Most Recent Financial Year -2
Turnover	€	€	€

Tenderers must, when so requested by the Contracting Authority, provide formal audited accounts in order to demonstrate that they comply with the above requirement.

**(ii) Banker's Letter**

*Tenderer's shall provide a letter from the applicant's current principal banker dated within the past 6 months, stating that, to the best of its knowledge, this is the applicant's principal account and it is currently in good standing.*

Tenderers must provide the specified documentation when requested by the Contracting Authority. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation, the Tenderer must inform the Contracting Authority of that valid reason as to why the documentation cannot be supplied and provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

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

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

**Technical and Professional Ability**

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

**(i) Services Provided over the past five (5) years**

Tenderers must demonstrate that they have the level of experience and ability to provide high quality services of a similar nature to those sought under this RFT. If a firm cannot provide evidence for the entire period (e.g. a firm has not been trading for the whole period) this will not be used as a reason to reject its application

*Tenderers must provide information on at least 3 reference projects that are similar in nature to the services required for this project. The work must have been completed over the past 5 years and at least 1 of the projects must have involved a Road Condition Data survey along, at least, a regional and local road network. Each example must include the following information:*

Example X			
Name of Client & Contract Title			
Nature and description of the services provided			
Client Type (Public / Private)			
Client Sector			
Senior Client Contact (Referee)			
Client Contact Details			
Client Website			
Total Value of the overall contract			
Total number of public road surveyed (km).			
Value of the Tenderer's component of the overall contract			
Contract Start Date		End Date	

Tenderers should note that the Contracting Authority may verify the reference contracts provided without prior notice being given to the Tenderer.

Minimum Qualifying Requirement: The Tenderer has demonstrated the successful delivery of three (3) contracts of a similar nature to Framework Agreement through the summary detail provided.

**(ii) Technical Capability**

*Tenderers must describe the size, number and balance of their Framework Agreement resource pool, and explain how you manage client demand with available capacity. Tenderers must include the curricula vitae of staff selected for this Framework, details of*

*sub contractors, your wider network of support and relationships with other organisations if relevant.*

Minimum Qualifying Requirement: The Tenderer has demonstrated that they have access to resources who are available to deliver the services and that acceptable mechanisms of managing client demand will be in place.

**(iii) Technical Equipment Available to carry out contract**

*Tender must provide details of all survey related equipment to be used to fulfil the survey requirements. Road condition data survey equipment must be capable of delivering the road condition data in accordance with the Specification. (Details of survey vehicles and equipment including current accreditation test certificates for each.)*

Minimum Qualifying Requirement: The Tenderer has demonstrated that they have the Tested\* equipment to carry out SCRIM surveys, Profile surveys and FWD surveys to collaborate in this Framework.

\*Tested by TRL or other similar independent testing body.

**(iv) Measures for ensuring Quality**

*Tenderers shall set out their quality assurance methodologies used for ensuring the required accuracy and consistency of the data and results for all aspects of the road condition data survey projects. (Three pages max, font size 10 and single line spacing).*

Minimum Qualifying Requirement: The Tenderer has demonstrated that they have a quality management system in place that demonstrates quality assurance for the collection and processing of survey data.

**(v) Safety and Health**

*Tenderers shall submit a copy of their up to date "Safety Statement" and risk assessments for each of the relevant surveys being tendered for, in accordance with the "Safety, Health and Welfare at Work Act 2005".*

Minimum Qualifying Requirement: The Tenderer has provided their current safety statement and completed risk assessments for conducting the relevant surveys i.e. RSP, SCRIM, FWD, PSCI and Cracking.

### **3.3 Criteria for selection as a Framework Member**

3.3.1 Tenders received will be evaluated in the basis of the pass/fail criteria and only those Tenderers who have qualified in accordance with paragraph 3.2 of this RFT will be considered for appointment to the framework.

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

- a) a formal written Framework Agreement has been executed by or on behalf of the Contracting Authority. The Contracting Authority may cancel this Competition at any time prior to a formal written Framework Agreement being executed by or on behalf of the Contracting Authority. For the avoidance of doubt, the conclusion of a Framework Agreement with a Framework Member does not guarantee the awarding of any Services Contract or contract whatsoever. Neither this document nor any information set out herein shall be regarded as a commitment or representation on the part of the Contracting Authority to enter into a contractual arrangement and
- b) a formal written Services Contract has been executed by or on behalf of the Framework Client arising as a result of a Mini Competition initiated by way of a Subsequent Request For Tender SRFT in accordance with the process set out at clause 5 and 6 of the Framework Agreement. The Framework Client may cancel a Mini Competition at any time prior to a contract being executed by it.

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 Framework Agreement being executed by or on behalf of the Contracting Authority. The Contracting Authority does not bind itself to accept the lowest priced, or any Tender.

**3.3.2** The offer of membership to the Framework (if any) to Tenderer(s) (as determined by paragraph 3.3.2), will be conditional upon:

- a) the Tenderer(s) submitting the evidence if required under paragraph
  - i. 3.2.A within seven (7) days of notification by the Contracting Authority; and
- b) Any Tender that fails to provide the requested documentation with the required time shall be excluded from further consideration.
- c) if required, the documentation submitted demonstrating that such Tenderer has the economic and financial capacity required under paragraph 3.2.A

## **3.4 Presentation of Proposals**

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

### **3.5 Standstill Period**

- 3.5.1 In circumstances where Directive 2007/66/EC applies, no contract can or will be executed or take effect until at least ten (10) calendar days after the day on which the unsuccessful Tenderers have been sent the appropriate notice informing them of the result of this Competition (“Standstill Period”). The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.
- 3.5.2 Tenderers should note that the Contracting Authority may, when notifying unsuccessful Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the lowest ranking preferred bidder to be offered membership of the Framework in respect of each award criterion assessed by the Contracting Authority.

### **3.6 Return of Signed Framework Agreements**

- 3.6.1 The successful Tenderer(s) must sign and return the Framework Agreement and the Confidentiality Agreement (if required), both in duplicate, to the Contracting Authority no later than seven (7) calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing. Please note the Contracting Authority cannot and will not enter into a Framework Agreement until the Standstill Period has expired. A signed Framework Agreement returned by the successful Tenderer(s) is not binding on the Contracting Authority until the Contracting Authority has signed the Framework Agreement in accordance with paragraph 2.1.3 above.
- 3.6.2 Where the signed Framework Agreement 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 offer membership to the Framework to the next highest-ranked Tenderer.

# Appendix 1: Requirements and Specifications

## 1. Background and Context

The Road Management Office is a shared Local Authority service established in 2014 following the local government efficiency review. The RMO's role is to support local authorities through the development of policy, strategy, and collaboration, supported by technology to enable local authorities to maximise efficiencies.

The road network in Ireland comprises of approximately 100000kms. The National Roads Authority is responsible for the management of the national road network. Local Authorities are responsible for the management, maintenance and improvement of regional and local road network. The Department of Transport Tourism and Sport (DTTAS) are responsible for the development of policy and oversight of this network. DTTAS have set out requirements for the surveying and collection of data relating to pavement management on regional and local roads in Ireland; *Pavement Survey Standard for Regional and Local Roads*.

The purpose of the establishment of this Framework Agreement is to provide Contracting Authorities with a framework to support them in procuring surveys of road condition on their regional and local road network.

### 1.1 Specification for this Framework

Surveys are required to be conducted in accordance with appended specification documents; *'Machine Road Condition Survey Specification for Regional and Local Roads'*. This Specification sets out technical requirements for Survey Parameters and Accreditation, defines the technical requirements for the parameters provided by the machine developer, including acceptance and consistency testing and accreditation. It describes the requirements for accreditation of the Equipment. It also describes the requirements for consistency testing and for the reporting and delivery of data from accredited surveys to MapRoad PMS.

### 1.2 The Requirement

The RMO proposes to establish one Framework Agreement for road condition surveys. Details of the Framework are set below.

The provision of services may include, but shall not be limited to, the following;

- Collection of SCRIM data
- Collection of visual surveys - PSCI
- Collection of road surface profile characteristics such as IRI, MPD, LPV, Rutting
- Collection of road geometry
- Road surface material inventory
- Collection and analysis of FWD
- Cracking survey

## 1.3 Structure of Frameworks

The Framework aims to:

- (i) ensure both flexible and appropriate access to survey service providers;
- and
- (ii) promote and encourage SME participation and opportunity.

Service Contracts under Framework Agreement shall be awarded by way of Mini Competition amongst the Framework Members.

Entry to the Framework Agreement will be determined by the application of the criteria as set out in section 3.2 of this RFT.

## 2. Basis of Assessment and Information Required

Service Contracts under Framework Agreement shall be awarded by way of Mini Competition amongst the Framework Members.

Entry to the Framework Agreement will be determined by the application of the award criteria as set out in section 3.3 of this RFT.

### 2.1 Pricing

Tenderers must complete the pricing schedule set out in Appendix 2 of this RFT.

Pricing is being sought in the form outlined below;

- Maximum rates for surveys; Works and Network.

## 3. Reporting to the Contracting Authority

The Contracting Authority has detailed below the minimum reporting and information requirements that shall be provided by Framework Member(s). It is a condition of the Framework Agreement that additional and different reports may be requested and required during the lifetime of the Framework Agreement and any Contracts awarded pursuant to Mini Competition. Framework Member(s) shall be required to assist with the development of these additional and different reports.

All management information must be readily available for the Contracting Authority within five working days from the quarter end, monthly end or on request. Reports shall be made available in such electronic and paper formats as may be requested by the Contracting Authority from time to time.

Minimum Report Types required by the Contracting Authority during the lifetime of the Framework Agreement

The Contracting Authority shall require reports that give a strategic view of the Framework Agreement and the Framework Members performance. Without prejudice to the generality of

the foregoing the table below details the minimum report types required during the Term.

Minimum RMO Report Types Report	Frequency of reports
Number of Mini Competitions applied for during the quarter	Quarterly and upon request
Number of Mini Competitions won during the quarter	Quarterly and upon request
<p>Reports to also include:</p> <ul style="list-style-type: none"> <li>• Client's name</li> <li>• Client's Contact Details</li> <li>• Detail of the services awarded</li> <li>• Contract Start and end Dates</li> <li>• Value of contract (€)</li> </ul>	

## Appendix 2: Pricing Schedule

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Tenderers must complete all fields of the Costs Details table below.

The costs shown must be in euro, inclusive of all expenses, exclusive of all taxes and exclusive of VAT. The appropriate VAT rate(s) must be shown separately.

Tenderers should note that where the Maximum cost is being requested and must include all administrative costs including but not limited to costs of all labour, secretarial services, insurances, technical analysis, processing data and liaison with all relevant individuals and authorities and all subcontractor fees. If admitted to the Framework, Tenderers may reduce these prices under subsequent Mini- Competitions.

Tenderers must provide costs in the following table:

- A. Tenderers must also identify maximum rates for the following levels of services. Tenderers should note that the rates tendered are maximum ceiling rates and must not be increased during the term of the Framework Agreement and cannot be exceeded when Framework Members submit responses to Mini Competitions.

<b>Service</b>	<b>Unit</b>	<b>Works Rate (€)</b>	<b>Network Rate (€)</b>
SCRIM survey	km		
Road surface profile survey	km		
FWD survey	km		
PSCI Survey	km		
Cracking Survey	km	n/a	
Surface material inventory	km	n/a	
Road Width	km	n/a	

## 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: Road Management Office (RMO)

RE: Request for Tenders to establish a Multi Supplier Framework for the Provision of Machine Road Condition Survey Services for Regional and Local Roads

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

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of:
  - a) the Framework Agreement and agree that, if offered membership of the Framework we will execute the Framework Agreement at Appendix 6 of the RFT and
  - b) The Services Contract and agree if awarded any contract pursuant to a Mini-Competition to execute the Services Contract at Appendix 7 to the RFT.

3. We accept all of the Terms and Conditions of the Confidentiality Agreements and agree:

**This part of paragraph 3 is required only for certain Tenders; it applies to this RFT.**

If offered membership of the Framework to execute Confidentiality Agreement 8.1, as set out in Appendix 8 of the RFT for the benefit of the Contracting Authority. and/or

**This part of paragraph 3 is required only for certain Tenders; it applies to this RFT.**

If awarded any contract pursuant to a Mini-Competition to execute Confidentiality Agreement 8.2 as set out in Appendix 8 of the RFT for the benefit of the Framework Client.

4. We accept all the Qualification and Award Criteria as set out in Part 3 of the RFT.
5. We agree to provide the Services in accordance with this RFT and our Tender, the SRFT and our response to SRFT if awarded any contract pursuant to Mini-Competition.

6. We confirm that we have complied with all requirements as set out at Part 2 of the RFT.

7. **This Clause 7 is required only for certain Tenders; it applies to this RFT.**

We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the closing date for the receipt of Tenders as specified at paragraph 2.10.2 of the RFT.

8. **This Clause 8 is required only for certain Tenders; it applies to this RFT.**

Our compliance with all relevant legal employment requirements as set out in the RFT, in particular but not exclusively paragraph 2.11.1 of the RFT.

9. We acknowledge that the RFT does not constitute an offer to enter into a Framework Agreement and/or any contract or Services Contract and neither this document nor any of the information set out therein should be regarded as a commitment or representation on the part of the Contracting Authority to enter into a contractual arrangement. No commitment of any kind, contractual or otherwise, shall exist unless and until a formal written contract has been executed by or on behalf of a Framework Client arising as a result of a Mini Competition. We acknowledge that the Framework Client may cancel a Mini Competition at any time prior to a contract being executed by it. Any notification of preferred bidder status by the Contracting Authority/Framework Client shall not give rise to any enforceable rights by the Tenderer. The Contracting Authority may, at its absolute discretion, cancel this Competition at any time prior to a formal written Framework Agreement being executed by and on behalf of the Contracting Authority.

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

11. We shall, if awarded any contract pursuant to SRFT, 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 and as required by the SRFT.

SIGNED

Company

(Authorised Signatory)

Print name

Address

Date

## Appendix 4: Tenderers' Aide-Memoire

1. Have you addressed all the requirements in Part 2?
2. Have you signed and completed all the relevant pages where so required?
3. Have you completed the Pricing Schedule at Appendix 2?
4. Have you noted the closing time and date for return of the Tender, please allow sufficient time for the upload of documents?
5. Have you returned all the documentation required summarised hereunder?

No. <sup>7</sup>	Requirement/Criterion	Applicable	Response	Pass/Fail Only
2.2.3b	Tenderer's Personal Situation	Yes	Declaration – Appendix 5	Yes
2.3.3, 2.3.5, 2.4	Tenderer's Statement	Yes	Declaration – Appendix 3	Yes
2.5	Consortia and Prime/Sub Contractor	Yes/No	Declaration Required	Yes
2.9.2	Confidentiality Agreement	Yes	Declaration – Appendix 8.1	Yes
2.10.5	Pricing Schedule	Yes	Appendix 2	Yes
3.2 A (i)	Annual Turnover	Yes	Declaration Required	Yes
3.2 A (ii)	Banker's Letter	Yes	Declaration Required	Yes
3.2 B (i)	Services over the past 5 years	Yes	Documentary Evidence Required	Yes
3.2 B (ii)	Technical Capability	Yes	Documentary Evidence Required	Yes
3.2 B (iii)	Technical Equipment	Yes	Documentary Evidence Required	Yes
3.2 B (iv)	Measures for ensuring quality	Yes	Documentary Evidence Required	Yes
3.2 B (v)	Safety and Health	Yes	Documentary Evidence Required	Yes
Appendix 2	Pricing schedule	Yes	Documentary Evidence Required	No

<sup>7</sup>The numbers in this column reference the section numbers of the criteria in this RFT.

# Appendix 5: Declaration as to Personal Circumstances of Tenderer

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Re: Request for Tenders to establish a Multi Supplier Framework for the Provision of Machine Road Condition Survey Services for Regional and Local Roads

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

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

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

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

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

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

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

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

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

Practising Solicitor/Commissioner for Oaths

## Appendix 6: Framework Agreement

### Request for Tenders to establish a Multi Supplier Framework for the Provision of Machine Road Condition Survey Services for Regional and Local Roads

**THIS FRAMEWORK AGREEMENT IS MADE ON THE                      DAY OF                      201**

(“the Agreement”)

BETWEEN:

The \_\_\_\_\_, whose principal place of business is at \_\_\_\_\_ (“the Contracting Authority”); and \_\_\_\_\_ [SERVICE PROVIDER] with offices at \_\_\_\_\_

(“the Framework Member”)(“Parties”)

#### WHEREAS:

1. By Request for Tender as advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number \_\_\_\_\_ of \_\_\_\_\_ and entitled “\_\_\_\_\_” dated \_\_\_\_\_ (“the RFT”) the Contracting Authority invited service providers (“Tenderers”) to tender to participate in a framework for the provision of Machine Road Condition Survey Services for Regional and Local Roads (the “Framework”) as described in the Requirements and Specifications at Appendix 1 of the RFT (“Services”) to be provided to the Contracting Authority and/or Framework Clients (as hereinafter defined). The purpose of the tender competition was to conclude Framework Agreements (as hereinafter defined). References to the RFT shall include any clarifications issued by the Contracting Authority. The RFT is hereby incorporated by reference into this Agreement.
2. The Framework Member submitted a response to the RFT dated the \_\_\_\_\_ (“the Submission”). References to the Submission shall include any clarifications issued by the Framework Member. The Submission is hereby incorporated by reference into this Agreement.
3. Parties eligible to participate in this Framework (“Framework Clients”) **This Recital 3 applies only to certain Agreements; it applies to this Agreement.**

The Framework Clients are:

The Department of Transport, Tourism and Sport (DTTAS),  
The Road Management Office (RMO) and all local authorities in Ireland;  
Carlow County Council  
Cavan County Council  
Clare County Council  
Cork County Council

Cork City Council  
Donegal County Council  
Dublin City Council  
Dún Laoghaire-Rathdown County Council  
Fingal County Council  
Galway County Council  
Galway City Council  
Kerry County Council  
Kildare County Council  
Kilkenny County Council  
Laois County Council  
Leitrim County Council  
Limerick City and County Council  
Longford County Council  
Louth County Council  
Mayo County Council  
Meath County Council  
Monaghan County Council  
Offaly County Council  
Roscommon County Council  
Sligo County Council  
South Dublin County Council  
Tipperary County Council  
Waterford City and County Council  
Westmeath County Council  
Wexford County Council  
Wicklow County Council

## 1. DEFINITIONS

“Commencement Date” means \_\_\_\_\_ 201 ;

“Contract” means a contract which is awarded in accordance with Clause 6 of this Framework Agreement. The term “Services Contract” refers to the draft contract attached to the RFT at Appendix 3.

“Framework Agreement” means this Agreement, the terms and conditions set out hereto.

“Framework Term” means the period in years set out in Clause 2.5;

“Month” means 28 days including weekends and bank holidays

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

1.1 To the extent that any specific term or condition in a Contract is inconsistent or conflicts with any term or condition of this Framework Agreement, the relevant term or condition of the Contract shall prevail.

1.2 Headings are included for ease of reference only and shall not affect the construction

of this Framework Agreement.

- 1.3 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.4 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.

## **2. APPOINTMENT OF FRAMEWORK MEMBER AND TERM OF THE FRAMEWORK**

- 2.1 In consideration of payment by the Framework Member of the sum of €1 (the receipt of which is hereby acknowledged by the Contracting Authority), the Framework Member accepts its appointment under the terms and conditions of this Framework Agreement.
- 2.2 Membership of this Framework does not entitle the Framework Member to be consulted in respect of, or awarded any contract or Contract during the Framework Period. The Contracting Authority and/or Framework Clients may at its sole discretion choose not to enter into any Contracts falling within the scope of this Framework Agreement. The Contracting Authority may terminate this Framework Agreement in accordance with Section 19 hereto.
- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any of the Services and/or number of Contracts (if any) which may be procured in connection with this Agreement and the Parties acknowledge that the Contracting Authority and/or Framework Clients are not bound to enter into any new Contract or other contractual arrangement with the Framework Member as a result of entering into this Agreement. The Contracting Authority and/or Framework Clients are not and will not be under any obligation to avail of the Framework. This Framework Agreement does not confer exclusivity on Framework Members.
- 2.4 While this Framework Agreement shall form the basis for the award of contracts falling within the scope of the Framework as set out in Clause 4. during the Framework Term, the Contracting Authority and/or Framework Clients may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within its scope. In this event the Contracting Authority and/or Framework Clients shall observe all applicable public procurement rules and shall not afford any advantage to the Framework Member.
- 2.5 The Framework Agreement shall take effect on the Commencement Date and expire [insert term of Framework] thereafter unless terminated earlier in accordance with these terms and conditions or unless extended by the Contracting Authority for a further [insert extension to a maximum Framework Term of four years], such option to extend shall be at the absolute discretion of the Contracting Authority. The maximum Framework Term shall be four (4) years in the aggregate.

## **3. FRAMEWORK MANAGEMENT PROVISIONS**

- 3.1 The Framework Member hereby agrees and undertakes to notify the Contracting Authority where it becomes aware of any breaches to the rules of this Framework

Agreement in Mini Competitions undertaken by Framework Clients.

**This Clause 3.2 applies only to certain Agreements; it applies to this Agreement.**

3.2 The Framework Member hereby agrees and undertakes to comply with the framework management provisions as set out in Annex 1 to this Agreement.

#### **4. SCOPE OF FRAMEWORK AGREEMENT**

This Framework Agreement relates to a Multi Supplier Framework for the Provision of Machine Road Condition Survey Services for Regional and Local Roads as more particularly described in the Requirement and Specifications at Appendix 1 of the RFT.

#### **5. PROCEDURE FOR SUPPLEMENTARY TENDERS**

5.1 On each occasion that the Framework Client proposes to award a Contract, it shall issue a Supplementary Request for Tender (“SRFT”) in accordance with the following procedure:

5.1.1 The Framework Client shall set out in the SRFT sent electronically to all Framework Members:

- the scope and term of the Contract to be awarded
- the deadline (date and time) for the receipt of the Response to SRFT (“Response”) taking into account the complexity of the Contract and the time needed to prepare an appropriate submission. Responses received after the deadline will not be considered
- the email address designated for receipt of Responses. Responses received in hardcopy or to any other email address will not be considered
- the types and levels of insurance required for the Contract
- the special conditions (if any) that apply to the Contract in addition to those (if any) marked as applying in the Services Contract published with the RFT.

5.1.2 The Response shall be submitted in writing by email to the designated email address (as specified in the SRFT) and its content shall remain confidential until the stipulated time limit for reply has expired.

5.1.3 Any clarifications requested by the Framework Member in relation to a Response must be submitted in writing by email to the designated email address.

5.1.4 The Framework Client may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.3 below.

5.2 The Framework Client shall not be responsible for any costs incurred by the Framework Member in the preparation of a Response to a SRFT.

## 6. AWARD CRITERIA

- 6.1 Contracts under this Framework Agreement shall be awarded in accordance with the procedure for supplementary tenders set out in Section 5 and in accordance with the criteria set out in this Section 6.
- 6.2 The Framework Member, on award of a Contract by a Framework Client agrees to execute and comply with the terms and conditions of the Services Contract.
- 6.3 Award Criteria

Subsequent Request for Tenders (SRFT) will be evaluated on the basis of the most economically advantageous tender. i.e. Price 100%

## 7. INTRODUCTION

This Framework Agreement must be considered in the context of the terms and conditions of the Services Contract furnished at Appendix 6 of the RFT. Those terms and conditions will apply to any Contract awarded pursuant to this Framework Agreement. Framework Members will not be furnished with a SRFT unless and until this Framework Agreement has been executed by the Framework Member and returned to the Contracting Authority.

## 8. APPLICABLE LAW AND JURISDICTION

The Framework Agreement and any contracts awarded under it will be subject to the law of Ireland and the jurisdiction of the Irish courts.

## 9. TAX CLEARANCE

- 9.1 It will be a condition of the award of any Contract arising from a Mini-Competition pursuant to the Framework that the Framework Member shall for the term of any such Contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance. This Circular and further information is available at [www.finance.gov.ie](http://www.finance.gov.ie) and [www.ros.ie/](http://www.ros.ie/)
- 9.2 Prior to the award of any Contract arising from a Mini-Competition pursuant to the Framework, the Framework Member shall promptly produce a Tax Clearance Certificate from the Irish Revenue Commissioners. Framework Members must furnish their original Tax Clearance Certificate on request from the Contracting Authority and/or Framework Clients or alternatively, the Framework Members may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by the Contracting Authority and/or Framework Clients. Where relevant, the provisions of this paragraph 9.2 apply equally to sub-contractors.

## **10 COMPLIANCE**

- 10.1 The Framework Members shall comply with all relevant legislation, regulatory requirements and best industry practice in the delivery of the Services. The term 'legislation' shall be deemed to mean any Act of the Oireachtas (Parliament), regulation, statutory instrument, European Community or other international obligation, direction of a regulatory or other competent authority, condition of any consent, authorisation, lease or other permission granted by any regulatory or other competent authority and any decision of a court of competent jurisdiction, in each case having effect in Ireland.
- 10.2 Each Framework Member will be solely responsible in law for the employment, remuneration, taxes, immigration, visa and work permits or other authorisations appropriate to the work carried out for, or on behalf of a Contracting Authority and/or Framework Clients. The Contracting Authority and/or Framework Clients reserve the right to seek confirmation that the relevant legal requirements are being met.

## **11. ANTI COMPETITIVE CONDUCT**

The attention of Framework Members is drawn to the application of the Competition Act 2002. The Act makes it a criminal offence for Framework Members to collude on prices or terms in a public tendering procedure.

## **12. CONFLICTS OF INTEREST**

- 12.1 Any conflict of interest or potential conflict of interest on the part of a Framework Member, individual employees or corporate or individual service providers (whether sub-contractors or third party retainers) of a Framework Member must be fully disclosed to the Contracting Authority and/or Framework Clients as soon as the conflict or potential conflict becomes apparent. In the event of any conflict or potential conflict of interest, the Contracting Authority and/or Framework Clients may invite Framework Members to propose means by which the conflict might be removed. The Contracting Authority and/or Framework Clients will, in its absolute discretion, decide on the appropriate course of action.
- 12.2 Where a Framework Member receives a Request for Supplementary Tender from the Contracting Authority and/or Framework Clients and is aware that there is a conflict of interest in respect of the Services being sought, whether the conflict concerns the Framework Member, an individual employee, sub-contractor or other, the Framework Member is obliged to disclose the conflict of interest immediately to the Contracting Authority and/or Framework Clients and is obliged to decline from submitting a Response to the Request for Supplementary Tender.

## **13. REGISTERABLE INTEREST**

Any registerable interest involving a Framework Member and the Contracting Authority and/or Framework Clients, as listed in recital 3 above, other members of the Government, members of the Oireachtas (Parliament), or employees of the Contracting Authorities and/or divisions/agencies under the aegis of the relevant Ministers, and their relatives, must be fully disclosed in any Response. In the event of this information only coming to the notice of a Framework Member after the submission of a Response and prior to the award of any Contract, it must be communicated to the Contracting Authority and/or Framework Clients immediately upon such information becoming known. The terms ‘registerable interest’ and ‘relative’ shall be interpreted as per Section 2 of the Ethics in Public Office Act, 1995.

## 14. FORCE MAJEURE

14.1 In the event of any failure, interruption or delay in the performance of the Parties’ obligations (or of any of them) resulting from any Force Majeure Event not reasonably within the control of the Party concerned (“the Affected 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

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.

14.2 If the Force Majeure Event continues for 60 calendar days either Party may terminate at 14 days’ notice.

## 15. Confidentiality

15.1 All communications issued between the Contracting Authority and/or Framework Clients and Framework Members must be treated as being strictly confidential. The Framework Member undertakes to comply with all reasonable directions of the Contracting Authority with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement executed by the Framework Member. Framework Members shall not release details of such communications other than on an “In Confidence” basis to those who have a legitimate need to know or whom they need to consult for the purpose of preparing a Response to Supplementary Tender. All of the Framework Member’s personnel, including sub-contractors, who provide the Services may be required, at the absolute discretion of the Contracting Authority and/or Framework Clients, to sign a confidentiality agreement in a format as determined by the Contracting Authority.

15.2 **This Clause 15.2 applies only to certain Agreements; it applies to this Agreement.**

The Framework Member shall execute Confidentiality Agreement 8.2 with the Framework Client in the event of being awarded a Contract. The form of the Confidentiality Agreement 8.2 shall be as set out in Appendix 8.2 of the RFT.

- 15.3 No publicity regarding this Framework Agreement, Mini Competitions or Contracts awarded following Mini Competitions is permitted unless and until the Contracting Authority has given prior written consent to the relevant communication.

## **16 LOCAL SECURITY ARRANGEMENTS**

All personnel calling to any of the offices or facilities of the Contracting Authority and/or Framework Clients will be required to comply with local security arrangements and protocols.

## **17. GIFTS**

Framework Members shall not offer, give or agree to give to any person holding an office in the Contracting Authority and/or Framework Clients, any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any Contract. Any breach of this clause may entitle the Contracting Authority and/or Framework Clients to cancel any existing contracts to recover from the Framework Member any loss resulting from any such termination and to terminate this Framework Agreement.

## **18. COSTS AND EXPENSES OF FRAMEWORK**

All costs and expenses incurred by the Framework Member relating to this Framework Agreement and any SRFT shall be borne by the Framework Member. The Contracting Authority and/or Framework Clients shall not be responsible or liable for any costs or expenses of whatsoever nature incurred by the Framework Member in this regard.

## **19 TERMINATION**

- 19.1 Subject to the provisions of sub-clause 19.2, this Agreement may be terminated by the Contracting Authority by serving 30 days written notice to the Contractor. This Agreement may be terminated by the Framework Member by serving 30 days written notice to the Contracting Authority. Neither party shall be entitled to any additional amounts or compensation in the event that the Agreement is terminated in accordance with this Clause 19.
- 19.2 The Contracting Authority 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 events:

19.2.1 if the Framework Member commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority, (if the breach(es) are capable of remedy), within 30 days after receipt of a request in writing from the Contracting Authority.

The following provision applies only to certain Agreements; it applies to this Agreement.

A failure to comply with the framework management provisions as set out in Schedule 1 shall be deemed to be a serious breach of this Agreement; and / or

19.2.2 if the Framework Member becomes insolvent, becomes bankrupt, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect; and / or

19.2.3 in circumstances where the Contracting Authority becomes aware that any of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. 329 of 2006) apply to the Framework Member.

19.3 Termination of this Agreement shall not affect any antecedent and accrued rights, obligation or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication is intended to come into or continue in force on or after such termination.

## 20.0 FREEDOM OF INFORMATION

The Framework Member acknowledges that the Contracting Authority is subject to the Freedom of Information Acts 1997 – 2003. Accordingly, information furnished to the Contracting Authority by the Framework Member may be released pursuant to the Contracting Authority's statutory obligations. If the Member considers that any of the information supplied by it to the Contracting Authority under this Framework Agreement or any Contract should not be disclosed because of its commercial sensitivity it should, when providing the information, indicate this and specify the reason for its commercial sensitivity. The Contracting Authority will consult the Framework Member about this sensitive information before making a decision on any Freedom of Information request received. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations

## 21.0 DISPUTE RESOLUTION

Subject to Clause 8 and to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties will seek to resolve any disputes between them arising out of or relating in any way to the issues covered by the Agreement amicably.

IN WITNESS WHEREOF this Framework Agreement has been executed by the Parties hereto as of the date first above written.

SIGNED by \_\_\_\_\_,  
being an Officer so authorised  
by the CONTRACTING AUTHORITY

in the presence of:

\_\_\_\_\_  
Witness

SIGNED by \_\_\_\_\_,  
being an Officer so authorised  
by the FRAMEWORK MEMBER

in the presence of:

\_\_\_\_\_  
Witness

## ANNEX 1 TO THE FRAMEWORK AGREEMENT

### FRAMEWORK MANAGEMENT PROVISIONS

#### Reporting to the Contracting Authority

The Contracting Authority has detailed below the minimum reporting and information requirements that shall be provided by Framework Member(s). It is a condition of the Framework Agreement that additional and different reports may be requested and required during the lifetime of the Framework Agreement and any Contracts awarded pursuant to Mini Competition. Framework Member(s) shall be required to assist with the development of these additional and different reports.

All management information should be readily available for the Contracting Authority within five working days from the quarter end, monthly end or on request. Reports shall be made available in such electronic and paper formats as may be requested by the Contracting Authority from time to time.

#### Minimum Report Types required by the Contracting Authority during the lifetime of the Framework Agreement

The Contracting Authority shall require reports that give a strategic view of the Framework Agreement and the Framework Members performance. Without prejudice to the generality of the foregoing the table below details the minimum report types required during the Term.

Minimum RMO Report Types Report	Frequency of reports
Number of Mini Competitions applied for during the month	Quarterly and on request
Number of Mini Competitions won during the month	Quarterly and on request
Reports to also include: <ul style="list-style-type: none"> <li>• Client's name</li> <li>• Client's Contact Details</li> <li>• Detail of the services awarded</li> <li>• Contract Start and end Dates</li> <li>• Value of contract (€)</li> </ul>	Quarterly and on request

## Appendix 7: Services Contract

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[Insert Contracting Authority's full legal name – to be completed on signing.]

and

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

### AGREEMENT

Relating to the Provision of Services pursuant to

Request for Tenders for the Establishment of a Framework for the Provision of Machine Road  
Condition Survey Services for Regional and Local Roads

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

The [Insert Contracting Authority's full legal name – to be completed on signing.] (“the Client”); and

[Contractor's full legal name: to be completed on signing], of [Contractor's address: to be completed on signing] (“the Contractor”)

(“the Parties”).

**WHEREAS:**

- A. The Road Management Office (RMO) (“the Contracting Authority”) invited responses (“Tenders”) to Request for Tenders dated \_\_\_\_\_ (“RFT”) from economic operators (“Tenderers”) for participation in a framework for the provision of the services as described in Appendix 1 to the RFT, “Requirements and Specifications”, (“the Services”) to be provided for offices at specified locations throughout Ireland. References to the RFT shall include any clarifications issued by the Client and same are attached hereto in Schedule F.
- B. The Contractor submitted a response to the RFT dated the [Insert Date of Tender] which is attached hereto in Schedule G (“the Submission”). References to the Submission shall include any clarifications issued by the Contractor and same are attached hereto in Schedule G.
- C. The Contracting Authority and the Contractor entered into a framework agreement [insert date of Framework Agreement] (the “Framework Agreement”). The Framework Agreement is incorporated by reference into this Agreement. Parties eligible to participate in this Framework (if any) are identified in the Framework Agreement and in the RFT. The Client is eligible to participate.
- D. By Request for Supplementary Tender dated [insert date of SRFT] (“the SRFT”), the Client invited responses from Framework Members to the SRFT for the provision of Services. References to the SRFT shall include any clarifications issued by the Client and same are attached hereto in Schedule H.
- E. The Contractor submitted a response to the SRFT dated the [Date of Tender] (the “Response”). References to the Response shall include any clarifications issued by the Contractor and same are attached hereto in Schedule I.

**IT IS HEREBY AGREED AS FOLLOWS:**

- 1. The Contractor agrees to provide the Services described in Schedule B (“the Services”) in accordance with this Agreement (“Agreement”). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the

Services in accordance with the RFT, the SRFT, the Submission and the Response (“the Specification”).

2. The Client agrees to pay the Charges to the Contractor as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice. For the purposes of this Agreement, the Client’s Contact is [name of contact person] of [address of contact person]; the Contractor’s Contact is [Contractor contact name: to be completed on signing.] of [Contractor contact address: to be completed on signing.]
3. This Agreement is governed by the terms and conditions as set out in Schedule A and consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - i. This Agreement and Schedules A to E attached hereto;
  - ii. The RFT and SRFT (Schedules F and H);
  - iii. The Submission and Response (Schedules G and I).
4. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

The Contracting Authority reserves the right to extend the Term for a period or periods of up to [INSERT NUMBER] months with a maximum of [NUMBER] such extensions permitted subject to its obligations at law. The Agreement shall not exceed four (4) years in aggregate.

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

## Schedule A: Terms and Conditions

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### 1. Contractor's Obligations

- A. The Contractor undertakes to perform its obligations arising from this Agreement with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and subcontractors. The Contractor shall require its agents and subcontractors to exercise due care, skill and diligence in the provision of Services and generally in the carrying out of obligations allocated by the Contractor to its agents and subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 4 the Contractor shall:
1. provide the Services according to the Specification, in accordance with the RFT and SRFT, in the manner set out in the Submission and Response (as accepted by the Client) and in accordance with the Client's directions and the terms of this Agreement;
  2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
  3. comply with all local security arrangements as notified to it by the Client;
  4. provide the Services in accordance with good industry practice and comply with all applicable laws with particular but not exclusive regard to the requirements of the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the Data Protection Acts 1988 and 2003, Freedom of Information Acts 1997 and 2003 and Employment legislation. The Contractor will be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement; and
  5. comply with the Special Conditions, if any, set out in Schedule D ("Special Conditions").
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the delivery of the Services and shall

assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its subcontractors and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Agreement to the extent that it or they are retained by the Contractor.

- D. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- E. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "Regulations") and failure to so comply shall constitute a material breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against all liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims, demands, actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Client under the Regulations by any Affected Employees. Affected Employees shall mean those employees in respect of whom the Regulations may be deemed to apply in connection with this Agreement.

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

- A. The Contractor shall provide the Services at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties in accordance with clause 11.
- B. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 11.

### 3. Key Personnel

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

### 4. Payment

- A. Subject to the provisions of this clause 4 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
  - 1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 11A from time to time;
  - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
  - 3. Invoices being submitted to the Client’s Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client’s Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under Special Condition 4; and

4. The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at [www.finance.gov.ie](http://www.finance.gov.ie). The Contractor may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by the Client.
- C. The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. The Charges shall include any and all expenses incurred by the Contractor, its employees, servants and agents in the performance of the Services.
- F. Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with clause 523 of the Taxes Consolidation Act, 1997 of any withholding taxes payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

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

- A. The Contractor warrants, represents and undertakes that:
  1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
  2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;

3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations;
  4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
  5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
  6. where applicable, the status of the Supplier, declared in the “Declaration as to Personal Circumstances of Tenderer” in the Submission, which confirms that none of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities’ Contracts) Regulations 2006 (S.I. No. 329 of 2006) apply to the Supplier, remains unchanged;
  7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 7 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes; and
  8. it retains and shall maintain for the Term insurances for the nature and amount specified in the SRFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 5A.8.
- B.** The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at clause 5A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

## **6. Remedies**

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

the Contractor's failure to exercise care as outlined in clause 1. The terms of this clause 6A shall survive termination of this Agreement for any reason.

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

## **7. Intellectual Property**

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

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

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

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

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

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

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

## 8. Confidentiality

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

2. which is or becomes public knowledge other than by breach of this clause; or
  3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
  4. is lawfully received from a third party (with full right to disclose).
- C.** The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, from time to time, during the currency of this Agreement as may be requested by the Client submit full personal details (including those of subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.
- D.** In circumstances where the Client is subject to the provisions of the Freedom of Information Acts, 1997 and 2003, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this commercially sensitive information before making a decision on any Freedom of Information request received. The final decision on disclosure rests with the Office of the Information Commissioner and ultimately, the courts.
- E.** The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

## **9. Force Majeure**

- A.** A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or subcontractor or agent) places of business.

**B.** In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:

1. the nature of the Force Majeure Event;
2. the anticipated delay in the performance of obligations;
3. the action proposed to minimise the impact of the Force Majeure Event;

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

**C.** If the Force Majeure Event continues for 60 days either Party may terminate at 14 days' notice.

**D.** In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

## **10. Termination**

**A.** Notwithstanding the provisions of clause 12 and subject to the provisions of sub-clause 10B, this Agreement may be terminated by either party by serving 30 days written notice to the other Party. For greater certainty, neither Party shall be entitled to any additional amounts or compensation in the event that the Agreement is terminated in accordance with this clause 10A.

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

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

and/or

2. if the other Party becomes insolvent, becomes bankrupt, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect.
- C. Where applicable, the Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the excluding circumstances listed in Article 45 of EU Directive 2004/18/EC as implemented into Irish law by European Communities (Award of Public Authorities' Contracts) Regulations 2006 (S.I. No. 329/2006) apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Client which is in its possession. As an exception to its obligations under this clause 10E the Contractor may retain one copy of the Materials, in paper form, in the Contractor's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under this Agreement.
- F. If requested, the Contractor shall, upon the termination of this Agreement for any reason or prior to the expiration of the Term, promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client. The Contractor agrees to the Client releasing any such anonymised information to third party tenderers for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

## **11. Contract Management**

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all

written directions of the Client.

**B.** The Contractor agrees to:

1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations, including the time scale of completion of the key components of the Services;
2. comply with the reporting arrangements and protocols required by the Client from time to time; and
3. comply with all reasonable directions of the Client.

**C.** The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

## **12. Disputes**

Subject to clause 13A and to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement, amicably. The Parties may agree procedures and protocols for dispute resolution from time to time.

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

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

## **14. Notices**

- A.** Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email or facsimile transmission. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.

- B.** All notices shall be deemed to have been served as follows:
1. if personally delivered, at the time of delivery;
  2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
  3. if communicated by email or facsimile transmission, at the time of acknowledgement of transmission.

#### **15. Assignment and Subcontract**

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

#### **16. Entire Agreement**

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

#### **17. Severability**

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

#### **18. Waiver**

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

#### **19. Non-exclusivity**

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

#### **20. Media**

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

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

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

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

- A. Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Client's premises, lands and facilities before submitting its Submission and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement.
- B. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

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

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

On each occasion that the Framework Client proposes to award a Contract, it shall issue a Supplementary Request for Tender (“SRFT”) in accordance section 5.0 of Appendix 6. The provision of services may include, but may not be limited to, the following:

- Collection of SCRIM data
- SCRIM Analysis
- Collection of visual surveys - PSCI
- Collection of road surface profile characteristics such as IRI, MPD, LPV & Rutting
- Collection of road geometry
- Road surface material inventory
- Collection and analysis of FWD
- Cracking Survey

Surveys are required to be conducted in accordance with appended specification documents; *‘Machine Road Condition Survey Specification for Regional and Local Roads’*. This Specification sets out technical requirements for Survey Parameters and Accreditation, defines the technical requirements for the parameters provided by the machine developer, including acceptance and consistency testing and accreditation. It describes the requirements for accreditation of the Equipment. It also describes the requirements for consistency testing and for the reporting and delivery of data from accredited surveys to MapRoad PMS.

**Schedule C: Charges**

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[Insert when completing contract]

## Schedule D: Special Conditions

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A provision in this Schedule shall apply ONLY IF marked as 'applies'.

### Special Condition 1 – Time of the Essence

SC 1(A) Time of delivery shall be of the essence. **This clause applies to this contract.**

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

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

### Special Condition 2 – Limitation of Liability

SC 2 Contractor's Limitation on Liability. **This clause applies to this contract.**

Save in respect of fraud, personal injury or death (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 110 per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims

### Special Condition 3 – Remedies

SC 3 Retention for Cause. **This clause does NOT apply to this contract.**

### Special Condition 4 – Equipment

SC 4 Contractor to provide Equipment. **This clause does NOT apply to this contract.**

### Special Condition 5 – Non Solicitation Clause

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

### Special Condition 6 – Change Control Procedure

SC 6 Change Control. **This clause applies to this contract.**

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

SC6(A) At any time during the term of this Agreement, either Party may propose a change

or changes to any part or parts of this Agreement.

- SC6(B) The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- SC6(C) A change control notice (“Change Control Notice”) shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment (“Impact Assessment”).
- SC6(D) All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party’s Contact.
- SC6(E) The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- SC6(F) On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- SC6(G) In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- SC6(H) The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client’s request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

### Special Condition 7 – Project Dependencies

- SC7 Additional Special Condition 7. This clause applies to this contract.

### Special Condition 8

- SC8 Additional Special Condition 8. This clause applies to this contract.

### Special Condition 9

- SC9 Additional Special Condition 9. This clause applies to this contract.

# Schedule E: Confidentiality Agreement

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[Insert when completing contract]

**Schedule F: Client’s RFT Including Any Clarifications Issued by the Client**

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[Insert when completing contract]

**Schedule G: Contractor’s Submission Including Any Clarifications Issued by the Contractor**

---

[Insert when completing contract]

**Schedule H: Client’s SRFT Including Any Clarifications Issued by the Client**

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[Insert when completing contract]

**Schedule I: Contractor’s Response to the SRFT Including Any Clarifications Issued by the Contractor**

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[Insert when completing contract]

## Appendix 8: Confidentiality Agreements

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### 8.1 Confidentiality Agreement 8.1 between a Framework Member and the Contracting Authority

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

The Road Management Office (RMO), of Milford Public Services Centre, Milford, Co. Donegal (hereinafter “the Client”)

of the one part;

and

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

#### WHEREAS

A. The Client invited responses (“Tenders”) to Request for Tenders dated 19 December 2014 (“RFT”) from economic operators (“Tenderers”) for participation in a framework for the provision of the services (“Services”) as described in Appendix 1 to the RFT, “Requirements and Specifications”(“the Competition”). The Contractor submitted a response to the RFT dated the [Insert Date of Tender].

The Contractor and the Client have entered into a framework agreement dated [insert date] (“the Framework Agreement”).

B. For the purposes of the Competition, the Framework Agreement 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 €5 (the receipt of which is hereby acknowledged by the Contractor) as follows:

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

commercial, financial, technical, operational or otherwise) relating to the provision of services under the Contract and or relating to the Client and all and any information supplied or made available to the Contractor (to include agents, subcontractors, customers and suppliers) for the purposes of the Contract; and

- 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. Save as may be required by law (or any statutory regulation or order having the force of law) or for the purpose of any proceedings in court or any tribunal of fact or law; or by order, request, regulation of any person or body or authority with whose order or requests the Contractor is obliged to comply, the Contractor agrees in respect of the Confidential Information:
  - 3.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
  - 3.2 not, without the Client's prior written consent, to communicate or disclose any part of such Confidential Information to any person except
    - i to those employees, agents, subcontractors and other suppliers on a need to know basis; and/or
    - ii to the Contractor's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

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

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

Confidential Information; or

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

5. The Contractor undertakes:

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

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

5.3 upon termination of the Competition (or Contract) for whatever reason to furnish to the Client, all Confidential Information or at the written direction of the Client to destroy in a secure manner all (or such part or parts thereof as may be identified by the Client) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Client so request in writing. As an exception to its obligations under this clause 5.3 the Contractor may retain one copy of the Confidential Information, in paper form, in the Contractor's legal files for the purpose of ensuring compliance with its obligations under this Agreement. For the avoidance of doubt "document" includes documents stored on a computer storage medium and data in digital form whether legible or not; and

5.4 to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:

- i Data Protection Acts, 1988 and 2003 and
- ii All EU requirements arising (including, but not limited to, provisions relating to the processing of data, ensuring the security of data and restrictions on transfers of data abroad) and any legislation and regulations implementing same.

6. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by the Client and the Contractor so acknowledges and confirms.

- 7. The Contractor shall, in the performance of the Framework Agreement and any Contract, access only such hardware, software, infrastructure, or any part of the Client’s databases, data or ICT system(s) as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Client and in the manner agreed in writing between the Parties.
- 8. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
- 9. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

SIGNED for and on behalf of the Client

SIGNED for and on behalf of the Contractor

(being a duly authorised officer)

Witness

Witness

## 8.2 Confidentiality Agreement 8.2 between a Contractor and a Framework Client

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

[Contracting Authority] of [Contracting Authority address] (hereinafter “the Client”) of the one part;  
and

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

### WHEREAS

- A. [Contracting Authority] (“the Contracting Authority”) invited responses (“Tenders”) to Request for Tenders dated 19 December 2014 (“RFT”) from economic operators (“Tenderers”) for participation in a framework for the provision of the services as described in Appendix 1 to the RFT, “Requirements and Specifications”, (“the Services”). The Contractor submitted a response to the RFT dated the [Insert Date of Tender].
- B. The Contracting Authority and the Contractor entered into a framework agreement [insert date of Framework Agreement] (the “Framework Agreement”). Parties eligible to participate in this Framework (if any) are identified in the Framework Agreement and in the RFT. The Client is eligible to participate.
- C. By Request for Supplementary Tender dated [insert date of SRFT] (“the SRFT”), the Client invited responses from Framework Members to the SRFT for the provision of Services. The Contractor submitted a response to the SRFT dated the [Date of Tender] (the “Response”).
- D. The Contractor has been identified as the preferred bidder pursuant to the SRFT (“the Mini Competition”).
- E. For the purposes of the Mini 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 €5 (the receipt of which is hereby acknowledged by the Contractor) as follows:

1. The Contractor acknowledges that Confidential Information may be provided to him by the Client and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
  - 2.1 unless specified in writing to the contrary by the Client all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the provision of services under the Contract and or relating to the Client and all and any information supplied or made available to the Contractor (to include agents, subcontractors, customers and suppliers) for the purposes of the Contract; and
  - 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. Save as may be required by law (or any statutory regulation or order having the force of law) or for the purpose of any proceedings in court or any tribunal of fact or law; or by order, request, regulation of any person or body or authority with whose order or requests the Contractor is obliged to comply, the Contractor agrees in respect of the Confidential Information:
  - 3.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
  - 3.2 not, without the Client's prior written consent, to communicate or disclose any part of such Confidential Information to any person except
    - i to those employees, agents, subcontractors and other suppliers on a need to know basis; and/or
    - ii to the Contractor's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

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

comply with the provisions of this Agreement.

4. The obligations in this Agreement will not apply to any Confidential Information:
  - i in the Contractor's possession (with full right to disclose) before receiving it from the Client; or
  - ii which is or becomes public knowledge other than by breach of this clause; or
  - iii is independently developed by the Contractor without access to or use of the Confidential Information; or
  - iv is lawfully received from a third party (with full right to disclose).
5. The Contractor undertakes:
  - 5.1 to comply with all directions of the Client with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Acts, 1988 and 2003);
  - 5.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Client including, if required, completion of documentation under the Official Secrets Act, 1963 and comply with any vetting requirements of the Client including by police authorities;
  - 5.3 upon termination of the Mini Competition (or Contract) for whatever reason to furnish to the Client, all Confidential Information or at the written direction of the Client to destroy in a secure manner all (or such part or parts thereof as may be identified by the Client) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Client so request in writing. As an exception to its obligations under this clause 5.3 the Contractor may retain one copy of the Confidential Information, in paper form, in the Contractor's legal files for the purpose of ensuring compliance with its obligations under this Agreement. For the avoidance of doubt "document" includes documents stored on a computer storage medium and data in digital form whether legible or not; and
  - 5.4 to comply with the requirements of Data Protection law and such guidelines as may be issued by the Data Protection Commissioner from time to time, including but not being limited to:
    - i Data Protection Acts, 1988 and 2003 and
    - ii All EU requirements arising (including, but not limited to, provisions relating to the processing of data, ensuring the security of data and

restrictions on transfers of data abroad) and any legislation and regulations implementing same.

6. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to him by the Client and the Contractor so acknowledges and confirms.
7. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the Client's databases, data or ICT system(s) as may be necessary for the purposes of the Mini Competition (and obligations thereunder or arising therefrom) and only as directed by the Client and in the manner agreed in writing between the Parties.
8. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Mini Competition or termination of the Contract (if awarded) for any reason.
9. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.

SIGNED for and on behalf of the Client

SIGNED for and on behalf of the Contractor

(being a duly authorised officer)

Witness

Witness