

**Request for Tenders dated 28/01/2022  
for the provision of  
Legislative Drafting Services**

**Tender procedure: Open procedure**

**Tender Deadline 02/03/2022 17:00**

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## Part 1: Introduction

- 1.1 The Office of the Attorney General (the “Contracting Authority”) invites tenders (“Tenders”) to this request for tenders (“RFT”) from interested parties (“Tenderers”) for the provision of the services as described in Appendix 1 to this RFT (the “Services”).
- 1.2 In summary, the Services will comprise: the drafting of the following to a very high standard on the instructions of Government Departments and Offices:
  - (a) Primary legislation (Government Bills), and Committee Stage and Report Stage amendments to Government Bills for moving in the Houses of the Oireachtas (Houses of Parliament), and
  - (b) Secondary legislation.
- 1.3 This public procurement competition (the “Competition”) will be conducted in accordance with the open procedure under the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the “Regulations”). Any contract that may result from this Competition (the “Services Contract”) will be issued for a term of **one (1) year** (“the Term”).
- 1.4 The Contracting Authority reserves the right to extend the Term for a period or periods of up to twelve **(12) months** with a maximum of **three (3)** such extensions on the same terms and conditions, subject to the Contracting Authority’s obligations at law.
- 1.5 The Contracting Authority estimates that the expenditure on the Services to be covered by the proposed Services Contracts may amount to some €2,929,728 (excl. VAT) over the Term and any possible extensions. Tenderers must understand that this figure is an estimate only based on current and future expected usage.
- 1.6 The Contracting Authority has a requirement for legislative drafting services, comprising approximately 1,200 drafting days per year. It is anticipated that following the evaluation of the tender responses (by application of the award criteria set out at paragraph 3.3) that the Contracting Authority may award a Services Contract to such number of the highest ranking Tenderers as would be required to provide the Services to the Contracting Authority. Please refer to Appendix 1 in that regard. However, the Contracting Authority does not bind itself to accept any Tender.

## Part 2: Instructions to Tenderers

### 2.1 Important Notices

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

2.1.2 The Contracting Authority does not bind itself to accept any Tender.

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

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

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

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

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

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

2.1.4 In this clause 2.1.4, "Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation"), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

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

The Tenderer, as Data Controller in respect of any Personal Data provided in his or her Tender, is required to confirm in the statement required under paragraph 2.4 below that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Tenderer have consented to the processing of such Personal Data by the Tenderer, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Tenderer in this Competition or that the Tenderer otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of his or her participation in this Competition.

## 2.2 Compliant Tenders

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

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

Tenderers are required:

- (a) To complete and submit with their Tender the electronic version of the European Single Procurement Document ("[eESPD](#)"). Tenderers may submit an eESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that: (i) the information contained in it continues to be correct and (ii) they satisfy the Selection Criteria for this Competition as set out at part 3.2 below;
  - (b) To submit all documentation which this RFT requires to be submitted with their Tender;
  - (c) To follow the format of this RFT and respond to each element in the order as set out in this RFT;
  - (d) To conform to and comply with all instructions and requirements set out in this RFT;
  - (e) To submit the statement required under paragraph 2.4 below; and
  - (f) Not to alter or edit this RFT in any way.
- 2.2.2 Without prejudice to the generality of paragraph 2.2.1, failure to comply with paragraph 2.5.1, 2.5.2 or 2.5.3 below will render the Tender non-compliant and it will be rejected.

## 2.3 Services Contract

- 2.3.1 Tenderers should note the terms and conditions of the Services Contract at Appendix 4 to this RFT.
- 2.3.2 Tenderers are required to confirm their acceptance of the terms and conditions of the Services Contract by signing the Tenderer's Statement at Appendix 2. Tenderers may not amend the Services Contract.

## 2.4 Acceptance of RFT Requirements

Each Tenderer is required to accept the provisions of this RFT. ALL TENDERERS MUST RETURN, with their Tender, a scanned signed copy of the Tenderer's Statement, as set out in Appendix 2. The Contracting Authority must be able to read the scanned signature of the Tenderer. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Tenderers may be requested to re-submit. Tenderers may not amend the Tenderer's Statement.

## 2.5 Tender Submission Requirements

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

Tenderers must ensure that they give themselves sufficient time to upload and submit all required tender documentation before the Tender Deadline (as defined in paragraph 2.5.2). Tenderers should take into account the fact that upload speeds vary. There is a maximum of 4GB for the total (combined) documents sent to the electronic postbox.

In order to submit a document to the electronic postbox, please note that you must click "Submit Response". After submitting you can still modify and re-send your response up until response deadline. Tenderers should be aware that the 'Submit Response' button will be disabled automatically upon the expiration of the response deadline.

- 2.5.2 Tenders must be received not later than **17:00 on Wednesday, 2<sup>nd</sup> March 2022** (the "Tender Deadline"). Tenders that are received late WILL NOT be considered in this Competition.
- 2.5.3 Tenders must be submitted in English.
- 2.5.4 All Tenders submitted must be compiled such that they can be read immediately using a PDF reader. The Contracting Authority is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

## 2.6 Queries and Clarifications

- 2.6.1 All queries relating to any aspect of this Competition or of this RFT must be directed to the messaging facility on [www.etenders.gov.ie](http://www.etenders.gov.ie). Queries will be accepted no later than **17.00 on Monday, 21<sup>st</sup> February 2022** unless otherwise published by the Contracting Authority. For the avoidance of doubt, Tenderers may not contact the Contracting Authority directly regarding any aspect of this Competition.
- 2.6.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on [www.etenders.gov.ie](http://www.etenders.gov.ie). Where appropriate, queries may be amalgamated. Tenderers should note that the Contracting Authority will not respond to individual Tenderers privately.
- 2.6.3 The Contracting Authority reserves the right to issue or seek written clarifications.
- 2.6.4 The Contracting Authority reserves the right at any time before the Tender Deadline, to update or amend the information contained in this document and/or to extend the Tender Deadline. Participating Tenderers will be informed of any such amendment or extension through the eTenders website.
- 2.6.5 Tenderers should ensure that they register their interest in this Competition, by clicking on the "Accept" button on [www.etenders.gov.ie](http://www.etenders.gov.ie), in order to receive all responses to queries and other updates in relation to this Competition.

## **2.7 Tendering Costs**

- 2.7.1 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.

## **2.8 Confidentiality**

- 2.8.1 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 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 Publicity**

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

## **2.10 Registrable Interest**

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

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

## **2.11 Anti-Competitive Conduct**

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

## **2.12 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.

## **2.13 Freedom of Information**

- 2.13.1 Tenderers should be aware that, under the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, information provided by them during this Competition may be liable to be disclosed.
- 2.13.2 Tenderers are asked to consider if any of the information supplied by them in their Tender should not be disclosed because of its confidentiality or commercial sensitivity. If Tenderers consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Tenderers must, when providing such information, clearly identify the specific sections of their Tender containing such information and specify the reasons for its confidentiality or commercial sensitivity. For the avoidance of doubt Tenderers may not assert confidentiality or commercial sensitivity over the entire Tender but must clearly identify the specific section containing such information. If Tenderers do not identify information as confidential or commercially sensitive, it is liable to be released in response to a request under the above legislation without further notice to or consultation with the Tenderer. The Contracting Authority will, where possible, consult with Tenderers about confidential or commercially sensitive information so identified before making its decision on a 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.

## **2.14 Tax Clearance**

It will be a condition of any Services Contract pursuant to this Competition that the successful Tenderer(s) shall, for the term of such contract(s), comply with all applicable EU and domestic tax laws. Prior to the award of any Services Contract arising out of this Competition the successful Tenderer shall be required to supply his or her Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers the successful Tenderer acknowledges and agrees that the Contracting Authority has the permission of the successful Tenderer to verify his or her tax cleared position online. Information in relation to how to apply for a Tax Clearance Certificate is located on the Revenue Commissioner's website, which can be found here: [www.revenue.ie/en/starting-a-business/tax-clearance/how-to-apply-for-a-tax-clearance-certificate/index.aspx](http://www.revenue.ie/en/starting-a-business/tax-clearance/how-to-apply-for-a-tax-clearance-certificate/index.aspx). This link provides an overview of the application process and other relevant information.

## **2.15 Conflicts of Interest**

Any conflict of interest or potential conflict of interest on the part of a Tenderer must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. Tenderers are required to declare that the preparation of their Tender was carried out independently. In the event of any actual or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict of interest might be removed and in circumstances where there are links between Tenderers, the Contracting Authority may seek further information to confirm the Tenders have been prepared independently. The Contracting Authority will, at its absolute

discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Tenderer from this Competition or terminating any Services Contract entered into by a Tenderer.

#### **2.16 Withdrawal from this Competition**

Tenderers are required to notify the Contracting Authority immediately via the e-tenders website, if at any stage they decide to withdraw from this Competition.

## Part 3: Selection and Award Criteria

### 3.1 Compliant Tenders

3.1 Only those Tenderers who have:-

- (a) Submitted a compliant Tender pursuant to paragraph 2.2 above, and
- (b) Declared by way of eESPD that either:
  - (i) no mandatory grounds for exclusion of the Tenderer pursuant to Regulation 57 of the Regulations apply to them, or
  - (ii) in circumstances where any mandatory exclusion grounds apply to the Tenderer (and where the Tenderer is not precluded from doing so under Regulation 57(17) of the Regulations), that it can provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability despite the existence of any such relevant exclusion ground, and
- (c) Declared by way of eESPD that they satisfy the selection criteria for this Competition as set out in paragraph 3.2 below (the "Selection Criteria"),

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

In order to ensure the proper conduct of the procedure, Tenderers are required to submit **with their Tender** the supporting documents as specified at paragraph 3.2 below as evidence of his or her fulfilment of the Selection Criteria (or any one of them) in accordance with this RFT.

However, please note that the Contracting Authority also reserves the right to exclude from evaluation a Tenderer to whom a discretionary ground for exclusion pursuant to Regulation 57 of the Regulations applies.

The Contracting Authority may decide to examine Tenders before verifying the absence of exclusion grounds in Regulation 57 of the Regulations (the "Exclusion Grounds") and the fulfilment of the Selection Criteria.

However, notwithstanding anything to the contrary in this paragraph 3.1, the Contracting Authority reserves the right to ask Tenderers at any moment during the Competition to submit any or all of the following for the purposes of verification of the status of the Tenderer:

- (i) a Declaration in the form attached at Appendix 3;
- (ii) evidence to the effect that measures taken by the Tenderer concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground.

If a Tenderer does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate the absence of Exclusion Grounds, or his or her reliability despite the existence of a relevant Exclusion Ground, he or she shall be excluded from further participation in this Competition.

## 3.2 Selection criteria

### 3.2 Technical and Professional requirements

Tenderers must declare by way of eESPD that they satisfy the technical and professional requirements set out below. In addition, tenderers must submit all supporting documentation, including references, specified below to the Contracting Authority in each case, as part of their tender submission. However, where the Tenderer is unable for a valid reason to provide the specified documentation, the Tenderer must inform the Contracting Authority of the reason as to why the documentation cannot be supplied and, if the Contracting Authority considers the reason given to be valid, provide such other suitable documentation to prove, to the satisfaction of the Contracting Authority, their technical and professional ability.

The Tenderer must confirm and declare that:

- a) He or she is a barrister or solicitor (or holds an equivalent professional qualification) who is qualified to practise as such without restriction in a common law jurisdiction.
- b) He or she has the legislative drafting knowledge and skills at a very high level required to deliver the Services to a very high standard in short turnaround times, which may involve the drafting of large and complex Bills of a very high quality dealing with technical subject areas, involving several stakeholders, within short timeframes.
- c) He or she has been engaged by a legislative drafting office in the drafting of primary legislation for or on behalf of a national or regional (but not local) government.
- d) He or she has been engaged in the drafting of primary legislation in such a legislative drafting office for a period of at least 7 years (whether running consecutively or not) in the last 20 years, during which period the majority of his or her professional time has been spent on such drafting work.
- e) Should he or she be successful in this Competition, he or she will be available to provide the Services to the Contracting Authority for a minimum of 90 days per year.

With regard to 3.2(b), (c) and (d), Tenderers must provide hyperlinks (**as part of their tender submission**) to a minimum of three (3), and a maximum of five (5), pieces of legislation in respect of which he or she was the lead drafter.

Tenderers must provide two (2) references that can attest to the Tenderers' legislative drafting knowledge and skills and their ability to deliver draft legislation within short timeframes. For the avoidance of any doubt, Tenderers are required to submit the supporting documents as specified at this paragraph 3.2 as part of their Tender submission.

The two (2) references as set out above shall include contact details (including telephone and email addresses of referees). The Contracting Authority reserves the right to contact any or both of the referees specified as part of the award process without prior notice being given to the Tenderer.

By way of a guide for Tenderers as to the standard of drafting knowledge and skills required, please see the Act at the following link: <http://www.legislation.ie/eli/2012/act/44/enacted/en/print.html>.

### 3.3 Award Criteria

A Services Contract may be awarded to such number of the highest ranking Tenderers as would be required to provide the Services to the Contracting Authority on the basis of the most economically advantageous tender(s) as identified in accordance with the following criteria:

CRITERIA	Marks available	Minimum Qualifying Threshold
<p><b>Criterion 1 – Understanding of the Services</b></p> <p>Tenderers must provide a statement (maximum one (1) A4 page - <i>Arial font size 11</i> for this criterion) setting out their understanding of the Services.</p>	<p><b>5 (total)</b></p>	<p><b>3 (total)</b></p>
<p><b>Criterion 2 - Legal knowledge and expertise</b></p> <p>In the delivery of the Services, Tenderers must demonstrate how they will deploy their legal knowledge and expertise under each sub-criterion below. In that regard Tenderers must provide a statement (maximum four (4) A4 pages - <i>Arial font size 11</i> for this criterion) setting out the following:</p> <ul style="list-style-type: none"> <li>• Analytical skills in identifying and resolving complex legal issues (<b>5 marks</b>);</li> <li>• Sound judgement and a commitment and attention to detail (<b>5 marks</b>);</li> <li>• Knowledge of public law in any jurisdiction (<b>5 marks</b>);</li> <li>• Knowledge of parliamentary procedures and systems, with particular regard to the legislative process, in any jurisdiction (<b>5 marks</b>).</li> </ul>	<p><b>20 (total)</b></p>	<p><b>12 (total)</b></p>
<p><b>Criterion 3 – Legislative drafting knowledge and skills</b></p>	<p><b>60 (total)</b></p>	<p><b>36 (total)</b></p>

<p>In the delivery of the Services, Tenderers must demonstrate how they will deploy their legislative drafting knowledge and skills under each sub-criterion below. In that regard Tenderers must provide a statement (maximum five (5) A4 pages - <i>Arial font size 11</i> for this criterion) setting out the following:</p> <ul style="list-style-type: none"> <li>• How he or she will deliver the Services successfully as either the sole drafter or the lead drafter <b>(30 marks)</b>;</li> <li>• How he or she will address drafting complexity arising to deliver the Services successfully <b>(10 marks)</b>;</li> <li>• How he or she will address difficulties arising from technical subject areas involved to deliver the Services successfully <b>(10 marks)</b>;</li> <li>• How he or she will ensure completion of the Services successfully within required timeframes <b>(10 marks)</b>.</li> </ul>		
<p><b>Criterion 4 – Leadership, project management and ICT Skills</b></p> <p>In the delivery of the Services, Tenderers must demonstrate how they will deploy their Leadership, Project Management and ICT skills under each sub-criterion below. In that regard, Tenderers must provide a statement (maximum four (4) A4 pages - <i>Arial font size 11</i> for this criterion) setting out the following:</p> <ul style="list-style-type: none"> <li>• How he or she will lead and manage drafting assignments and work with the several stakeholders involved to ensure the timely delivery of those assignments <b>(5 marks)</b>;</li> <li>• How their ICT skills will facilitate the successful delivery of the Services remotely, including the skills required to prepare legislative texts in electronic format and to conduct meetings via conference and video-conference calls with multiple parties <b>(5 marks)</b>;</li> <li>• Proposed approach of Tenderers to meeting urgent requests for the Services in</li> </ul>	<p><b>15 (total)</b></p>	<p><b>9 (total)</b></p>

exceptional circumstances (5 marks).		
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A Minimum Qualifying Threshold (MQT) of 60% will apply to each individual award criterion. For the avoidance of doubt, Tenderers must obtain a minimum of 60% of the marks available for each award criterion. Failure to achieve the MQT will result in the Tenderer being eliminated from the Competition.

Tenderers might please note that where a maximum number of pages is specified in respect of statements for the individual criteria above, the maximum applies to each criterion (and not to each sub-criterion) and should not be exceeded. Anything submitted beyond the maximum specified will be disregarded and will not be taken into account in the evaluation of tenders.

### Evaluation Methodology

Scoring of the qualitative award criterion will be based upon an assessment of the full provision of the information requested by the Contracting Authority from Tenderers. The information provided by the Tenderers will be assessed and the response elements will be awarded marks for each criterion and sub-criterion.

### Tie Break Rules

In the event that there are two or more Tenderers with equal marks, the following tie break rules will be adopted.

In the first instance, the Tenderer who is available to commence the provision of the Services from March 2022 or as early as possible thereafter will be deemed a Most Economically Advantageous Tenderer (“MEAT”).

In the event of the application of this tie break rule not resulting in the determination of a MEAT, the Tenderer who has been awarded the highest marks for Award Criterion 1 - Understanding of the Services will be deemed to be a Most Economically Advantageous Tenderer (“MEAT”). In the event of the application of that tie break rule not resulting in the determination of a MEAT, this approach will continue, as required, for Award Criterion 2 - Legal knowledge and expertise, Award criterion 3 Legislative drafting knowledge and skills and Award criterion 4 Leadership, Project Management and ICT skills. In the event of the rules set out above failing to determine a MEAT, the Preferred Tenderer(s) shall be selected on the basis of a random selection. In such a circumstances an independent third party will observe the random selection process and the results will be communicated to Tenderers.

3.3.1 Subject to paragraphs 2.1 (Important Notices) and 3.5 (Standstill Period) of this RFT, award of a Services Contract to such number of the highest ranking Tenderers as would be required to provide the Services to the Contracting Authority (as determined by paragraph 3.3) will be conditional upon:

- (a) the Tenderer submitting the following evidence in respect of the Tenderer **to the extent not already provided**, within seven (7) days of request by the Contracting Authority: (i) a Declaration in the form attached at Appendix 3; (ii) if applicable, evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;
- (b) the evidence specified at paragraph 3.3.1(a) above demonstrating that each Tenderer concerned meets the Selection Criteria and the compliance requirements specified at paragraph 3.1(b) and (c) above.

### **3.4 Presentation of Proposals**

Tenderers may be required to make a presentation of their tender Submission. The Contracting Authority will not be responsible for the cost of such presentations (in accordance with paragraph 2.7). Performance at presentations will NOT be evaluated.

### **3.5 Standstill Period**

- 3.5.1 In circumstances where the European Communities (Public Authorities' Contracts) (Review Procedures) Regulations 2010 (Statutory Instrument 130 of 2010), as amended by the European Communities (Public Authorities' Contracts) (Review Procedures) (Amendment) Regulations 2015 (Statutory Instrument 192 of 2015) apply, no contract can or will be executed or take effect until at least fourteen (14) calendar days after the day on which the Tenderers have been sent a notice informing them of the result of this Competition (the "Standstill Period") if such notice is sent by electronic means. The Standstill Period shall be sixteen (16) calendar days if such notice is sent by other means. The preferred bidders will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.
- 3.5.2 Tenderers should note that the Contracting Authority may, when notifying Tenderers of the results of this Competition, include the scores obtained by the Tenderer concerned and the scores obtained by the lowest ranking preferred bidder in respect of each award criterion assessed by the Contracting Authority.

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

- 3.6.1 The successful Tenderer(s) must sign and return the Services Contract and the Confidentiality Agreement, 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 by the Contracting Authority. A signed Services Contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Services Contract in accordance with paragraph 2.1.2 above.
- 3.6.2 Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period as specified at paragraph 3.6.1 then the Contracting Authority may proceed to award the Services Contract to the next highest-ranked Tenderer in accordance with paragraph 3.6.1 above.

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

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

### **Background**

The Office of the Attorney General is the Contracting Authority for the purposes of this Competition. The Office of the Parliamentary Counsel to the Government ("the OPC") is a constituent part of the Office of the Attorney General. The OPC provides a professional legislative drafting service to the Government, Departments and Offices. Primary legislation (Government Bills) of varying complexity and urgency is drafted by Parliamentary Counsel in the OPC to reflect the policy objectives of the Government. The OPC is also responsible for drafting Government amendments to Bills at Committee Stage and Report Stage of a Bill's progression through the Houses of the Oireachtas (Houses of Parliament). The OPC also drafts secondary legislation (Government orders and regulations) for the Government and Ministers of the Government.

The work of the OPC enables the Government to implement their Legislation Programme in an efficient and timely manner. The work of the OPC involves frequent contact with officials in Government Departments and with Advisory Counsel in the Office of the Attorney General.

For more information on the role of the OPC within the Office of the Attorney General please see:

[www.attorneygeneral.ie](http://www.attorneygeneral.ie).

The Contracting Authority is seeking to supplement the legislative drafting capacity of the OPC where the demands for legislative drafting services on that Office requires such additional capacity. Accordingly, it is anticipated that following the evaluation of the tender responses (by application of the award criteria set out at paragraph 3.3) that the Contracting Authority may award a Services Contract to such number of the highest ranking Tenderers as would be required to provide the Services to the Contracting Authority. Tenderers are referred to clause 1.6 below in that regard.

### **1.1 Legislative drafting services**

The legislative drafting services required are the drafting to a very high standard of the following on the instructions of Government Departments or Offices:

- (a) Primary legislation (Government Bills), and Committee Stage and Report Stage amendments to Bills for moving in the Houses of the Oireachtas, and
- (b) Secondary legislation.

Please see link to the Irish statute book here: [www.legislation.ie](http://www.legislation.ie).

### **1.2 Requirements for successful Tenderers**

Successful Tenderers will be expected to do the following:

- Work remotely, provide their own broadband connection, telephone facilities and services, office equipment and materials;

- Work on a collaborative basis with a junior Parliamentary Counsel assigned to each drafting project assigned;
- Analyse the Heads of Bill or drafting instructions for a statutory instrument (SI) and any supplementary material provided by an instructing Government Department in a timely manner and raise any queries with the instructing Department;
- Agree an indicative timeframe for delivery of the final draft Bill or SI with the instructing Department;
- Draft iterations of the Bill or SI to give effect to the Heads of Bill or drafting instructions within the required timeframe, seek further instructions from the Department, as and when required, and reflect those instructions in evolving drafts of the Bill or SI;
- Engage with the instructing Government Department by email, telephone, conference or video-conference calls to discuss issues arising during the drafting process and to obtain clarification of instructions as necessary, with such meetings with officials in Government Departments generally being held during Office hours of 9:00 to 18:00 Greenwich Mean Time;
- Keep the instructing Government Department updated regarding progress in drafting of the Bill or SI and notify the Government Department in a timely manner of any obstacles to completion of the draft Bill or SI within the agreed timeframe;
- Identify legal issues arising in the course of drafting a Bill or SI and seek the advice of Advisory Counsel in the Office of the Attorney General in relation to such issues;
- Report to the Attorney General, the Chief Parliamentary Counsel and Parliamentary Counsel Group Managers, as appropriate, in relation to progress in the drafting of the Bill or SI and in relation to any legal issues or other issues arising that may affect the timeframe for delivery of the Bill or SI;
- Engage in the OPC's Quality Assurance procedures once the text of a draft Bill has been settled with the instructing Government Department and make appropriate changes to the draft arising from those procedures, in consultation with the instructing Government Department;
- Provide the instructing Government Department with an agreed text of the draft Bill or SI (stamped by the OPC) that is legally sound, clear and effective and fully and properly reflects the policy instructions of the Department as conveyed during the drafting process;
- Draft Committee and Report Stage amendments as required by the instructing Government Department during the passage of the Bill through the Houses of the

Oireachtas;

- Liaise with support staff in the OPC as required including for the purposes of inputting the text of draft Bills into the Legislative Workbench System (electronic system for publication of Bills) used by the OPC and the Houses of Parliament or the text of SIs into the usual OPC format in the electronic Statutory Instruments System (eSIS). Support services personnel in the OPC will be available to provide assistance to successful Tenderers with regard to the correct formatting, layout and inputting of legislative texts to the appropriate System.

### **1.3 Assignment of drafting projects to successful Tenderers**

Individual drafting projects will be assigned to a successful Tenderer by the Chief Parliamentary Counsel (or her nominee in the OPC) in a way that will ensure the timely delivery of the particular project. Factors to be taken into account in the assignment will include the availability of the Tenderer to undertake the work at the time of the proposed assignment, the knowledge and expertise of the Tenderer with regard to the subject matter and areas of law involved in the project and the capacity of the Tenderer to deliver the project within the required timeframe having regard to the volume of on-going work (not yet completed) already assigned to the Tenderer.

Assignment of drafting projects will be contingent upon there being demands on the OPC from Government Departments and Offices for legislative drafting services. Successful Tenderers will be required to be available to meet the drafting needs of the OPC, as and when required, during the Term of the Services Contract.

A Services Request Form as set out in Schedule B to the Services Contract (in Appendix 4) will be completed in respect of each drafting project.

### **1.4 Fees**

<b>Fees for drafting services provided by Tenderers</b>	<b>€610.36 per day * (Excl. VAT)</b>
<b>*One day shall consist of 7 hours and 30 minutes. Fees payable for part thereof shall be determined on a pro-rata basis in accordance with the hours worked.</b>	

The fee shall be subject to Withholding tax (currently 20%) which shall be deducted at source and paid directly to the Irish Revenue Commissioners. In that regard, please see paragraph 3.6 of Schedule A to the Services Contract. Please see [www.revenue.ie](http://www.revenue.ie) for further information regarding the reclaiming of withholding tax in appropriate cases.

If a Tenderer is in receipt of a pension with respect to a Public Service employment, please note that the pension may be subject to abatement for the Term of a Services Contract in accordance with section 52 of the Public Service Pensions (Single Scheme and Other Provisions) Act 2012. It is a matter for the Tenderer to direct any enquiries in that regard to the Pensions section of the Department of Public Expenditure and Reform.

### **1.5 Quality assurance of drafting assignments and review**

Performance of the Services being provided to the Contracting Authority will be monitored by the OPC on an on-going basis for each drafting assignment undertaken throughout the Term of any Services Contract.

The Contracting Authority reserves the right to take whatever steps as may be deemed necessary to ensure an appropriate standard is provided by those awarded a Services Contract.

The Contracting Authority may give a Successful Tenderer a written notification of their performance where the Successful Tenderer will be asked to demonstrate to the satisfaction of the Contracting Authority that he or she has implemented steps to redress the performance issues if they arise.

The Contracting Authority reserves the right to terminate a Services Contract where in the view of the Contracting Authority, there are issues with a Successful Tenderer's performance or where a Successful Tenderer, without reasonable excuse, does not accept instructions on more than three (3) occasions. In addition, a Successful Tenderer must notify the Contracting Authority immediately if he or she is suspended or removed from practising in their profession as a solicitor or barrister (or equivalent profession). In such cases, a Successful Tenderer's Services Contract shall be terminated.

The Successful Tenderer shall implement the OPC's Quality Assurance procedures referred to in **Paragraph 1.2** above in respect of each drafting assignment.

### **1.6 Estimated number of days for provision of Services**

The Contracting Authority has a requirement for legislative drafting services, comprising approximately 1,200 drafting days per year. It is anticipated that following the evaluation of the tender responses (by application of the award criteria set out at paragraph 3.3 above) that the Contracting Authority may award a Services Contract to such number of the highest ranking Tenderers as would be required to provide the Services to the Contracting Authority.

In that regard, Tenderers are required to provisionally indicate the number of drafting days per year for which he or she will be available (if successful in this Competition), to deliver the Services to the Contracting Authority. For the avoidance of doubt, this information shall only be used by the Contracting Authority in order to determine the number of Services Contracts that may be required in order to fulfil the total number of drafting days per year.

By way of example, if each of the five (5) highest ranking Tenderers indicate that they are provisionally available to deliver the Services for 240 days per year a Services Contract may then be awarded to each of those Tenderers. In the event that the five (5) highest ranking Tenderers do not fulfil the estimated number of drafting days per year, then the Contracting Authority reserves the right to award additional Services Contracts to the next highest ranking Tenderer(s) until the estimated number of drafting days per year has been fulfilled.

Tenderers should note that the Contracting Authority does not guarantee any minimum level of drafting work.

### **1.7 Timesheets – requests for payment on monthly basis in arrears**

Payment will be made within 30 days on receipt of appropriate invoices and timesheets setting out the days worked.

## Appendix 2: Tenderer's Statement

### TENDERER'S STATEMENT

TO: The Office of the Attorney General (the "Contracting Authority")

RE: Request for Tenders for the Supply of Legislative Drafting Services

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

1. I 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. I accept all of the Terms and Conditions of the RFT, the Services Contract and the Confidentiality Agreement and agree if awarded a Services Contract to execute the Services Contract at Appendix 4 to the RFT and the Confidentiality Agreement at Appendix 5 to the RFT.
3. I accept all the Selection and Award Criteria as set out in Part 3 of the RFT.
4. I agree to provide the Contracting Authority with the Services in accordance with the RFT and my Tender.
5. I confirm that I have complied with all requirements as set out at Part 2 of the RFT.
6. I confirm that all Data Subjects whose Personal Data is provided in my Tender have consented to the processing of such Personal Data by me, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of my participation in this Competition or that I otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that I will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.

### SIGNED

**(Authorised Signatory)**

**Print name**

**Address**

**Date**

### **Appendix 3: Declaration as to Personal Circumstances of Tenderer**

Re: Request for Tenders for the Provision of Legislative Drafting Services

**NAME:** [Click here and insert name]

**ADDRESS:** [Click here and insert address]

I, [Click here and insert name of Declarant] sincerely declare that :

- (a) I have never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
- (b) I have never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority.
- (c) I have never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
- (d) I have never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
- (e) I have never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
- (f) I have never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.
- (g) I am not in breach and have not breached my obligations relating to the payment of taxes or social security contributions.
- (h) that the preparation of my Tender was carried out independently.
- (i) I am not bankrupt or the subject of insolvency proceedings, my assets are not being administered by a liquidator or by the court, I am not in an arrangement with creditors, my business activities are not suspended nor am I in any analogous situation arising from a similar procedure under national laws and regulations.
- (j) I am not guilty of grave professional misconduct.
- (k) I have not entered into agreements with other economic operators aimed at distorting competition.
- (l) I am not aware of any conflict of interest due to my participation in the Competition;
- (m) I have not had any prior involvement in the preparation of the Competition;

- (n) I have not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
- (o) I am not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).
- (p) I have not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition, or obtain confidential information that may confer upon it undue advantages in respect of the Competition; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

I understand and acknowledge that the provision of inaccurate or misleading information in this declaration may lead to me 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 4: Services Contract**

The Office of the Attorney General

and

[Insert successful Tenderer's full legal name]

### **AGREEMENT**

Relating to the provision of Services pursuant to

Request for Tenders for the provision of Legislative Drafting Services

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

The Office of the Attorney General, of Government Buildings, Upper Merrion Street, Dublin 2 (“the Client”);

and

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

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

**WHEREAS:**

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

**IT IS HEREBY AGREED AS FOLLOWS:**

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - i. This Agreement and any Schedules attached thereto;
  - ii. The RFT;
  - iii. The Submission.
2. The Contractor agrees to provide the Services described in Schedule B (“the Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B includes a Services Request Form. In all circumstances where the Client has a particular legislative drafting requirement, the Client will issue a Services Request Form to the Contractor in the form set out at Schedule B.
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges in accordance with clause 3 (charges and payment) of this Agreement (“the Charges”).
4. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [Insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

The Client reserves the right to extend the Term for a period or periods of up to 12 months with a maximum of three (3) such extensions permitted subject to its obligations at law

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

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

## **Schedule A: Terms and Conditions**

### **1. Contractor's Obligations**

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services.
- B. In consideration of the payment of the Charges and subject to clause 3 (charges and payment) the Contractor shall:
  - 1. provide the Services in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
  - 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
- C. 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.
- D. 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 his or her duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.

### **2. Awarding of Legislative Drafting Projects**

- 2.1 In all circumstances where the Client has a particular legislative drafting requirement, the Client will issue a Services Request Form to the Contractor in the form set out at Schedule B.
- 2.2 The Contractor will provide the Services more particularly identified in the Services Request Form during the Term of the Contract.
- 2.3 Any Services provided shall be governed by the terms of this Agreement.
- 2.4 The Client shall be under no obligation to purchase any minimum number or value of Services.

### **3. Charges and Payment**

- 3.1 The Client shall pay and discharge the Charges (plus any applicable VAT) subject to (1) compliance by the Contractor with the provisions of this Agreement; (2) the furnishing by the Contractor of a valid invoice/ fee note and such supporting documentation as may be required by the Client from time to time (any Contractor's pre-printed terms and conditions are hereby disallowed) and (3) the furnishing by the Contractor of a valid Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Client. The Contractor shall comply with all applicable EU and domestic taxation law and requirements.

3.2 The Charges of the Services shall be -

- i. calculated based on the prices set by the Client and as set out at Appendix 1 of the RFT. These Charges are not subject to variation for the duration of the Agreement;
- ii. exclusive of any applicable VAT but inclusive of all charges for travel and accommodation and any and all out of pocket expenses in the case of Services, and any duties, imposts or levies other than VAT.

3.3. The Contractor may only invoice the Client following performance of the Services.

3.4 The Client shall be entitled to deduct from the Charges any amount which is disputed by the Client, pending resolution of such dispute (including related costs and expenses).

3.5 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.

3.6 The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

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

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

1. he or she has the authority and right under law to enter into, and to carry out his or her obligations and responsibilities under this Agreement and to provide the Services hereunder;
2. he or she is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
3. he or she is entering into this Agreement with a full understanding of his or her obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
4. he or she has acquainted himself or herself 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. he or she has taken all and any action necessary to ensure that he or she has the power to execute and enter into this Agreement;
6. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated [insert date] , which confirms that none of the

excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;

7. he or she owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of his or her obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
  8. the Client shall be under no obligation to purchase any minimum number or value of Services.
- B. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

## **5 Intellectual Property**

- 5.1 The Contractor hereby assigns to the Client all Intellectual Property Rights (“IPR”) in the material created by the Contractor in the course of performing the Services.
- 5.2 All Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- 5.3 Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials provided to and/or prepared by the Contractor up to the date of termination. The “Materials” shall mean 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.
- 5.4 The provisions of clause 5 will survive the expiration or termination of this Agreement for any reason.

## **6 Confidentiality**

- 6.1 Each of the Parties to this Contract agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Contract (“Confidential Information”) and shall not disclose same to any third party except (1) to its / his or her professional advisers subject to the provisions of this clause; (2) as may be required by law; (3) as may be necessary to give effect to the terms of this Contract; 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.
- 6.2 The obligations in this clause 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; (2) which is or becomes public knowledge other than by breach of this clause; (3) is independently developed by the disclosing Party without access to or use of the Confidential Information; or (4) is lawfully received by the disclosing Party from a third party (with full right to disclose).

6.3 In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Contract, the Client may consult with the Contractor in respect of the request before determining whether the information is exempt from disclosure.

6.4 The provisions of clause 6 will survive the expiration or termination of this Agreement for any reason.

## **7. Force Majeure**

A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its / his or her 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 (t) 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 / his or her 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 fourteen (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.

## **8. Termination**

A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving 30 days written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving three (3) months written notice to the Client.

- B. Either Party shall have the right (in addition to the rights under clause 9(a) and any other rights which it / he or she has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
  2. if the other Party becomes insolvent, becomes bankrupt, makes any arrangement with its / his or her creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
  3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
  4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **9. Contract Management**

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

## **10. Disputes**

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

## **11. 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.

## **12. Notices**

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 13.
- B. All notices shall be deemed to have been served as follows:
  - 1. if personally delivered, at the time of delivery;

2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
3. if communicated by email, on the next calendar day following transmission.

### **13. 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.

### **14. Severability**

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

### **15. 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.

### **16. 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.

### **17. 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.

### **18. 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 his or her obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to his or her attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor and 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 ( ) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms

“registrable interest” and “relative” shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.

- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

## **19. Equipment**

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

## **20. Non Solicitation**

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

## **21. Data Protection and Security**

- A. The Contractor shall at all times comply with all applicable national and EU data protection legislation (including but not limited to EU Regulation 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”)) and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner in Ireland from time to time (together the “Data Protection Laws”).
- B. The Contractor acknowledges that the Contractor is a data controller (within the meaning of the Data Protection Laws) in respect of any personal data (within the meaning of the Data Protection Laws) provided to or received by the Contractor from the Client or any third party for the purposes of provision of the Services under this Agreement and shall comply with his or her legal obligations as a data controller under the Data Protection Laws.
- C. The provisions of clause 21 will survive the expiration or termination of this Agreement for any reason.

**Schedule B: Services Request Form**

**SERVICES REQUEST FORM**

**Instructions:**

- (a) The Office of the Parliamentary Counsel (“OPC”) to fill in the form (where indicated) and send it to the Contractor identified, by email;
- (b) The Contractor must respond to OPC within the next 3 working days\* accepting/declining request;
- (c) If accepting the request, the Contractor must complete and sign the form (where indicated) and return it to the OPC within two working days of the date of acceptance of the request\*;
- (d) On receipt of the completed form from the Contractor, the OPC to the sign form (where indicated).

\* Please note that, where urgency is indicated, the Contractor is required to accept/decline the request and, if applicable, complete the form and return it to the OPC by 5:45 pm on day of receipt of request.

**Section 1 – to be completed by Instructing Unit:**

<b>Name of Contractor:</b>	
<b>Name of OPC Instructing Party:</b>	
<b>Re:</b>	
<b>Date:</b>	

**DRAFTING PROJECT**

Provide full details of drafting project

## **DRAFTING INSTRUCTIONS**

Provide any drafting instructions or background material relevant to the Drafting Project and/or attach relevant material such as legislation, correspondence, submissions/briefing documents, reports etc.

Where attaching documentation please list the documents attached here.

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### **PRIORITY**

If you are seeking priority for your request, please identify the reasons here and note any relevant external deadlines.

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Section 2 – to be completed by drafter

<b>Estimated number of days to complete drafting project:</b>	
<b>Confirmation by Drafter to accept:</b>	

Section 3 – signatures

<b>Contractor:</b>	
<b>OPC Instructing Party</b>	

## Appendix 5: Confidentiality Agreement

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

The The Office of the Attorney General, of Government Buildings, Upper Merrion Street, Dublin 2, (hereinafter “the Contracting Authority”) of the one part;  
and

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

### WHEREAS

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

The Contractor has been identified as one of the preferred bidders in the Competition.

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

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

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
  - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and
  - 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection

Commission or other supervisory authority for data protection in Ireland from time to time

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

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

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

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

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

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

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

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

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

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

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

6. The Contractor undertakes:

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

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

6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in his or her possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish

a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt “document” includes documents stored on a computer storage medium and data in digital form whether legible or not.

7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11. The Contractor acknowledges that the Contractor is a data controller (within the meaning of the Data Protection Laws) in respect of any personal data (within the meaning of the Data Protection Laws) provided to or received by the Contractor from the Client or any third party for the purposes of provision of the Services under this Agreement and shall comply with his or her legal obligations as a data controller under the Data Protection Laws.

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