

**CONFIDENTIAL**

**FRAMEWORK AGREEMENT**

**DATED [ ● ] 2014**

between

**THE HEALTH SERVICE EXECUTIVE**

and

**[ INSERT VENDOR NAME HERE ● ]**

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**IN RESPECT OF [ ● ]**

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**THIS AGREEMENT** is made on [ INSERT DATE HERE ● ]

**BETWEEN:**

- (1) [The Health Service Executive] (the “**Customer**”) and
- (2) [INSERT VENDOR NAME HERE ● ] having its registered offices at [ ● ] (the “**Vendor**”).

**WHEREAS**

- (A) The Vendor is engaged in the business of providing Framework Goods and Services.
- (B) By notice published on e-Tenders on [ ● ], the Customer invited parties to submit tenders for the provision of Framework Goods and Services in accordance with the provisions of the Invitation to Tender (ITT).
- (C) Following the evaluation of tenders, the Customer wishes to assign a panel of qualified Vendors to the Framework whereby the Vendor agrees to participate in the Framework in accordance with this Framework Participation Agreement.

**1. DEFINITIONS**

- 1.1 In considering this Framework Agreement, the following words and expressions shall have the following meanings unless there is something in the subject matter or context inconsistent with such meanings:

“**Commencement Date**” means the date of this Framework Agreement;

“**Contract for Specific Services**” means the terms and conditions of contract between the Customer and the Vendor appointing the Vendor to perform the Specific Services as detailed in the Offer and as accepted by the Vendor in accordance with Clause 5.14 and which shall, unless stipulated otherwise, incorporate the terms of this Framework Agreement;

“**Framework**” means the panel of Vendors appointed to provide Framework Goods and Services under this Framework Agreement;

“**Framework Agreement**” otherwise referred to as the “Vendor Participation Agreement” means this agreement including its Schedules;

“**Vendor**” means any of the Vendors appointed to the Framework and shall include its servants, agents and subcontractors;

“**Framework for Goods and Services**” means the goods and services to which this Framework Agreement applies;

“**Good Industry Practice**” means the exercise of that degree of skill, diligence, prudence and foresight which would reasonably be expected from a skilled and experienced service provider engaged to provide goods and services similar to the Framework Goods and Services, complying with all applicable laws, codes of professional conduct, relevant codes of practice, Irish, European and other relevant standards;

“**Laws**” means any law applicable in Ireland (without further enactment) and shall include common law, statute, statutory instrument, bye-law created under Irish

statute, code of practice or code of conduct, rule of court, delegated or subordinate legislation and any form of EU law applicable in Ireland including without limitation, decisions, regulations and directives;

“**Offer**” has the meaning given to it in Clause 5.14;

“**Mini Competition**” means a request for a proposal made by the Customer to the Vendor pursuant to Clause 5.3;

“**Sanctions**” mean any sanctions imposed by the Customer on the Vendor under Clause 16 of this Framework Agreement

“**Selling Rights**” means the right of the Vendor to compete to provide Specific Services to the Customer under this Framework Agreement.

“**Specific Services**” means those elements of Framework Goods and Services which are set out in a Mini Competition under this Framework, and issued by the Customer to the Vendors;

“**Tender**” means a tender proposal submitted by the Vendor pursuant to Clause 5.8 for the provision of Specific Services;

“**Working Day**” means any day other than Saturday or Sunday or Bank or Public Holidays.

- 1.2 The headings and the table of contents in this Framework Agreement are inserted only for convenience and shall not affect its construction.
- 1.3 Reference to any statute, enactment, order, regulate. on or other similar instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended by any subsequent statute, enactment, order, regulation or statutory instrument or as contained in any subsequent re-enactment.
- 1.4 Words importing the singular shall include the plural and vice versa.
- 1.5 Reference to “includes” will be construed without limitation.
- 1.6 In the event of any ambiguity or conflict between the contract documents the order of precedence shall be as follows:
  - (a) Contract for Specific Services;
  - (b) this Framework Agreement;
  - (c) Mini Competitions for each particular project; and
  - (d) the Vendor’s Tender in respect of the relevant Specific Services.

**2. PURPOSE OF THIS DOCUMENT**

- 2.1 The purpose of this document is to
- (a) confirm the duration of the Framework
  - (b) describe how the Framework will operate
  - (c) define the obligations for Vendors appointed to the Framework
  - (d) describe the role of the customers Contract Manager and vendor Contract Liaison person
  - (e) list the sanctions that will apply in the case of non compliance with the framework
  - (f) document circumstances that could result in the termination of the Framework

**3. DURATION OF FRAMEWORK AGREEMENT**

- 3.1 Subject to Clause 3.2 below, this Framework Agreement shall come into force on the Commencement Date and shall continue in force thereafter for a period of two (2) years, this period being referred to as the ‘Initial Term’, unless terminated earlier in accordance with the terms of this Framework Agreement.
- 3.2 The Customer shall have the option, at any time during the term of this Framework Agreement, to extend the term of this Framework Agreement by a period of up to two (2) years by notice in writing to the Vendors. Any such extension shall commence from the end of the ‘Initial Term’.

**4. CONTRACT MANAGEMENT**

- 4.1 The role of the Customer is to endeavour to ensure that the Framework is implemented in full accordance with all legal requirements and to manage the participation of Vendors to maximise the benefits of the agreement to the Customer.
- 4.2 The Customer shall nominate a dedicated Contract Manager for the Framework with responsibility for maintaining the smooth, efficient and viable operation of the Framework.
- 4.3 Mini Competitions and resulting contracts for business will be issued via the Contract Manager. The Contract Manager will act as the single point of contact on behalf of the Customer to Vendors for the duration of the Framework.
- 4.4 The role of the Vendor is to endeavour to make the Framework the Customer’s preferred mechanism for procuring Services by making suitably attractive offerings for the specified range of services that are within the scope of the Framework.
- 4.5 The Vendor shall nominate a dedicated Contract Liaison Person with responsibility for monitoring the ongoing operation of the Framework from the Vendor’s perspective and for raising any unresolved issues with the Contract Manager. The Vendor’s Contract Liaison Person will act as the single point of contact on behalf of the Vendor to the Customer for the duration of the Framework.
- 4.6 The Vendor agrees to act in full compliance with any and all directions of the Customer and the Contract Manager.

## 5. OPERATION OF THE FRAMEWORK

- 5.1 This Framework comprises [ ] Vendors including the Vendor.
- 5.2 The Customer is not obliged under this Framework Agreement, to award any contract for any Services to any Vendor.
- 5.3 The Contract Manager may require that all Mini Competitions be conducted according to any such procedure or process and adhere to any minimum time limits that the Contract Manager may define, within the terms of this Framework Agreement. The Vendor will comply with any instructions issued by the Contract Manager in this regard and will bear any costs associated with such compliance.
- 5.4 The Customer may conduct and manage a Mini Competition between the Vendors for any value or size of order.
- 5.5 The Customer may extend the time limits for the compilation of responses to a Mini Competition, submission of queries and issuing responses and for the evaluation of Vendors' responses as appropriate to the needs and circumstances of the competition and the Customer.
- 5.6 The Customer must include all Vendors qualified under the Framework that are not prohibited from participating in a Mini Competition by reason of any sanction imposed by the Contract Manager.
- 5.7 If and when Specific Services are required, the Customer shall issue a Mini Competition or shall otherwise consult with the Vendors in writing.
- 5.8 Each Vendor shall submit a duly completed Tender and provide such other additional information in accordance with the requirements as set out in the Mini Competition.
- 5.9 Each Tender received by the deadline date for receipt of Tenders will be assessed on the basis of the award criteria as stated in the Mini Competition. The Customer may ascribe such weighted values of its choice to each criterion to reflect the requirements of the particular Mini Competition.
- 5.10 The Customer will apply the award criteria contained in the Mini Competition in accordance with the core principles of equal treatment, mutual recognition, proportionality and transparency.
- 5.11 Proposals received in response to a Mini Competition conducted under the Framework will be evaluated according to the Award Criteria set out in no particular order below:
  - (a) Cost (i.e. proposed all inclusive rate to be charged by the provider for the services of the individual candidate(s));
  - (b) Quality, expertise and experience of proposed personnel;
  - (c) Performance at interview;
  - (d) Special Requirements.
- 5.12 Please note that in respect of the price submitted by the Vendor in response to a Mini Competition, it is not permissible for the Vendor to include any rates which are higher than those submitted by it when tendering for appointment to the Framework.

- 5.13 Following the evaluation of tenders, the Customer shall select the successful Vendor and communicate the outcome to all Vendors.
- 5.14 Following selection of the successful Vendor under Clause 5.13:
- (a) the Customer will issue a written offer (the “Offer”);
  - (b) the Vendor must accept that “Offer”;
  - (c) the Vendor must sign a contract for that work (referred to as a Contract for Specific Services) in the form of the HSE ICT Standard Terms and Conditions; and
  - (d) if a Vendor has already secured work from a mini competition under the Framework and subsequently secures additional work from a separate mini competition under the same Framework then, at the Customer’s discretion, the Vendor may only be required to sign a lot agreement for that work.
- 5.15 The Customer shall not be liable to the Vendor for any costs or expenses incurred by it in complying with any tender procedure under this Clause 5.

**6. OBLIGATIONS OF VENDORS APPOINTED TO THE FRAMEWORK**

- 6.1 This Framework Agreement governs the overall relationship between the Customer and the Vendor with respect to the provision of Framework Goods and Services awarded to the Vendor.
- 6.2 In respect of Framework Goods and Services and the Specific Services for which the Vendor has been appointed pursuant to Clause 5, the Vendor agrees as follows:
- (a) that it shall at all times act in good faith and exercise the level of skill and care reasonably expected of service providers regularly undertaking services of the type provided under the appointment for Specific Services including all other services necessary or incidental to the particular Specific Services required. Furthermore, the Vendor will carry out the Specific Services with the necessary resources and in reasonable time;
  - (b) that it shall provide the Specific Services in accordance with Good Industry Practice and all Laws and shall take all reasonable steps, having regard to its obligations to ensure that all matters are dealt with which are necessary to achieve the successful performance of the relevant Specific Services;
  - (c) that it shall actively participate in the framework and respond to all mini competitions issued under the framework.
  - (d) That it shall endeavour to make the Framework the Customer’s preferred mechanism for procuring Services by making attractively priced offerings for the specified range of services that are within the scope of the Framework.
- 6.3 The Customer may at its discretion and at any time during the term of this Framework Agreement review the technical, economic and financial ability of the Vendor in order to ensure that the Vendor continues to have the technical, economic, financial ability to perform Specific Services. The Vendor must co-operate with any such review.

6.4 The Customer may also, from time to time, request the Vendor to provide confirmation that no material change in the position of the Vendor has occurred.

**7. REPORTING AND PERFORMANCE**

7.1 The Vendor will provide regular briefings to the Contract Manager as to progress in the performance of Specific Services.

7.2 Upon the completion of any Contract for Specific Services, the Customer may conduct an appraisal of the Specific Services performed by the Vendor. The Customer may, in its absolute discretion, notify the Vendor of the results of such appraisal and the Vendor shall be required to have due regard to the Customer's comments in relation to the future provision of Specific Services.

**8. ADDITIONAL SERVICES**

8.1 The Customer may define *Special Requirements* pertaining to any order placed through the Framework. A Special Requirement is any requirement relating to the fulfilment of an order or the successful or appropriate operation or execution of the services being the subject of the order and which cannot be reasonably anticipated at the time of electing to participate in the Framework.

8.2 For the avoidance of doubt, this Clause is not, nor shall it be relied upon as a promise or representation as to the Customer's decision to extend the scope of the Framework for Goods and Services nor is it a representation of fact or promise as to the future.

**9. PAYMENTS**

9.1 In consideration of the performance of Specific Services, the Customer shall pay to the Vendor in accordance with the Payment Schedule as set out in the Contract for Specific Services.

9.2 The Vendor shall invoice the Customer for the Specific Services at such intervals as agreed in writing in the Contract for Specific Services. Customer payment terms are normally 30 days in respect of undisputed invoices.

9.3 Where, in any case the Vendor is liable to make any payment to the Customer under this Framework Agreement or otherwise, the Customer may set off any such payments due to it against any payments due by the Customer to the Vendor.

**10. WARRANTIES**

10.1 The Vendor represents and warrants that it has all necessary power and authority to execute, deliver and perform its obligations under this Framework Agreement and any Contract for Specific Services and that it has duly and validly executed and delivered the Framework Agreement and the Framework Agreement constitutes legal valid and binding obligations on the Vendor.

10.2 The Vendor represents and warrants that it will provide all Framework Goods and Services and the Specific Services with the skill, care, diligence, and professional conduct reasonably required to provide Framework Goods and Services and the Specific Services and in good time and with all necessary resources.

10.3 The Vendor represents and warrants that it is not aware of any material facts or circumstances that have not been disclosed to the Customer and which might, if

disclosed, materially adversely affect the decision of a prudent person considering whether or not to enter into this Framework Agreement with the Vendor.

10.4 The Vendor's liability under this Framework is limited to that specified by the contract applicable to each Mini Competition but shall normally not exceed six million five hundred thousand Euro (€6,500,000).

## 11. INSURANCE

The following levels of insurance are the maximum levels normally required by the Customer:

<b>Type of insurance</b>	<b>Minimum cover for any one claim</b>	<b>Permitted deductible for any one claim</b>	<b>Period</b>
Property Cover on all Risks basis	Full replacement value and associated expenses	€6,500	From date of Agreement until Supplies delivered and accepted by the Customer
Product liability for any Supplies	€6,500,000	€6,500	From date of Agreement until completion of the contract
Professional indemnity for any professional services (or design works).	€6,500,000	€50,000	From date of Agreement until 6 years after completion of contract
Public liability for death, personal injury, loss of and damage to property	€6,500,000	€6,500	From date of Agreement until completion of the contract
Employer's liability for sickness, injury and death of employees	€12,700,000	€0	From date of Agreement until completion of the contract
Motor Insurance required by law	Third Party Property Damage - €2.6m. Third Party Personal Damage - Unlimited.	€0	From date of Agreement until completion of the contract

By signing this Framework Agreement, the Vendor commits to putting in place the necessary levels of insurance, at time of 'Offer', should they be successful in securing business from the framework. The required levels of insurance will be stated in the applicable Mini Competition. If no levels are stated, the defaults listed above will apply.

Under exceptional circumstances and particularly for smaller/ low risk pieces of work issued under Mini Competitions, these levels may be reduced.

**12. ASSIGNMENT, SUB-CONTRACTING AND NOVATION**

- 12.1 The Vendor shall be prohibited from transferring or assigning, directly or indirectly, to any person or persons whatsoever, any part of this Framework Agreement without the written permission of the Customer.
- 12.2 The Vendor shall not subcontract out any element of the Services without the prior written consent of the Customer which consent may be withheld at the Customer's absolute discretion. The Vendor shall be responsible for ensuring that any subcontractors appointed by the Vendor pursuant to this Clause 12.2 will not compromise the Vendor's obligations and responsibilities under this Framework Agreement. In addition, the Vendor shall be responsible for ensuring that any arrangements with subcontractors will be fully compliant with any relevant directions or conditions imposed by the Customer.
- 12.3 The Customer may transfer, assign or novate all or any part of the terms and conditions of this Framework Agreement or any Contract for Specific Services to any person and shall give prompt notice to the Vendor of such transfer, assignment or novation. The Vendor agrees to do all acts, and execute all documents, necessary to give effect to such transfer, assignment or novation.
- 12.4 The Vendor shall obtain the Customer's prior written consent to any Change of Control of the Vendor (meaning a change in the possession, directly or indirectly, of the power by the Vendor, or either of the companies comprising the Vendor to direct or cause the direction of the management policies, whether through ownership or shares, by contract, or by any other means;) and such consent will not be unreasonably withheld or delayed.

**13. CONFIDENTIALITY**

- 13.1 The Vendor agrees to keep, and to ensure that its employees, personnel, servants, agents and subcontractors shall keep confidential, all information, documentation or other matters arising or coming to their attention in connection with the provision of Framework Goods and Services and shall not at any time disclose or permit such information to be disclosed to any third party except as permitted hereunder to enable the Vendor to carry its duties and obligations under the Framework Agreement.
- 13.2 The Vendor shall take all reasonable steps to ensure that its employees, personnel, servants, agents and subcontractors are made aware of and perform such obligations.

**14. CONFLICT OF INTEREST**

- 14.1 The Vendor shall disclose to the Customer within forty-eight (48) hours of it coming to its attention, any conflict of interest or potential conflict of interest which it, or any Vendor personnel may have in performing any Specific Services or the Framework Goods and Services.
- 14.2 In the event of any conflict or potential conflict of interest, the Customer shall, in its absolute discretion, decide on the appropriate course of action.

## 15. TAX CLEARANCE

The Vendor shall not be entitled to any payments in respect of the provision of Specific Services if the Vendor does not produce a current tax clearance certificate or statement from the Revenue Commissioners of Ireland confirming suitability on tax grounds and the Vendor shall be required to provide the Customer with a copy of a tax clearance certificate and to produce certificates as and when required. All payments for Specific Services shall be subject to withholding tax in accordance with the Laws.

## 16. SANCTIONS

16.1 The Contract Manager may impose sanctions on the Vendor in the following circumstances:

- (a) *Inadequate Participation:* The Contract Manager may suspend the Vendor's Selling Rights for a period to be decided by the Contract Manager where the Contract Manager believes the Vendor is not actively participating in the Framework.
- (b) *Anti-Competitive Actions:* Where the Vendor engages in any act that may, in the opinion of the Contract Manager, have a negative impact on the operation of this Framework Agreement or a Contract for Specific Services, or may negatively affect any Mini Competition procedure in connection with this Framework Agreement, the Contract Manager may permanently suspend the Vendor's Selling Rights through this agreement.
- (c) *Poor Service or Quality:* Where the Contract Manager is satisfied that the Vendor has failed to provide goods or services up to the required standard and specifications the Contract Manager may suspend the Vendor's Selling Rights through the Framework until such time as the Contract Manager is satisfied that the Vendor will provide services of an acceptable quality.
- (d) *Failure to Comply with a Direction of the Contract Manager:* Where the Vendor fails to comply with any direction of the Contract Manager within the timeframe specified or to a standard that is acceptable to the Contract Manager, the Contract Manager may do any or all of the following
  - (i) Suspend the Vendor's Selling Rights for a period that is in the opinion of the Customer commensurate with the Vendor's failure to comply.
  - (ii) Impose a fixed fine on the Vendor to be paid in accordance with the instructions of the Contract Manager.
  - (iii) Impose any such penalty, whether financial or otherwise, that is agreeable to both the Contract Manager and the Vendor.

16.2 Any dispute in relation to a sanction imposed on the Vendor by the Customer is subject to appeal by the Vendor and will be resolved in accordance with Clause 24 (Dispute Resolution) of this Framework Agreement.

16.3 Where the Vendor has been sanctioned by the Customer, the Vendor may offer to provide a bond or guarantee for the benefit of the Customer in lieu of the specified sanction which the Customer in its discretion may accept where the Customer is of the opinion that the bond or guarantee offers adequate protection against a recurrence of the issue that triggered the sanction.]

17. **TERMINATION**

17.1 The Customer may, without prejudice to any other right or remedy terminate this Framework Agreement on thirty (30) days' written notice for any reason, or with immediate effect in the case of an Event of Default by the Vendor.

17.2 On termination of this Framework Agreement by the Customer for any reason:

- (a) the provisions of this Clause 17 shall be without prejudice to any other rights or remedies which the Customer may have; and
- (b) the Customer shall not be liable to the Vendor for any Losses suffered or incurred by the Vendor arising out of or in connection with the Framework Agreement for any reason.

17.3 Event of Default means any one of the following events, the Vendor:

- (a) contravenes the provisions of Clause 12 (Assignment, Sub-contracting and Novation);
- (b) fails to disclose any conflict of interest pursuant to Clause 14 (Conflict of Interest) ; or
- (c) any proprietor or partner comprising the Vendor it being a firm or partnership, becomes bankrupt or makes any composition or arrangement with a conveyance or assignment for the benefit of its creditors or any application is made under any bankruptcy act to which any proprietor or partner within the Vendor is subject for a sequestration or its estate, or a trustee is appointed by him on behalf of its creditors, or if the Vendor, being a company, enters into voluntary or compulsory liquidation (except for the purposes of reconstruction or amalgamation) or have any receiver or manager or administrative receiver appointed over any of its assets or either company comprising the Vendor carries on business under an examiner or administrator;
- (d) fails to provide a certificate of insurance or a certified copy of the policies pursuant to Clause 11 (Insurance);
- (e) undergoes a Change of Control and the Customer does not give prior written consent to such Change of Control;

17.4 The Customer may terminate contracts for Specific Services subject to the termination clauses of the applicable contract for those Specific Services. In the absence of such a contract or clauses, the Customer may terminate a Contract for Specific Services by providing the Vendor with 30 days' notice.

18. **WAIVER**

No right or remedy given to the Customer under or pursuant to any provision of this Framework Agreement shall whether or not exercised preclude the exercise by the Customer of any other right or remedy given hereunder nor shall it preclude the exercise by the Customer of any right or remedy to which it might be otherwise entitled under common law or under statute.

19. **VARIATIONS**

A variation of this Framework Agreement is valid only if it is in writing and signed by or on behalf of each party.

20. **SEVERANCE**

Each of the provisions of this Framework Agreement is severable and distinct from the others and if at any time one or more of such provisions or becomes invalid, illegal or unenforceable the validity and legality or enforceability of the remaining provisions hereof shall not in any way be effected or impaired.

21. **NON-EXCLUSIVITY**

21.1 For the purposes of this Framework Agreement the Customer shall at all times be entitled to enter into separate contracts for the provision of any or all services the same as or similar to the Framework Goods and Services with persons other than the Vendor.

21.2 No guarantee or representation shall be deemed to have been made by the Customer in respect of the value or quantity of any Specific Services which may be ordered by the Customer. Further, the Vendor acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such guarantee or representation.

21.3 For the avoidance of doubt, nothing in this Framework Agreement shall create an exclusive relationship between the Customer and the Vendor for the provision of Framework Goods and Services or any Specific Services.

22. **NOTICES**

22.1 Any notice given by the Customer to the Vendor under this Framework Agreement or a Contract for Specific Services shall be in writing and may be given by sending the notice by hand or by registered post addressed to the Vendor at the following address:

[Vendor]  
[Vendor Address]

22.2 Any notice to be given by the Vendor to the Customer, may be given (in addition to any other mode of service prescribed by the Customer from time to time) by sending the notice by registered post or by hand addressed to the Customer at the following address:

Health Service Executive  
Dr Steeven's Hospital  
Dublin 8

22.3 Notice by registered post or hand shall be deemed to have been delivered on the day of delivery.

23. **GOVERNING LAW OF THE FRAMEWORK AGREEMENT**

The construction validity and performance of this Framework Agreement and any Contract for Specific Services shall be governed by the laws of Ireland.

24. **DISPUTE RESOLUTION**

- 24.1 Either party may give to the other written notice that a dispute or difference (“Notice of Dispute”) has arisen. Any dispute or difference arising between the parties arising out of or in connection with this Framework Agreement, any Contract for Specific Services, such dispute shall, in the first instance be subject to settlement by negotiation in good faith between the senior management of both parties.
- 24.2 If after 30 days from the date of the Notice of Dispute such negotiations prove unsuccessful either party shall be entitled to refer such dispute or difference to arbitration before a single arbitrator appointed by the parties or in default of agreement as to the choice of arbitrator appointed by the Chairman for the time being of the Chartered Institute of Arbitrators, Irish Branch. The place of arbitration shall be in Ireland.
- 24.3 Any dispute referred to arbitration shall be deemed to be a submission to arbitration in accordance with the Arbitration Act, 2010. The award of the Arbitrator shall be fixed and binding upon the parties provided only that any arbitration under this Clause shall not save in respect of the alleged failure to pay or wrongful withholding of such monies by the Customer proceed during the continuance of the provisions of such Specific Services and in any event shall not prevent or delay in any way such provision of the obligation of the Vendor to complete the Specific Services in accordance with this Framework Agreement or any Contract for Specific Services.

**IN WITNESS** of which this document has been executed and delivered as a deed on the date which appears above.

Signed by: \_\_\_\_\_  
**HEALTH SERVICE EXECUTIVE**

Signed by: \_\_\_\_\_  
**[VENDOR]**