

## **REQUEST FOR TENDER FOR SERVICES**



**The Higher Education and Training Awards Council &  
The Department of Health and Children**

---

**REQUEST FOR TENDERS  
FOR  
THE PROVISION OF**

**A Review of Complementary Therapies and related academic  
programme validation**

---

## **TABLE OF CONTENTS**

**Part 1** - Introduction

**Part 2** - Instructions to Tenders

**Part 3** – Qualification and Award Criteria

**Appendix 1** Requirement and Specifications

**Appendix 2** Services Contract

**Appendix 3** Pricing Schedule

**Appendix 4** Tender Statement

**Appendix 5** Tenderers' *aide-mémoire*

**Appendix 6** *Confidentiality Agreement*

**PART 1**  
**INTRODUCTION**

- 1.1 The **Higher Education and Training Awards Council (HETAC)** on behalf of HETAC & the Department of Health and Children invites responses (“**Tenders**”) to this Request for Tender (“**RFT**”) from economic operators (“**Tenderers**”) for the provision of the Services as described in Appendix 1 of this RFT: “Requirements and Specifications”(“**the Services**”). The Contracting Authority is the contracting authority for this public procurement competition (“**the Contracting Authority**”).
- 1.2 The title of this RFT is “**A Review of Complementary Therapies and related academic programme validation**”.
- 1.3 This public procurement competition relates to:
- An identification of all academically accredited/validated programmes of higher education provided by higher education institutions (HEIs) in Ireland; universities in the UK; in comparable HEIs in countries that have established national frameworks verified as compatible with the Bologna qualifications framework; in Australia; and in New Zealand, in the areas of complementary therapies at the time the research commences. This research should take as its primary focus five fields; the three specific complementary therapies identified by the Department of Health and Children Working Group Report - acupuncture, herbal medicine and Traditional Chinese Medicine and two additional fields Osteopathy and Chiropractic.
  - To identify all academically accredited/validated programmes of higher education in the same jurisdictions, where, since 2005 validation has been withdrawn or refused or where validated provision has ceased over the last five years, and an analysis of the reasons for this, whether these be driven by academic, market, political, reputational or scientific concerns.
  - Drawing on the information and analysis in 1 and 2 above suggest criteria for the identification of fields which have the academic and professional maturity to warrant the academic validation of programmes by HETAC.
  - A critical review of the analytic literature on the therapeutic effectiveness, safety and contemporary public policy on the regulation of the following fields since 2000:
    - Acupuncture
    - Traditional Chinese Medicine
    - Herbal Medicine
    - Osteopathy
    - Chiropractic

## PART 2

### INSTRUCTIONS TO TENDERERS

#### 2.1 INTRODUCTION TO THIS RFT

- 2.1.1 While every effort has been made to provide comprehensive and accurate background information, requirements and specifications, Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT. Tenderers and recipients of this RFT may wish to consult their own legal advisers in relation to this RFT or the subject matter thereof.
- 2.1.2 All information supplied by Tenderers may be treated as contractually binding on the Tenderers if accepted by the Contracting Authority.
- 2.1.3 **No commitment of any kind, contractual or otherwise shall exist unless and until a formal written contract has been executed by or on behalf of 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 public procurement competition at any time prior to a formal written contract being executed by or on behalf of the Contracting Authority.**
- 2.1.4 This RFT supersedes all previous documentation and correspondence between the Contracting Authority and Tenderers and Tenderers should place no reliance on such previous documentation and correspondence. **Tenderers to this RFT should study the contents of this RFT carefully, including the information and documents contained in the Appendices.** The Tenderers attention is drawn to the Tenderers' *aide-mémoire* at Appendix 5.

#### 2.2 COMPLIANT TENDERS

- 2.2.1 Failure to comply with the requirements of this paragraph 2.2.1 **may** render the Tender non-compliant and it **may** be rejected. The Contracting Authority shall consider all compliant Tenders against the qualification and award criteria in Part 3 of this RFT. Tenderers must:
- (a) Include all documentation specified in this RFT;
  - (b) Follow the format of this RFT and respond to each element in the order as set out in this RFT;
  - (c) Conform to and comply with all requirements as set out within this RFT.
- 2.2.2 If the RFT is altered or edited in any way, the subsequent Tender may be deemed non-compliant.
- 2.2.3 Failure to comply with the requirements of this paragraph 2.2.3 **will** render the Tender non-compliant and it **will** be rejected. The Contracting Authority shall consider all compliant Tenders against the Qualification and Award Criteria in Part 3 of this RFT. Tenders **must**:
- (a) Include the duly completed original Tender Statement at Appendix 4;
  - (b) Be received by the Contracting Authority in accordance with paragraph 2.6; below;
  - (c) Where applicable, provide a statement, confirming whether any of the

excluding circumstances listed in Article 45 of EU Council Directive 2004/18/EC as implemented into Irish law by Regulation 53 of the European Communities (Award of Public Authorities' Contracts) Regulations 2006 (Statutory Instrument 329 of 2006), apply to the Tenderer; and

- (d) Be submitted in the English or Irish languages only.

## **2.3 SERVICES CONTRACT**

2.3.1 The Contracting Authority will, subject to the right of cancellation of this public procurement competition (as set out at paragraph 2.1.3 above and at paragraph 3.3 below), select the successful Tenderer(s] to supply the Services sought under this RFT.

2.3.2 The successful Tenderer(s) shall supply the Services in accordance with and on the terms and conditions of the contract as set out at Appendix 2 to this RFT ("**the Services Contract**"). The successful Tenderer(s) shall be required to enter into the Services Contract with the Contracting Authority. Tenderers should take account of the provisions of the Services Contract in the preparation of their Tenders. Tenderers are required to confirm their acceptance of the Services Contract in the Tender Statement at Appendix 4.

2.3.3 Tenderers should be aware that any or all of the Special Conditions as set out at Schedule D to the Services Contract **will apply (in addition to** the Terms and Conditions in Schedule A to the Services Contract) to the supply of the Services **if** they have been ticked '**YES**'  by the Contracting Authority in Schedule D attached thereto.

## **2.4 ACCEPTANCE OF RFT REQUIREMENTS**

Each Tenderer is required to accept the provisions of this RFT. **ALL TENDERERS MUST RETURN**, with their Tender, the **original** signed Tender Statement, as set out in Appendix 4, written on the Tenderer's letterhead. Tenderers may not amend the Tender Statement at Appendix 4.

## **2.5 CONSORTIUM AND PRIME / SUB-CONTRACTORS**

2.5.1 Where a group of undertakings come together to create a consortium in order to submit a Tender in response to this RFT the Contracting Authority will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the contract ("**Lead Contractor**") only, irrespective of whether or not tasks are to be performed by another member of the consortium. The Tender must clearly set out:

(a) the full name of the entity under which the Tender is being submitted together with its registered business address (where applicable), registered business name (where applicable), company registration number (where applicable), telephone and e-mail contact details;

(b) The names of all members of the consortium who will be involved in the supply of the Services;

(c) A description of the role to be fulfilled by each member of the consortium; and

(d) The name, title, telephone number, postal address, facsimile number and e-mail address of one nominated contact person, within the organisation of the Lead Contractor who is authorised to represent the consortium, to whom all communications shall be directed and accepted until this public procurement competition has been completed or terminated. **Correspondence from any other person (including from any consortium member) will NOT be accepted, acknowledged or responded to.**

2.5.2 Where a group of undertakings submit a Tender in response to this RFT the Contracting Authority will deal with all matters relating to this public procurement competition through the entity who will carry overall responsibility for the performance of the contract only, irrespective of whether or not tasks are to be performed by a subcontractor ("**Prime Contractor**"). The Tenderer must clearly set out:

(a) the full legal name of the Prime Contractor together with its registered business address (where applicable), registered business name (where applicable), company registration number (where applicable), telephone and e-mail contact details,

(b) The names of all sub-contractors who will be involved in the supply of the Services.

(c) A description of the role to be fulfilled by each sub-contractor and

(d) The name, title, telephone number, postal address, facsimile number and e-mail address of one nominated contact person who is authorised to represent the Prime Contractor, within the organisation of the Prime Contractor, to whom all communications shall be directed and accepted until this public procurement competition has been completed or terminated. **Correspondence from any other person (including from any sub-contractor) will NOT be accepted, acknowledged or responded to.**

## **2.6 TENDER SUBMISSION REQUIREMENTS**

2.6.1 Tenders must be delivered in sealed envelope(s). The envelope must be marked with the RFT Title and the word "Confidential." Tenders must be delivered to the following address:

**The Higher Education and Training Awards Council, 26 - 27 Denzille Lane, Dublin, 2, Ireland**

2.6.2 Tenders must be received not later than **12noon** on **2 December 2010**. Tenders that are received late **WILL NOT** be considered in this public procurement competition. Tenderers must clearly set out a return address on their Tender cover letter. Tenders submitted by e-mail or fax will **NOT** be accepted.

2.6.3 Tenders may submit more than one proposal. However any second or subsequent proposal must be prepared and presented under separate cover.

2.6.4 In responding to this RFT all Tenders must follow the format of the RFT and respond to each element of the RFT in the order as set out in this RFT. All Tenderers must submit one [(1) soft copy of their Tender on disc (CD-ROM) and three in hard copy] All Tenders submitted in soft copy (CD-ROM) must be compiled such that they can be read immediately using Windows XP. It is the Tenderer's responsibility to ensure that the information provided on the CD-

ROM is identical with information provided in the hard copy Tender. In the event that there is a discrepancy or conflict between the contents of the hard and soft copies of the Tender hard copy shall be given precedence over the soft copy.

## **2.7 QUERIES AND CLARIFICATIONS**

- 2.7.1 All queries or requests for clarification relating to any aspect of this public procurement competition or of this RFT **must be directed by e-mail ONLY to [tenders@hetac.ie](mailto:tenders@hetac.ie)** no later than **12noon** on **25 November 2010** unless otherwise notified in writing to all Tenderers by the Contracting Authority.
- 2.7.2 All clarifications and responses to queries/requests for clarification will be posted on the Irish public procurement website, [www.etenders.gov.ie](http://www.etenders.gov.ie) Tenderers should note that the Contracting Authority will not make responses or clarifications to individual Tenderers privately.
- 2.7.3 The Contracting Authority reserves the right to issue or seek written clarifications.

## **2.8 TENDERING COSTS**

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

## **2.9 CONFIDENTIALITY**

- 2.9.1 All documentation, drawings, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this public procurement competition;
- (a) are furnished for the sole purpose of replying to this RFT only,
  - (b) may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority,
  - (c) shall be treated as confidential by the Tenderer and by any third parties (including sub-contractors) engaged or consulted by the Tenderer; and
  - (d) must be returned immediately to the Contracting Authority upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.
- 2.9.2 The successful Tenderer must return the **original** signed confidentiality agreement, as set out in Appendix 6 (“Confidentiality Agreement”) to the Contracting Authority in accordance with paragraph 3.6 below. The Confidentiality Agreement must be in the form as set out at Appendix 6 and Tenderers may not amend the Confidentiality Agreement.

## **2.10 PRICING**

- 2.10.1 All prices quoted must be all-inclusive (i.e. including but not being limited to all costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- 2.10.2 Tenderers must confirm that all prices quoted in the Tender will remain valid for

**six** months commencing from the closing date for the receipt of Tenders.

2.10.3 Any currency variations occurring over the term of the Services Contract shall be borne by the Tenderer.

2.10.4 Payments for Services supplied under this RFT shall be made subject to and in accordance with the Services Contract at Appendix 2 to this RFT.

2.10.5 All Tenderers must complete the Pricing Schedule at Appendix 3 to this RFT.

## **2.11 EMPLOYMENT LAW**

2.11.1 Under Article 27 of Directive 2004/18/EC as implemented into Irish law by Regulation 27 of European Communities (Award of Public Contracts) Regulations 2006 (S.I. No. 329 of 2006), Tenderers must provide a statement confirming that they have taken account of their legal obligations relating to employment protection and working conditions relating to the provision of the Services sought under this RFT. Failure to make the statement at paragraph 7 of the Tender Statement of Appendix 4 **will** render the Tender non-compliant.

Tenderers may obtain information regarding their obligations concerning:

- 1 Taxation from the Irish Revenue Commissioners ([www.revenue.ie](http://www.revenue.ie));
- 2 Environmental protection from the Environmental Protection Agency ([www.epa.ie](http://www.epa.ie));
- 3 Employment protection & working conditions from the Department of Enterprise, Trade and Employment ([www.doete.gov.irl](http://www.doete.gov.irl))

2.11.2 The successful Tenderer shall be solely responsible in law for the employment of, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of providing the services.

2.11.3 Tenderers must comply with any applicable statutory terms relating to minimum pay and to any legally binding sectoral agreements and must take these into account when preparing tenders.

2.11.4 Tenderers shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument SI No. 131 of 2003 European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Minister for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.

## **2.12 PUBLICITY**

No publicity regarding this public procurement competition, the award of a contract or the execution of a contract is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

### **2.13 REGISTERABLE INTEREST**

Any Registerable Interest involving the Tenderer/ sub-contractor and the Contracting Authority, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority and their relatives must be fully disclosed in the Tender or, in the event of this information only coming to their notice after the submission of a Tender and prior to the award of the contract, it should be communicated to the Contracting Authority immediately upon such information becoming known to the Tenderer / sub-contractor. The terms 'Registerable Interest' and 'Relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act, 1995 a copy of which is available to download at [www.finance.gov.ie](http://www.finance.gov.ie)

### **2.14 ANTI-COMPETITIVE CONDUCT**

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

### **2.15 INDUSTRY TERMS USED IN THIS RFT**

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

### **2.16 FREEDOM OF INFORMATION**

- 2.16.1 Tenderers should be aware that, under the Freedom of Information Acts 1997 and 2003, information provided by them during this public procurement competition may be liable to be disclosed.
- 2.16.2 You are asked to consider if any of the information supplied by you in your Tender should not be disclosed because of its sensitivity. If you consider that certain information is not to be disclosed because of its sensitivity, you should, when providing such information, clearly identify same and specify the reasons for its sensitivity. If you do not identify it as sensitive, it is liable to be released in response to a Freedom of Information request without further consultation with you. The Contracting Authority will, where possible, consult with you about sensitive information you have identified before making a decision on a request received under the Freedom of Information Acts.

### **2.17 TAX CLEARANCE**

- 2.17.1 It will be a condition of the award of any contract under this RFT that the successful Tenderer shall for the term of any such contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance. This Circular and further information is available at [www.finance.gov.ie](http://www.finance.gov.ie) and [www.revenue.ie](http://www.revenue.ie).
- 2.17.2 Prior to the award of any contract arising out of this public procurement competition the successful Tenderer shall promptly produce a Tax Clearance Certificate from the Irish Revenue Commissioners. Tenderers must furnish their original Tax Clearance Certificate with their Tender. Alternatively, the Tenderer

may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate on-line verification of their tax status by the Contracting Authority.

## **2.18 CONFLICTS OF INTEREST**

Any conflict of interest or potential conflict of interest on the part of a Tenderer, individual employees, agents, or sub-contractors of a Tenderer must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. In the event of any conflict or potential conflict of interest, the Contracting Authority may invite Tenderers to propose means by which the conflict might be removed. The Contracting Authority will, in its absolute discretion, decide on the appropriate course of action.

## **2.19 WITHDRAWAL FROM THIS PUBLIC PROCUREMENT COMPETITION**

Tenderers are required to e-mail [tenders@hetac.ie](mailto:tenders@hetac.ie) immediately if at any stage they decide to withdraw from this public procurement competition.

## **2.20 SITE VISIT**

The Contracting Authority will facilitate Tenderers by permitting an inspection of the Contracting Authority's premises. A site visit to view the Contracting Authority's premises or facilities at **26 – 27 Denzille Lane, Dublin, 2, Ireland** shall be organised by appointment before **18 November 2010**. Tenderers wishing to make an appointment to avail of this opportunity must confirm their attendance by e-mailing [tenders@hetac.ie](mailto:tenders@hetac.ie) by **12noon** by **17 November 2010**.

## **2.21 INSURANCE**

- 2.21.1 The successful Tenderer shall be required to hold for the term of the Services Contract any relevant insurances as appropriate.
- 2.21.2 Tenderers must **EITHER** (a) furnish copies of valid certificates of insurance showing that they hold the types and levels of insurance as specified at paragraph 2.21.1 with their Tenders **OR** (b) submit a letter from their insurer or insurance broker with their Tender confirming that if awarded a contract under this RFT that they will obtain and hold the types and levels of insurance as specified at paragraph 2.21.1 and provide confirmation that the provision of the Services comes within the ambit of relevant insurances.
- 2.21.3 The successful Tenderer will, during the term of the Services Contract, be required to:
- (a) immediately advise the Contracting Authority of any material change to its insured status;
  - (b) produce proof of current premiums paid upon request;
  - (c) produce valid certificates of insurance upon request.

## PART 3

### QUALIFICATION AND AWARD CRITERIA

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

### **3.2 QUALIFICATION CRITERIA**

#### **Economic and Financial Standing:**

Proof of the Tenderers economic and financial standing must be submitted with the Tender. Tenderers must provide the following specified documentation with their Tender. However, where the Tenderer is unable, for a valid reason, to provide the specified documentation the Tenderer must inform the Contracting Authority of that valid reason as to why the documentation cannot be supplied and can provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity:

- (i) Tax Clearance Certificate from Irish Revenue Commissioners and
- (ii) Copy of Auditor's Report on most recent Financial Statements.

Tenderers should note that economic operators relying on the capacity of other entities **must submit an undertaking** with their Tender from those entities that they will place the necessary resources at the disposal of the Tenderer.

And,

#### **B. Technical and Professional Ability:**

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

- (i) List of Research reports in the last five years, and
- (ii) Publication information where relevant (including websites).

Tenderers should note that economic operators relying on the capacity of other entities **must submit an undertaking** with their Tender from those entities that they will place the necessary resources at the disposal of the Tenderer.

### **3.3 AWARD CRITERIA**

**No commitment of any kind, contractual or otherwise shall exist unless and until a formal written contract has been executed by or on behalf of the Contracting Authority. Any award of notification of bidder status by the Contracting Authority shall not give rise to any enforceable rights by the Tenderer. The Contracting Authority may cancel this public procurement competition at any time prior to a formal written contract being executed by or on behalf of the Contracting Authority.**

The contract will be awarded on the basis of the most economically advantageous tender by applying award criteria **set out at paragraph 9 of the Requirements and Specifications (Appendix 1) entitled “Evaluation and Award Criteria”**.

### **3.4 PRESENTATION OF PROPOSALS**

Tenderers may be required to make a presentation of the proposal contained in their Tender. The Contracting Authority will not be responsible for the cost of such presentations.

### **3.5. STANDSTILL PERIOD**

- 3.5.1 No contract can be executed or take effect at least until sixteen (16) calendar days after the day on which the unsuccessful Tenderer/s have been sent the appropriate notice informing them of the result of this public procurement competition.
- 3.5.2 Tenderers should note that the Contracting Authority may, when notifying unsuccessful Tenderers of the results of this public procurement competition, include the scores obtained by the Tenderer concerned and the scores obtained by the preferred bidder in respect of each award criterion assessed by the Contracting Authority.

### **3.6 RETURN OF SIGNED CONTRACTS**

- 3.6.1 The successful Tenderer must **sign and return** the Services Contract to the Contracting Authority no later than 30 calendar days from the date of the notice to him of the result of this public procurement competition. Please note the Contracting Authority cannot enter into a contract until the standstill period has expired. A signed contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Contract in accordance with paragraph 3.3 above.
- 3.6.2 Where the Signed Contract has not been received by the Contracting Authority within the period as specified at clause 3.6.1 then the Contracting Authority may proceed to award the contract to the next highest ranked Tenderer .

## **APPENDIX 1**

### **REQUIREMENTS AND SPECIFICATIONS**

November 2010

#### **Request for Tenders for a Review of Complementary Therapies and related academic programme validation**

**This project is divided into two Parts, A&B – they can be tendered for separately or together, but the timescale remains the same.**

#### **1 Background to the project**

Between 2000 and 2010 there have been various reports and studies conducted on the regulation of complementary therapies in Ireland. Currently practitioners of these therapies in Ireland are free to practice their therapies without any state regulation of the therapies or the practitioners, and with very limited self-regulation. A 2005 *Report of the National Working Group on the Regulation of Complementary Therapists to the Minister for Health and Children (2005)* addressed the uses of complementary therapies and definitions of the same. It also addressed regulatory and policy issues in general. It focussed on the regulation of complementary therapists and not the efficacy of the therapies. It did not comment on technical matters such as issues relating to the licensing of alternative medicines, or more specific clinical issues, including, for example, the clinical advantages and risks associated with any particular therapy.

Arising from the publication of this Report in 2005 the Higher Education and Training Awards Council (HETAC) established its own expert working group to draft award standards for complementary therapies. The HETAC standards were developed during 2007 and approved by Council in 2008. Their development included direct consultation with the all interested parties including representatives from the University sector. Areas for debate during this process included fields of learning which may be appropriate for a higher education and training award; issues associated with the absence of regulation; the absence of agreed minimum standards of practice for complementary therapies, which may be necessary for some therapies; the appropriate level for any such awards; and the appropriate award titles. With the adoption of Award Standards for Complementary Therapies in Autumn 2008 HETAC also adopted a position whereby it initiated a pilot phase during which it would engage only with providers of programmes of education and training

in acupuncture, herbal medicine and Traditional Chinese Medicine. These three were singled out by the 2005 National Working Group on Complementary Therapies as the candidate professions for statutory regulation. They were viewed at that time as having substantial evidence bases and as posing high risks to patients.<sup>1</sup> In addition the pilot required federation of professional bodies/associations within a therapy as a normal condition for programme validation where there is a practical component. This was recognition of the need to achieve agreement on minimum standards of practice among other things. Education and training programmes in complementary therapies, other than for conventionally trained medical practitioners/doctors, and with the exception of chiropractic and osteopathy, programmes in complementary therapies, other than for conventionally trained doctors, are generally offered outside of the traditional higher education and training/university sector. The primary exception to this is the United Kingdom, though there are other limited examples.

The first programme to be considered for validation by HETAC, against what were at that time draft award standards, was a submission from the Acupuncture Foundation of Ireland (AFI) received in December 2006. Whilst this was evaluated to meet the academic award standard, the absence of federation led to a refusal to validate. AFI appealed this decision to the National Qualifications Authority of Ireland (NQAI) in 2009, and a report of the NQAI in February 2010 upheld HETAC's right to make validation conditional on the establishment of satisfactory arrangements for professional regulation. In upholding the HETAC decision the NQAI also recommended that HETAC determine what such arrangements might look like, including the question of whether a single national federation was essential, and to consult with the Department of Health and Children (DOHC) in this undertaking. Arising from this consultation the DOHC and HETAC agreed to jointly commission an independent review of current research findings on the effectiveness and safety of complementary therapies and the state of the art internationally on regulation and academic recognition of these professions. The terms of reference for this review are indicated hereunder.

---

<sup>1</sup> The lack of regulation, whether voluntary self-regulation, or statutory, in Ireland, creates one of the principal issues for HETAC in its engagement with providers of programmes in complementary therapies. HETAC evaluates programmes with reference to the standards it determines in the National Framework of Qualifications. It has no competence in the area of professional practice, competence to practice, licence to practice, etc. Where professions are regulated, or in fields of learning which have a recognised professional aspect, the competence to practice is determined by the relevant professional body, e.g. An Bord Altranais, the RIAI etc. Higher education and training programmes in these areas will be subject to registration/accreditation by the professional body in question and therefore there is no issue of protection of learners in respect of right to practice. In the absence of professional standards, HETAC validation may, by default, become the 'licence to practice', or be deemed to be 'the standard' for practice in the relevant field of learning

## 2 TERMS OF REFERENCE

### PART A

*(to run contemporaneously with PART B)*

- 1. An identification of all academically accredited/validated programmes of higher education provided by higher education institutions (HEIs) in Ireland; universities in the UK; in comparable HEIs in countries that have established national frameworks verified as compatible with the Bologna qualifications framework; in Australia; and in New Zealand, in the areas of complementary therapies at the time the research commences. This research should take as its primary focus five fields; the three specific complementary therapies identified by the Department of Health and Children Working Group Report - acupuncture, herbal medicine and Traditional Chinese Medicine and two additional fields Osteopathy and Chiropractic.**
- 2. To identify all academically accredited/validated programmes of higher education in the same jurisdictions, where, since 2005 validation has been withdrawn or refused or where validated provision has ceased over the last five years, and an analysis of the reasons for this, whether these be driven by academic, market, political, reputational or scientific concerns.**
- 3. Drawing on the information and analysis in 1 and 2 above suggest criteria for the identification of fields which have the academic and professional maturity to warrant the academic validation of programmes by HETAC.**

#### Outcomes required

- A full listing of all currently validated programmes in complementary therapies offered by the traditional higher education sector nationally and internationally in areas identified in A1 The catalogue should provide information on
  - the entry requirements for these programmes
  - their overall objectives
  - their dates of initial validation and any revalidation
  - their titles
  - their framework level
  - their credit volume
  - their relationship with professional standards or regulation
  - the name of the providing organisation and validating body if different

There should be indication of where the researcher has sourced the data and summary information on providing and validating organisation should also be provided. This should include information on the validation process and criteria for validation and criteria for any associated professional regulation.

- Information should be included on whether such modules or programmes are reserved to medical or paramedical programmes
- A list of programmes from which such validation in the last 5 years has been withdrawn/lapsed, identifying trends and offering an analysis of the reasons such withdrawals/lapses have occurred.
- As indicated the research should take as its primary focus five fields; the three specific complementary therapies identified by the Department of Health and Children Working Group Report - acupuncture, herbal medicine and Traditional Chinese Medicine along with Osteopathy and Chiropractic. The initial three fields were the identified candidate professions for statutory regulation which were subsequently adopted as fields of study eligible for academic validation on a pilot basis against the HETAC complementary therapy award standards. Osteopathy and Chiropractic have been included due to the prevalence of academically validated programmes in those fields along with the fact that they are regulated by statute in other jurisdictions. The information obtained in addressing the objectives and in preparing the critique should also allow the researcher to propose a set of criteria for the expansion or restriction of the list of proposed fields in which to validate academic programmes.

## PART B

*(to run contemporaneously with PART A)*

### **1 A critical review of the analytic literature on the therapeutic effectiveness, safety and contemporary public policy on the regulation of the following fields since 2000:**

**Acupuncture**  
**Traditional Chinese Medicine**  
**Herbal Medicine**  
**Osteopathy**  
**Chiropractic**

#### Outcomes required

- For efficiency, this review should be based primarily on meta-analytical and comprehensive reviews, including studies looking at the therapeutic effectiveness of these fields in the context of integrative medicine.
- The review should also lead to a set of recommendations proposing how the scientific maturity of the field should inform HETAC practice in the validation of programmes in these areas.

## Tender detail

### 1. Timing

- a. The researcher(s) will need to work closely with HETAC/DOHC to identify and explore the key potential outcomes identified above.
- b. An outline timetable for each project is as follows:

<b>Research Projects</b>				
<b>December 2010</b>	<b>January 2011 – February 2011</b>	<b>March 2011</b>	<b>May 2011</b>	<b>June 2011</b>
<i>Select and brief researchers to conduct the pilot.</i>	<i>Agree Methodology by Week 1 January Data collection commences</i>	<i>10 Week Progress Report</i>	<i>Submission of draft report and undertaking any revisions required and submission of final Report by end of May</i>	<i>Final Report for Consideration by Council</i>

- c. The timetable for these projects is:

- Tender(s) returns due December 2<sup>nd</sup>
- Possible short-listing and invitation to interview by December 10<sup>th</sup>
- Appoint and brief consultants, by December 2010
- Agree methodology beginning January 2011
- Researcher begins project from January 2011
- Progress report March 2011
- Draft report due May 2011
- Final report due beginning of May 2011

### 2. Selection Criteria in the eventuality of a short-listing

- Knowledge of the substantive area;
- Quality of previous experience;
- Experience and suitability of the person who will undertake the contract; and
- Ability to complete the contract within timeframe.

### **3. Deliverables and Milestones**

The contractor will be expected to provide progress reports to and take advice from the DOHC/HETAC working group, which meets approximately every two months.

The deliverables are:

- a detailed agreed methodology to be submitted 2 weeks after appointment
- a progress report to be submitted 10 weeks after appointment (The progress report is to include the list of programmes (part a) and the list of literature under part b.
- a draft final report to be submitted 18 weeks after appointment
- a final report to be submitted 20 weeks after appointment

### **4. Workload – time involved**

It is anticipated that the workload involved in both of these projects could amount to 8-10 months of one researcher's time.

### **5. Tender Submission Detail**

Tender responses should provide the information set out in the following paragraphs:

#### **1. Capacity**

- a. The professional experience and expertise within your organisation relevant to the project, particularly the experience your organisation has in working closely with the Higher Education (HE) sector.
- b. Details and CVs of the staff who will undertake the work.
- c. Any other details about your organisation you consider to be relevant.

#### **2. Project plan**

- a. What information you will need to gather and the methodology for this. In particular, how you will go about identifying the key issues in ascertaining the validity of research to be considered.
- b. The timescale to complete the project.
- c. A risk assessment of your proposed approach and how you will mitigate any key risks.

### **6. Pricing structure**

HETAC/DOHC wish to agree fixed prices for the work outlined. Tenderers should indicate how they propose to charge for expenses if these are to be presented as an additional item.

## **7. Payment**

Payment will be made at the following three stages provided the identifiable deliverables have been made.

25% on Signing of Contract

25% on submission of the Progress Report at week 10

50% on completion

## **8. Procedure and additional advice regarding tender selection**

- Three copies, including one unbound copy, of tenders should be sent to HETAC in the secure envelope provided to arrive by 12noon on December 2<sup>nd</sup>, 2010.
- HETAC/DOHC reserves the right not to award the contract.
- HETAC/DOHC will retain all the intellectual property rights.
- HETAC/DOHC may invite one or more tenderers to an interview to further explain their service and how they can meet HETAC/DOHC needs. Such interviews will be held at a location to be advised.
- Unwarranted or inappropriate attempts (including canvassing) to influence the decision of HETAC/DOHC by tenderers, or by any party acting on behalf of a tenderer will automatically disqualify the tenderer.
- It will be a condition of the award of any contract that the tenderer will be required to produce a valid tax clearance certificate from the Irish Revenue Commissioners. In the case of a non-resident tenderer, a statement of suitability on tax grounds from the Revenue Commissioners will be required.
- Professional Services Withholding Tax (PSWT) is obliged to be deducted from certain consultancy services that may be provided by the successful tenderer.
- It shall be the responsibility of tenderers themselves to obtain all necessary documentation and to ensure that they comply fully with all relevant Irish taxation requirements.

**9. EVALUATION AND AWARD CRITERIA**

The contract(s) will be awarded from the qualifying tenders based on the award criteria hereunder in the following order of priority:

- Quality of proposal 40%
- Quality of personnel 30%
- Cost 20%
- Ethical and other considerations 10%

## **Annex One**

### **1. Background to the Higher Education and Training Awards Council**

HETAC (the Higher Education and Training Awards Council) was established on 11 June 2001, under the Qualifications (Education and Training) Act 1999. It is the successor to the National Council for Educational Awards (NCEA) and is the awarding body for third-level education and training institutions outside the university sector. It exists to benefit learners and potential learners by:

- Setting standards, accrediting programmes and awarding qualifications at all levels of higher education and training;
- Providing assurance to the public that programmes of higher education and training are above an acceptable threshold level of quality and that objective quality assurance processes are in place to meet the expectations of Irish Society and the International Community;
- Delivering a quality improvement service to registered educational providers so as to contribute to raising standards to increasingly higher levels.

HETAC's principal quality assurance processes include registering providers of higher education and training, validating programmes, monitoring quality, reviewing institutions and conducting related system-level research.

HETAC is a full member of the European Association for Quality Assurance in Higher Education (ENQA), and is currently included on the European Quality Assurance Register (EQAR).

**APPENDIX 2**  
**SERVICES CONTRACT**

---

**and**

---

**AGREEMENT**

**The provision of Services**

**In relation to**

---

**THIS AGREEMENT** is made on the \_\_\_\_\_ day of \_\_\_\_\_ 20\_\_ **BETWEEN:**

\_\_\_\_\_, of \_\_\_\_\_ (**“the Client”**);  
and

1) \_\_\_\_\_ of \_\_\_\_\_ (**“the Contractor”**)

2) (**“the Parties”**).

**3) WHEREAS:**

- A. By Request for Tender dated \_\_\_\_\_ and titled \_\_\_\_\_ (**“the RFT”**) (which document is attached hereto in Schedule F, the Client invited tenders for \_\_\_\_\_ to be provided for its offices at specified locations throughout Ireland. References to the RFT shall include any clarifications issued by the Client and same are attached hereto in Schedule F.
- B. The Contractor submitted a response to the RFT dated the \_\_\_\_\_ which is attached hereto in Schedule G (**“the Submission”**). References to the Submission shall include any clarifications issued by the Contractor and same are attached hereto in Schedule G.

**1) IT IS HEREBY AGREED AS FOLLOWS**

- 1. The Contractor agrees to provide the Services described in Schedule B (**“The Services”**) in accordance with this Agreement. Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT and the Submission (**“The Specification”**).
- 2. The Client agrees to pay the Charges to the Contractor as stipulated in Schedule C (**“the Charges”**). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice. For the purposes of this Agreement, the Client’s Contact is \_\_\_\_\_ of \_\_\_\_\_; the Contractor’s Contact is \_\_\_\_\_ of \_\_\_\_\_ [address].
- 3. This Agreement is governed by the terms and conditions as set out in Schedule A and consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - (i) This Agreement and Schedules A to E attached hereto;
  - (ii) The RFT, Schedule F;
  - (iii) The Submission Schedule G.
- 4. This Agreement shall take effect on the date of this Agreement and shall expire on the \_\_\_\_\_, 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 \_\_\_\_\_ months with a maximum of two such extensions permitted subject to its obligations at law].

**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 perform its obligations arising from this Agreement with all due care, skill and diligence and in the appointment, monitoring and retention of its agents and sub-contractors. The Contractor shall require its agents and sub-contractors to exercise all due care, skill and attention in the supply of Services and the performance of its obligations under this Agreement.
- B.** In consideration of the Charges and subject to clause 4 the Contractor shall:
1. provide the Services according to the Specification as set out in Schedule B hereto and in the manner set out in the Submission and in accordance with the Client's directions and the terms of this Agreement;
  2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
  3. comply with all local security arrangements as notified to it by the Client;
  4. provide the Services in accordance with industry standards and comply with all applicable laws with particular but not exclusive regard to the requirements of the Safety Health and Welfare at Work Act 2005, the Waste Management Act 1996, the Data Protection Acts 1988 and 2003, Freedom of Information Acts 1997 and 2003 and Employment legislation. The Contractor will be responsible for compliance with all statutory requirements of an employer, all legally binding sectoral agreements and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement; and
  5. comply with the Special Conditions, if any, set out in Schedule D (**"Special Conditions"**).
- C.** The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the delivery of the Services and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its sub-contractors and shall procure that its sub-contractors shall comply in all respects with the relevant terms of this Agreement to the extent that it or they are retained by the Contractor.
- D.** During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- E.** The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees of Transfer of Undertakings) Regulations 2003 (SI No. 131 of 2003) and Council Directive

2001/23/EC (together the “Regulations”) and failure to so comply shall constitute a material breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Minister indemnified from and against all Liabilities (including the cost of wages, salaries and other remuneration or benefits, expenses, taxation, PRSI payments, health contributions, levies, losses, claims demands actions, fines, penalties, awards, (including legal expenses on an indemnity basis)) from, or incurred by reason of, any claims made against the Minister under the Regulations by any Affected Employees “Affected Employees” shall mean those employees in respect of whom the Regulations may be deemed to apply in connection with this Agreement.

## **2 Delivery of the Services**

The Contractor shall provide the Services at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties in accordance with clause 11.

## **3 Key Personnel**

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

## **4 Payment**

- A. Subject to the provisions of this clause 4 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the parties.
- B. Discharge of the Charges is subject to:
  - 1. Compliance by the Contractor with the terms of this Agreement to the satisfaction of the Client;
  - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
  - 3. Payments shall be made monthly in arrears subject as herein. invoices must be submitted to the Client’s Contact (as set out in this Agreement or such other alternative contact as may be agreed between the parties). All and any queries relating to the invoice and or the Services for any billing period (including

whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 10 Working Days of receipt of invoice. In circumstances where no queries are raised within the said 10 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under Special Condition 4.

4. The Client must be in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at [www.finance.gov.ie](http://www.finance.gov.ie).
- C. The provisions of the Prompt Payment of Accounts Act 1997, as amended or revised, and the European Communities (Late Payment in Commercial Transactions) Regulations, 2002 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Client may unilaterally deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. The Charges shall include any and all expenses incurred by the Contractor, its employees, servants and agents in the performance of the Services.
- F. Charges shall be discharged as provided for in this Clause subject to the retention by the Client in accordance with clause 523 of the Taxes Consolidation Act, 1997 of any withholding taxes payable to the Contractor.
- G. Save as provided for in this Clause the Client shall have no further or other financial obligations or liability under or arising out of this Agreement.

## **5 Warranties**

- A. The Contractor warrants, represents and undertakes that:
  1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
  2. the execution and performance of this Agreement does not conflict with or constitute a breach or default under any contract or agreement of any kind to which the Contractor is a party or any judgment, order, statute or regulation which is applicable to the Contractor or its assets;
  3. it is entering into this Agreement with a full understanding of its material terms

and risks and is capable of assuming those risks;

4. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations;
5. it has acquainted itself with and shall comply with legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services.
6. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement.
7. as at the date of this Agreement, all information contained in the Contractor's submission remains true, accurate and not misleading, save as may have been specifically disclosed in writing to the Client and set out in Schedule B;
8. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 7 below) that are necessary for the performance of its obligations under this Agreement, in any event shall be in place no later than the first date on which any such Intellectual Property Rights are used for the purposes of this Agreement or earlier termination of this Agreement for whatever reason;
9. it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall comply with all reasonable directions of the Client arising therefrom.

## **6 Remedies**

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor its employees, sub-contractors or agents or any of them or as a result of the Contractor's failure to exercise care as outlined in clause 1. The terms of this clause 6A shall survive termination of this Agreement for any reason.
- B. Neither party will be liable for any indirect, incidental, punitive or consequential loss (including loss of profit) damage, cost or expense of any kind whatsoever and howsoever caused even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of the Contract are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

## **7 Intellectual Property**

- A. Intellectual Property Rights (“IPR”) means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- B. Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor’s standard hardware and software products or modifications or updates to such products.
- C. All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.
- D. The Contractor grants to the Client a royalty-free, irrevocable and non-exclusive licence (with a right to sub-licence) to use any Intellectual Property Rights that the Contractor owned or developed prior to the Effective Date and which the Client reasonably requires in order exercise its rights and take the benefit of this Agreement including the Services provided.
- E. The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- F. Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.
- G. The Contractor shall ensure that all and any necessary consents and or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement and the Contractor shall indemnify the Client for and in respect of all and any third party intellectual property rights in so far as any such rights are used for the purposes of this Agreement.

H Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this Clause 7 will survive the expiration or termination of this Agreement for any reason.

## **8 Confidentiality**

A. Each of the parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement and shall not be disclosed to any third party except to:

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

B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement as exhibited to this Agreement in Schedule E.

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

D. The terms of this clause 8 shall survive termination of this Agreement for any reason.

## **9. Force Majeure**

A. A '**Force Majeure Event**' means an event beyond the reasonable control of the Affected Party (as defined in Clause 9B below) 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. Strikes and labour disputes shall not constitute a force majeure event.

B. In the event of any failure, interruption or delay in the performance of the Parties' obligations (or of any of them) resulting from any Force Majeure Event not reasonably within the control of the Party concerned ("**the Affected Party**"), the Affected Party shall promptly notify the other Party in writing specifying:

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

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

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

## **10. Termination**

- A. Notwithstanding the provisions of clause 12 and subject to the provisions of sub-clause 10B, this Agreement may be terminated by [the Client] [by either Party] by serving three months (3 months) written notice to the other Party. For greater certainty, neither Party shall be entitled to any additional amounts or compensation in the event that the Agreement is terminated in accordance with this Clause 10A.
- B. 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 on the happening of any of the following:
1. if the Contractor commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Client, (if the breach(es) are capable of remedy), within 30 days after receipt of a request in writing from the Client; and / or
  2. if the Contractor becomes insolvent, becomes bankrupt, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect.
- C. 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.
- D. On completion or termination of this Agreement, howsoever arising, The Contractor shall immediately return all confidential information, records, papers, materials, media and other property of the other Party which is in its possession.

## **11. Contract Management**

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the

Client.

B. The Contractor agrees to:

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

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

## **12. Disputes**

Subject to clause 13A and to the parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement amicably.

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

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

## **14. Notices**

- A. Any notice or other communication to be given hereunder shall either be delivered personally or sent by registered post or email or facsimile transmission. The Parties will from time to time agree primary and alternate contact Parties and details for the purposes of this clause 14.
- B. All notices shall be deemed to have been served as follows:
  1. if personally delivered, at the time of delivery;
  2. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and

3. if communicated by email or facsimile transmission at the time of acknowledgement of transmission;

#### **15. Assignment and Sub-contract**

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

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

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

#### **17. Severability**

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

#### **18. Waiver**

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

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

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

#### **20. Media**

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

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

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

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

- B. Any registrable interest involving the Contractor (and any sub-contractor or agent as the case may be) and the Ceann Comhairle (Speaker), the Commissioners of Public Works, members of the Government, members of the Oireachtas or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (sub-Contractor or agent as the case may be). 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 of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 21C or the commission of any offence by the Contractor, any sub-contractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2001 shall entitle the Client to terminate this Agreement forthwith and to recover the amount of any loss resulting from such cancellation.

## **22. INSPECTION AND ACCESS TO PREMISES**

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

# **SCHEDULE B**

## **SERVICES: THE SPECIFICATION**

The Specification means the description of the Services to be supplied under the Agreement including:

- 1 The Services
- 2 Project Management.
- 3 Key Personnel
- 4 The Premises: location of where the work is to carried out
- 5 Quality Standards to be delivered
- 6 Any other requirements as set out in the RFT- look to the relevant services industry and insert appropriate requirements e.g. catering – specific health and safety requirements;
- 7 Security;
- 8 Licences.

# **SCHEDULE C CHARGES**

- 1 Payments**
- 2 Travel and Subsistence**
- 3 Expenses**

# SCHEDULE D

## SPECIAL CONDITIONS

**Unless the provisions below are ticked YES they shall NOT apply**

### SPECIAL CONDITION 1 – TIME OF THE ESSENCE

**SC 1(A) Time of delivery shall be of the essence**

**YES**

SC 1(A) Time of delivery shall be of the essence and if the Contractor fails to deliver the Services within the time promised or specified in the Specification the Client may release itself from any obligation to accept and pay for the Services and/or terminate this Agreement without prejudice to any other rights and remedies of the Client.

**SC 1(B) Right to Impose Liquidated Damages Claim**

**where Delivery Dates not Complied with**

**YES**

SC 1(B) Without prejudice to any general right to damages under this Agreement where the Contractor does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Client may, at his discretion, deduct \_\_\_ % per week, or part thereof, for each week of late delivery of the value of the entire relevant invoice or order as liquidated damages up to a maximum amount of \_\_\_ % of the Charges (or invoice or order) price for the relevant Services (“**Liquidated Damages Threshold**”).

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

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

### SPECIAL CONDITION 2 – LIMITATION OF LIABILITY

**SC 2 Contractor’s limitation on liability**

**YES**

Save in respect of fraud, personal injury or death (for which no limit applies), the limit of the Contractor’s aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed \_\_\_\_\_% of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims [and in any event shall not be for a sum less than [€ \_\_\_\_\_]].

**SPECIAL CONDITION 3 - REMEDIES**

**SC 3 Retention for Cause**

**YES**

If for any reason the Client is dissatisfied with the performance of the Contractor, an appropriate sum may be withheld from any payment otherwise due (“**the Retention Amount**”) which Retention Amount shall not at any given time exceed **10%** of the Charges. In such event the Client shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction; payment of the Retention Amount will be made upon replacement and or remedy of the said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this SC 4(A) shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

**SPECIAL CONDITION 4 – EQUIPMENT**

**SC 1 Contractor to provide Equipment**

**YES**

- SC 4(A) The Contractor shall provide all Equipment and materials (“Equipment”) necessary for the supply of the Services.
- SC4(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 or damage to any equipment. The Contractor shall provide for the haulage or carriage thereof to the Client’s premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.
- SC4(C) The Contractor shall maintain and store all items of Equipment within the Client’s premises in a safe, serviceable and clean condition.
- SC4(D) The Contractor shall, at the Client’s written request, at its own expense and as soon as reasonably practicable:
  - i) remove from the Client’s premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
  - ii) replace such item with a suitable substitute item of Equipment.
- SC4(E) On completion of the Services the Contractor shall remove the Equipment used by the Contractor to supply the Services and shall leave the Client’s premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client’s premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or subcontractors.

**SPECIAL CONDITION 5 – NON SOLICITATION CLAUSE**

**YES**

For the duration of the Contract and for a period of 12 months thereafter neither the Client nor the Contractor shall employ or offer employment to any of the other Party’s staff who have been associated with the procurement and/or the contract management of the Services without that other Party’s prior written consent.

**SPECIAL CONDITION 6 – CHANGE CONTROL PROCEDURE**

**YES**

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

- Sc6(A) At any time during the term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- Sc6(B) The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- Sc6(C) A change control notice (“Change Control Notice”) shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment (“Impact Assessment”).
- Sc6(D) All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party’s Project Manager.
- Sc6(E) The Client must indicate its acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) Working Days or such other period agreed between the Parties.
- Sc6(F) On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- Sc6(G) In the event that the Client rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- Sc6(H) The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client’s request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

**Special Condition 7 CLIENT’S OBLIGATIONS**

**YES**

---

---

---

---

---

---

---

**Special Condition 8**

**YES**

---

---

---

---

---

---

# **SCHEDULE E**

## **CONFIDENTIALITY AGREEMENT**

## **SCHEDULE F**

**CLIENT'S RFT INCLUDING ANY  
CLARIFICATIONS ISSUED BY THE  
CLIENT**

## **SCHEDULE G**

### **CONTRACTOR'S SUBMISSION INCLUDING ANY CLARIFICATIONS ISSUED BY THE CONTRACTOR**

#### **APPENDIX 3**

#### **PRICING SCHEDULE**



**APPENDIX 4**  
**TENDER STATEMENT**

*[Tenderers shall complete and return the following form of Tender Statement printed on the Tenderer's headed note paper and signed by the Tenderer]*

**TENDER STATEMENT**

TO: The Contracting Authority  
RE: The provision of *[insert the RFT Title from paragraph 1.3]*

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

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1.
2. We accept all of the terms and conditions of and agree to execute the Services Contracts at Appendix 2.
3. We accept all the Qualification and Award Criteria as set out in Part 3.
4. We agree to provide the Contracting Authority with the Services in accordance with the Request for Tenders and our Tender.
5. We confirm that we have complied with all requirements as set out at Part 2 of this RFT.
6. We confirm that all prices quoted in our Tender will remain valid for the period of time commencing from the closing date for the receipt of Tenders as specified at paragraph 2.10.2 of the RFT.
7. Our compliance with all relevant legal employment requirements as set out in this RFT, in particular but not exclusively Clause 2.11.1.
8. We acknowledge that the RFT does not constitute an offer to enter into a contract and neither this document nor any of the information set out therein should be regarded as a commitment or representation on the part of the Contracting Authority or any other person to enter into a contractual arrangement. No commitment of any kind, contractual or otherwise shall exist unless and until a formal written contract has been executed by or on behalf of the Contracting Authority. The Contracting Authority may, at their absolute discretion, cancel this public procurement competition at any time prior to a formal written contract being executed by and on behalf of the Contracting Authority.

Signature: .....

Print Name: .....  
(Authorised Signatory)

Company: .....

Address:

.....

Date:

.....

.....

## **APPENDIX 5**

### **TENDERER'S AIDE-MÉMOIRE**

#### **Have you.....?**

1. Addressed all the requirements in Part 2?
2. Remembered to sign and complete all the relevant pages where so required?
3. Completed the Pricing Schedule at Appendix 3?
4. Correctly addressed the Tender return envelope?  
(including marking 'Confidential' and the RFT title on it)
5. Returned all the documentation required?
6. Noted the closing time and date for return of the Tender?

## **APPENDIX 6**

### **CONFIDENTIALITY AGREEMENT**