

**Request for Tenders  
for the Provision of  
Catering Services and Operation of the Catering  
Facilities and including the Operation of the Retail  
Facility at Belvedere House Gardens & Park, Mullingar,  
Co. Westmeath, Ireland**

**8<sup>th</sup> August 2022**

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## Part 1: Introduction

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1.1 Westmeath County Council invites responses (“Tenders”) to this Request for Tenders (“RFT”) from economic operators (“Tenderers”) for the provision of the services as described in Appendix 1 to this RFT, “Requirements and Specifications”, (“the Services”). Westmeath County Council is the contracting authority for this public procurement competition (“the Contracting Authority”).

1.2

**The Title of this RFT is - “Request for Tenders for the Provision of Catering Services and Operation of the Catering Facilities and including the Operation of the Retail Facility at Belvedere House Gardens & Park, Mullingar, Co. Westmeath, Ireland**

1.3 This public procurement competition relates to the requirement for a high quality Catering Service to operate the Courtyard Café facilities at Belvedere House Gardens & Park by suitably qualified companies or individuals with proven experience in the catering sector. In addition, the service required also includes the operation of the Retail facility adjacent to the Courtyard by suitably qualified companies or individuals with proven experience in the retail sector.

1.4 Any contract that may result from this public procurement competition will be issued for a term of **3 years** (“the Term”). There is an option for a 1 year (12 month) extension bound by agreement of both parties following the completion of the initial 3 year term.

1.5 Tenders must be received not later than **3pm on Thursday 1<sup>st</sup> September 2022**. Tenders that are received late WILL NOT be considered in this public procurement competition.

## Part 2: Instructions to Tenderers

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### 2.1 Introduction to this RFT

- 2.1.1 While every effort has been made to provide comprehensive and accurate background information and requirements and specifications, Tenderers must form their own conclusions about the solution needed to meet the requirements set out in this RFT. Tenderers and recipients of this RFT may wish to consult their own legal advisers in relation to this RFT or the subject matter thereof.
- 2.1.2 All information supplied by Tenderers may be treated as contractually binding on the Tenderers if accepted by the Contracting Authority.
- 2.1.3 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. The Contracting Authority does not bind itself to accept the lowest priced or any Tender.
- 2.1.4 This RFT supersedes and replaces all previous documentation, communications and correspondence between the Contracting Authority and Tenderers, and Tenderers should place no reliance on such previous documentation and correspondence. Tenderers to this RFT should study the contents of this RFT carefully, including the information and documents contained in the Appendices. The Tenderers attention is drawn to the Tenderers' aide-memoire at Appendix 4.

### 2.2 Compliant Tenders

- 2.2.1 Failure to comply with the requirements of this paragraph 2.2.1 may render the Tender non-compliant and the Tender may be rejected. Tenderers must:
- a. Include all documentation specified in this RFT;
  - b. Follow the format of this RFT and respond to each element in the order as set out in this RFT;
  - c. Comply with all requirements as set out within this RFT.

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

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

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

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

## **2.3 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 provide the Services sought under this RFT.

2.3.2 The successful Tenderer(s) shall provide the Services in accordance with and on the terms and conditions of the contract as set out at Appendix 6 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 Tenderers' Statement at Appendix 3. Tenderers may not amend the Services Contract.

- 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 provision of the Services if they have been marked as “applies” by the Contracting Authority.

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

## 2.5 Consortia and Prime / Subcontractors

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

- a. The full legal name of the Prime Contractor together with its registered business address (where applicable), registered business name (where applicable), company registration number (where applicable), telephone and e-mail contact details;
- b. The names of all subcontractors and/or consortium members who will be involved in the provision of the Services;
- c. A description of the role to be fulfilled by each subcontractor and/or consortium member; and
- d. The name, title, telephone number, postal address, facsimile number and e-mail address of the nominated contact personnel authorised to represent the Prime Contractor, within the organisation of the Prime Contractor, to whom all communications shall be directed and accepted until this public procurement competition has been completed or terminated. Correspondence from any other

person (including from any subcontractor and/or consortium member) will NOT be accepted, acknowledged or responded to.

## 2.6 Tender Submission Requirements

- 2.6.1 Tenders must be received not later than **3pm on Thursday 1<sup>st</sup> September 2022**. Tenders that are received late WILL NOT be considered in this public procurement competition.
- 2.6.2 Each Tenderer is limited to submitting one Tender in his own capacity and one Tender as part of a consortium/group of undertakings under this RFT.
- 2.6.3 The Contracting Authority is not responsible for corruption in electronic documents. Tenderers must ensure electronic documents are not corrupt.

## 2.7 Queries and Clarifications

- 2.7.1 All queries or requests for clarification relating to any aspect of this public procurement competition or of this RFT must be directed to Questions and Answers Facility on [www.etenders.ie](http://www.etenders.ie). Queries or requests for clarifications will be accepted **no later than 3pm on Friday 19<sup>th</sup> August 2022** unless otherwise published by the Contracting Authority.
- 2.7.2 All clarifications and responses to queries/requests for clarification will be via Questions and Answers Facility on [www.etenders.ie](http://www.etenders.ie). Where appropriate, questions may be amalgamated. Tenderers should note that the Contracting Authority will not make responses or clarifications to individual Tenderers privately.
- 2.7.3 The Contracting Authority reserves the right to issue or seek written clarifications.
- 2.7.4 The Contracting Authority reserves the right to update or alter the information contained in this document at any time up to seven days before the final date for receipt of Tenders. Participating Tenderers will be so informed through the eTenders website. In the event of such updates or alterations the Contracting Authority reserves the right to postpone the deadline for the receipt of Tenders so as to allow Tenderers sufficient time to respond.

## 2.8 Tendering Costs

All costs and expenses incurred by Tenderers relating to their participation in this public procurement competition including, but not being limited to, site visits, field trials,

demonstrations and/or presentations shall be borne by and are a matter for discharge by the Tenderers exclusively.

## **2.9 Confidentiality**

- 2.9.1** All documentation, data, statistics, drawings, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Tenderers during the course of this 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 subcontractors) engaged or consulted by the Tenderer; and
  - d. must be returned immediately to the Contracting Authority upon cancellation or completion of this public procurement competition if so requested by the Contracting Authority.
- 2.9.2** The successful Tenderer must return the original signed confidentiality agreement, as set out in Appendix 7 (“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 7 and Tenderers may not amend the Confidentiality Agreement.

## **2.10 Pricing / Remuneration**

- 2.10.1** The Pricing/Remuneration in respect of this RFT shall require tenderers to set out their proposed % payment to Westmeath County Council based on Net of VAT monthly turnover for the Café and for the Gift Shop, which figures for the last full trading year 2019 are as set out in Appendix 2 of this RFT.
- 2.10.2** Tenderers will also be required to pay to Westmeath County Council a fixed annual amount (ex VAT) as set out in Appendix 2 for the use of the facilities and to cover rates and utilities (water, electricity, gas and waste disposal).
- 2.10.3** Tenderers will also be required to pay to Westmeath County Council an additional fixed annual amount (ex VAT) as set out in Appendix 2 for the use of on site additional container storage facilities made available.
- 2.10.4** Tenderers will also be required to pay to Westmeath County Council an additional fixed annual amount (ex VAT) and payable monthly (Appendix 2) and as detailed in Appendix 1 into a Capital Replacement Fund maintained by Westmeath County Council for the sole purpose of replacing any light and heavy equipment specifically in the ownership of Westmeath County Council.



2.10.5 Remuneration payable to Westmeath County Council for Services provided pursuant to this RFT shall be subject to and be made in accordance with the Services Contract at Appendix 6 to this RFT.

2.10.6 All Tenderers must complete the Pricing/Remuneration Schedule at Appendix 2 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 Tenderer's Statement of Appendix 3 will render the Tender non-compliant.

Tenderers may obtain information regarding their obligations concerning:

- Taxation from the Irish Revenue Commissioners ([www.revenue.ie](http://www.revenue.ie));
- Environmental protection from the Environmental Protection Agency ([www.epa.ie](http://www.epa.ie));
- Employment protection and working conditions from the Department of Jobs, Enterprise and Innovation ([www.djei.ie](http://www.djei.ie)).

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

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

## 2.12 Publicity

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

## **2.13 Registrable Interest**

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

## **2.14 Anti-Competitive Conduct**

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

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

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

## **2.16 Freedom of Information**

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

## 2.17 Tax Clearance

- 2.17.1 It will be a condition of the award of any contract under this RFT that the successful Tenderer shall for the term of any such contract, comply with all EU and domestic taxation law and requirements, including but not being limited to Circular 43/2006 issued by the Department of Finance. This Circular and further information is available at [www.finance.gov.ie](http://www.finance.gov.ie) and [www.revenue.ie](http://www.revenue.ie).
- 2.17.2 Prior to the award of any contract arising out of this public procurement competition the successful Tenderer shall be required to produce a Tax Clearance Certificate from the Irish Revenue Commissioners. Alternatively, the Tenderer may supply the certificate and registration numbers, as they appear on the Tax Clearance Certificate, to facilitate online verification of their tax status by the Contracting Authority.

## 2.18 Conflicts of Interest

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

## 2.19 Withdrawal from this Public Procurement Competition

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

## 2.20 Site Visit

- 2.20.1 Should it be deemed necessary for the purposes of tendering, 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 Belvedere House Gardens & Park, Mullingar shall be organised on by prior appointment for **Tuesday 23<sup>rd</sup> August 2022 between the hours of 8.30am and 12.30pm**. Tenderers wishing to make an appointment to avail of this opportunity must confirm their attendance by contacting Manager Stephen Masterson at [Stephen.masterson@westmeathcoco.ie](mailto:Stephen.masterson@westmeathcoco.ie) where the official site visit time will be agreed. Attendance at the Contracting Authority's premises will be subject to compliance with local security arrangements.

## 2.21 Insurance

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

Type of Insurance	Indemnity Limit
Employer's Liability	€13,000,000
Public Liability	€6,500,000
Professional Indemnity	
Product Liability	

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

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

- a. immediately advise the Contracting Authority of any material change to its insured status;
- b. produce proof of current premiums paid upon request;
- c. produce valid certificates of insurance upon request.

## Part 3: Qualification and Award Criteria

### 3.1 Compliant Tenders

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

### 3.2 Qualification Criteria

#### 3.2.A Economic and Financial Standing

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

No.	Requirement/ Criterion	Criterion Applicable to	Pass/ Fail Only
A.1	Tenderer's Personal Situation	Required with Tender	Yes
A.2	Bankers Letter	Required with Tender	Yes
A.3	Tax Compliance	Not required with tender, but to be submitted on request	Yes
A.4	Public Liability Insurance	Not required with tender, but to be submitted on request	Yes
A.5	Employer's Liability Insurance	Not required with tender, but to be submitted on request	Yes

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

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

The documentation required under this paragraph 3.2.A will be requested by the Contracting Authority prior to (and shall be a condition of) the award of any contract.

### 3.3 Award Criteria

- 3.3.1 Only those Tenderers who have qualified in accordance with paragraph 3.2 of this RFT will proceed to be evaluated under this paragraph 3.3.

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

- 3.3.2 The contract will be awarded on the based on the following criteria.

### 3.3.2.1 Quality Criteria

The table below provides a summary of how the information requested below and described in detail in Appendix 2 will be assessed and provides details of the Quality Criteria and maximum marks to be awarded under each criterion.

<b>Quality Criteria and Information Required:</b>		
<b>Criteria</b>	<b>Description</b>	<b>Total marks</b>
<b>A: Company Experience</b>	<p>Tenderers must provide satisfactory evidence of at least one previous contract in the last 3 years of services of a similar scale and nature to the scope as specified in Appendix 1 of this RFT.</p> <p>Please provide contact details of relevant Clients for previous/current contracts that may be contacted on a confidential basis.</p> <p>If you are a recently formed company, you must provide sufficient documentation to display your capacity to carry out a contract of this nature and scale as outlined in Appendix 1.</p>	<b>80</b>
<b>B: Company Staffing Levels</b>	<p>Tenderers must provide details of proposed staff levels including supervision and arrangements for ensuring that the required complement of staff is consistently available to carry out a contract of the nature and scale as outlined in Appendix 1.</p>	<b>60</b>
<b>C: Company Business Plan</b>	<p>Tenderers must submit a Company Business Plan for the utilisation of the Catering Facilities at Belvedere and the operation of the Retail Facility at Belvedere.</p> <p>The Business Plan should also include proposals for the management and review of the contract.</p> <p>The Business Plan should also include proposals for the monitoring and controlling quality of food and operations and the quality and level of service.</p>	<b>70</b>
<b>D: Company Health, Safety &amp; Environment</b>	<p>Each Tenderer must demonstrate in a clear and comprehensive manner how it proposes to manage food safety in the provision hospitality services so as to ensure compliance with the Food Safety Regulations (EC/852/2004).</p> <p>The proposal should also address the Tenderer's methodology for adhering to all legislation relevant to health and safety and the environment, specific to the food service industry when performing the services, to include but not limited to:</p> <ul style="list-style-type: none"> <li>- Food traceability from farm to table on all products served including hospitality.</li> </ul>	<b>40</b>

	<ul style="list-style-type: none"> <li>- Packaging and waste management including food waste minimisation within the service.</li> <li>- Methodology for managing food safety documentation and records within the kitchen, canteen and hospitality services.</li> </ul>	
<b>E: Commercial Terms</b>	Total remuneration tendered for the Café and Retail Facility as outlined in Appendix 2	<b>80</b>
<b>Total Quality Score</b>		<b>330</b>

### 3.3.2.2 Remuneration payable to Westmeath County Council

Only tenders that have qualified under paragraph 3.3.2.1 will be assessed for the remuneration payable to Westmeath County Council.

The Total Remuneration tendered will be calculated based on the various items lists in the Pricing/Remuneration Schedules, the notational turnover figures and the % of Net of VAT turnover tendered (Appendix 2).

The tender with the highest Total Remuneration (C) will be awarded the maximum marks available for Remuneration (A) as indicated in Section 3.3.2.1.a

The method for calculating the marks of other compliant tenders is as follows:

$$\text{Price mark for compliant tender for category} = A \times (1 - [(C-B)/B])$$

Where:

A = Maximum marks available for Remuneration (A) as indicated in Section 3.3.3 below.

B = Total Remuneration tendered by the Tender being considered.

C = Tender with the highest Total Remuneration.

Other compliant tenders are marked by deducting one percent (1%) of the total marks available for remuneration for every one percentage points difference between the highest Total Remuneration (C) and that of the Total Remuneration of the tender under consideration (B). The lowest price mark which can be obtained is zero. Marks will be calculated to 2 decimal places.

### 3.3.3 Award

Successful Tenders will be selected on the basis of the highest scoring marks awarded for the Quality Criteria and Price described below.

No commitment of any kind, contractual or otherwise shall exist unless and until a formal written agreement has been executed by or on behalf of the Contracting Authority. Any award of 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.

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

The scores for quality and price achieved by tenders, which have not been excluded from the competition, will be added and the tender receiving the highest overall score will be the most economically advantageous tender.

<b>Description</b>		<b>Maximum Marks</b>
Total Quality Score		<b>250</b>
Total Remuneration payable to Westmeath County Council Score		<b>80</b>
Total Overall Score		<b>330</b>

- 3.3.3 The award of contract (if any) to the highest ranked Tenderer (as determined by paragraph 3.3), will be conditional upon:
- (a) the Tenderer submitting the documentation if required under paragraph 3.2.A within fourteen days of notification by the Contracting Authority; and
  - (b) if required, the documentation submitted demonstrating that such Tenderer has the economic and financial capacity required under paragraph 3.2.A

#### **3.4 Presentation of Proposals**

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

#### **3.5 Standstill Period**

- 3.5.1 In circumstances where Directive 2007/66/EC applies, no contract can or will be executed or take effect until at least seven (7) calendar days after the day on which the unsuccessful Tenderers have been sent the appropriate notice informing them of the result of this public procurement competition (“Standstill Period”). The preferred bidder will be notified of the decision of the Contracting Authority and of the expiry date of the Standstill Period.
- 3.5.2 Tenderers should note that the Contracting Authority may, when notifying unsuccessful Tenderers of the results of this 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 and the Confidentiality Agreement, both in duplicate, to the Contracting Authority no later than seven calendar days from the date of expiry of the Standstill Period unless notified otherwise in writing. Please note the Contracting Authority cannot and will not enter into a contract until the Standstill Period has expired. A signed Services Contract returned by the successful Tenderer is not binding on the Contracting Authority until the Contracting Authority has signed the Services Contract in accordance with paragraph 2.1.3 above.
- 3.6.2 Where the signed Services Contract and the Confidentiality Agreement have not been received by the Contracting Authority within the period as specified at clause 3.6.1 then the Contracting Authority may proceed to award the contract to the next highest-ranked Tenderer.

# **Appendix 1: Requirements and Specifications**

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## **GENERAL SPECIFICATION OF REQUIREMENTS**

### **1. Context**

Belvedere House, Gardens and Park is owned and operated by Westmeath County Council and attracts circa 130,000 visitors per annum. Belvedere is open 361 days of the year with family based events as organised from time to time but particularly at Easter, Halloween and Christmas. The 160-acre lakeside estate has a fully restored Georgian Villa and a large Victorian Walled Garden with four outdoor children's play areas. Belvedere Estate is host to several large-scale annual events such as Festivals, Athletics Meetings, Garden Festivals and is also a recognised venue for Civil Ceremonies.

Belvedere House operates an annual Membership Scheme which offers Season Ticket Holders access to the estate during normal opening hours with possible restrictions applying in the event of large scale third party events on the estate (e.g. LIFE Festival).

Currently the Season Ticket membership for the 12 months 1<sup>st</sup> October 2020 to 30<sup>th</sup> September 2021 is 1,950 tickets (approx) representing over 4,500 members including corporate memberships such as Mullingar Harriers Athletic Club, Westmeath Sports Partnership and Disability Groups who use the estate facilities throughout the year. Various ongoing promotions to attract new members occur throughout the year along with ongoing social media campaigns.

Belvedere House is a member of Heritage Island and Mid Ireland Tourism, with ongoing Marketing and Publicity campaigns via these memberships to increase visitor numbers and footfall to Belvedere.

Belvedere is centrally located with direct access from National Road N52 and is one hour's travel from Dublin on the M4.

### **2. The Café**

The Café is located in the Courtyard of the Visitor Centre, which is currently the main entrance and exit from Belvedere House Gardens & Park.

An existing Catering Operator has been operating quite successfully for 11 months. The purpose of this tender is to invite tenders from interested parties to operate the facilities as per the terms and conditions indicated in this tender.

This is a unique opportunity to operate catering facilities in one of Ireland's premier heritage tourism sites. It is expected that the Catering Operator shall:

- provide at least a minimum level of catering service during off peak hours and during the winter season to support the normal day to day operation and activities at the Estate.
- be creative during peak hours and peak season periods to enhance and optimise the contribution of the catering facility to the overall function and success of the Estate and its role as a major tourist attraction in the Midlands.

### **3. Opening Times for the Café**

The catering operator shall be responsible for the operation and management of the Café facilities for 52 weeks of the year (Monday-Sunday) acknowledging seasonally adjusted opening hours for Belvedere House, Gardens and Park as published from time to time.

Current schedule of opening times as follows:

<b>November to February</b> <i>(House closes at 4pm)</i>	9.30am to 4.30pm
<b>March &amp; October</b> <i>(House closes at 5pm)</i>	9.30am to 6.00pm
<b>April &amp; September</b> <i>(House closes at 5pm)</i>	9.30am to 7.00pm
<b>May to August</b> <i>(House closes at 5pm)</i>	9.30am to 8.00pm

*Last admission 1 hour before stated closing times.*

The Courtyard Café must operate during published opening hours to service daily visitors to Belvedere House, Gardens and Park, be they Free Independent Travellers (FIT) or pre booked tourists or other groups/visitors.

Where special/corporate events and evening functions are booked from time to time, the Catering Operator shall cater for such functions as required and as agreed.

### **4. The Retail Facility**

A small Retail Facility is located adjacent to the Courtyard Area in the Visitor Centre at Belvedere. The existing Catering Operator has also been operating the facility for the last four years quite successfully. The current operator's contract is coming to an end and the purpose of this tender is to invite tenders from interested parties to operate the Retail Facility as per the terms and conditions indicated in this tender.

This is a unique opportunity to operate the Retail Facility in one of Ireland's premier heritage tourism sites. It is expected that the Retail Facility Operator shall:

- provide at least a minimum level of service in the Retail Facility during off peak hours and during the winter season to support the normal day to day operation and activities at the Estate
- be creative during peak hours and peak season periods to enhance and optimise the contribution of the Retail Facility to the overall function and success of the Estate and its role as a major tourist attraction in the Midlands.

The opening times for the Retail Facility are as detailed at 3 above and unless otherwise agreed by Westmeath County Council with the Operator, the Retail Facility is not subject to extended opening hours.

### **5. Quality Control**

The Retail Facility Operator shall maintain the minimum service and quality levels as proposed in the tender for the duration of the Contract. Service and quality levels will be monitored on a regular basis and assessed as part of the performance measurement procedure under any contract.

**6. Indemnity**

The successful tenderer shall fully indemnify Westmeath County Council from all liability for losses to the tenderer's own staff, suppliers or agents and all members of staff working, visiting or conducting any form of business associated with the operations of the Café and the Retail Facility at Belvedere.

The ultimate aim is to increase the feasibility and profitability of Belvedere House, Gardens and Park and all its facilities.

## OPERATIONAL SPECIFICATION FOR THE CAFÉ AND GIFT SHOP

### The Café

- Westmeath County Council requires a catering service in the Courtyard Café at Belvedere House Gardens & Park during the seasonally adjusted opening hours of the facilities and as may be required from time to time for special event bookings and with a level of staffing to ensure quality customer service both at peak and off-peak times throughout the year.
- The Catering Operator shall provide menus that will cater for FIT market (Free Independent Travellers) and for the pre booked tour market and also corporate lunch facilities with both hot and cold meal options and including children's menus.
- The Catering Operator shall ensure timely provision of catering services so that all Visitors who wish to avail of the Café services can do so and that visiting groups/conference delegates must be able to complete their meals within their allocated stay at Belvedere.
- The Catering Operator is responsible for the cost of all utilities associated with the Courtyard Café such as Electricity, Gas, Water, Waste Disposal and Rates and shall pay an annual amount (ex VAT) to Westmeath County Council to cover utilities as set out in Appendix 2.
- Limited storage facilities will be available with an additional annual amount (ex VAT) payable to Westmeath County Council as set out in Appendix 2.
- Use of Office Space for Cash Handling etc will be provided at Belvedere along with reasonable use of a telephone line for matters directly relating to catering services.
- Westmeath County Council has provided the existing light and heavy catering equipment sufficient in the Café to service the daily needs of the building.
- Any other light/heavy equipment that the Catering Operator requires is being and shall be provided by the Catering Operator.
- The Catering Operator shall pay an additional fixed annual amount (ex VAT) and payable monthly as set out in Appendix 1 into a Capital Replacement Fund maintained by Westmeath County Council for the sole purpose of replacing any light and heavy equipment specifically in the ownership of Westmeath County Council, such as the oven, fridges, mixers and other permanent fixtures in the Café, with an expected life cycle that exceeds the Term of the Agreement or any extension thereof, and that may be deemed irreparable and confirmed by a Service Engineers report during the Term of the Agreement or any extension thereof, as well as further into the future under different catering operators. The Catering Operator shall not have any claim whatsoever on the balance of the fund or any unused contributions made towards the Capital Replacement Fund on completion of the Catering Operator's Term of the Contract or any extension thereof.

- The Catering Operator shall from the date of Contract, take full care at all times and shall be responsible for all servicing and repairs of all light and heavy equipment whether in the ownership of the Catering Operator or Westmeath County Council, if so required from time to time.
- The Catering Operator shall not remove any light or heavy catering equipment from the facility.
- The Catering Operator shall be responsible for servicing and repairs and replacement of his/her own light and heavy and other equipment being used in the Café.
- Westmeath County Council requires that the Café menus are of the highest quality consisting of the freshest ingredients prepared on each day of the service, offering the widest possible choice to suit the needs of visitors to Belvedere House Gardens & Park.
- A “Healthy Option” menu shall also be available.
- No reheated food is to be served at any time.
- The tariffs charged to Council Staff and nominees shall be considerably less than are charged at commercial retail levels, bearing in mind the level of input to the facilities by Westmeath County Council.
- The Catering Operator’s food costings shall reflect his/her best assessment of the portion sizes considered appropriate for Belvedere’s Courtyard Café catering services.
- The Catering Operator shall have available in the Café, specialty teas and coffees ranging from cappuccino, espresso, latte and a range of herbal teas.
- The Catering Operator shall demonstrate innovation and flair in the creation of menus and provide “special themes” catering for days such as “St. Patrick’s Day”, “Pancake Tuesday” etc...
- Promotion of new products and menu rotation is essential. Promotions are to be colourfully displayed on Catering Operator-provided advertising displays and must not cause damage to the structure, fixtures or fittings of the area.
- The Catering Operator shall brand the restaurant area appropriately in agreement with Westmeath County Council’s requirements.
- All food shall be served on catering delph with metal cutlery, the exception being “food-to-go”.
- The Catering Operator shall provide any additional delph, mugs, cutlery and catering utensils as required to operate the facility.

- All costs in relation to breakages, damages, losses or replacement of delph, mugs, cutlery and other catering utensils shall be for the Catering Operator's own Account.
- The Catering Operator shall not remove any delph, mugs, cutlery or other catering utensils from the facility.
- Washing of delph, mugs, cutlery and catering utensils shall be the responsibility of the Catering Operator using the equipment provided by Westmeath County Council.
- The Catering Operator shall be responsible for the provision of all cleaning materials required for the kitchen and Café areas.
- All waste disposals shall be the responsibility of the Catering Operator. The Catering Operator shall separate the waste into food and non-food and comply with existing waste recycling policies by delivering waste to designated collection points on a daily basis as currently arranged on the Estate.
- The Catering Operator shall comply with existing and future Environmental Regulations.
- The Catering Operator will support a green policy and make every effort to reduce, reuse, recycle.
- The Catering Operator shall be responsible for providing covered containers for kitchen refuse and swill.
- A satisfaction and performance review will be carried out quarterly for the first year and subsequently bi-annually.
- The Catering Operator shall operate a suggestion box scheme and periodic surveys, both to be agreed in advance with the Manager of Belvedere House Gardens & Park.
- Complaints shall be followed up within 24 hours.
- Westmeath County Council may from time to time need to obtain vouched refreshments and lunches for meeting purposes, VIP visits, etc. This will be operated to an agreed system between the Catering Operator and Westmeath County Council. Detailed tracking by the Catering Operator will be required for reimbursement upon presentation of the invoice.
- The Catering Operators product prices shall at all times be market related and competitive in order to optimise income from the Café enterprise to the Catering Operator and Westmeath County Council.
- The Catering Operator shall at all times comply with current Irish & EU Employment Legislation and adhere to prescribed rates of pay and conditions of employment relative to the industry.



- The Catering Operator shall at all times during the continuance of the contract comply with Food and Hygiene Regulation, Food and Drugs Act, By-Laws and Statutory Regulations governing catering establishments and carry out the requirements of the Health and Safety Executive and Sanitary Authorities.
- The Catering Operators on-site staff shall comply with Westmeath County Council's on-site Security and Health and Safety arrangements and regulations.
- The Catering Operator shall provide high quality uniforms to all its employees. Hairnets and proper foot-wear shall be worn at all times while working in the food serving areas/kitchen/tea stations.
- The Catering Operator shall ensure that periodic "deep cleans" are carried out.
- Cash and goods belonging to the Catering Operator or his /her staff stored on the premises shall be solely at the Catering Operator's risk.
- The Catering Operator shall display the price list of the full range of services in a prominent place in the Courtyard area.
- All Catering Operators staff shall be trained in personal and food production hygiene requirements and certified prior to commencing work on this site. This training shall be continuous and detailed records kept on site as evidence of this training.
- Other training to include:
  - Chemical handling and awareness
  - Fire regulations and awareness
  - Health and Safety at Work
  - Use of dangerous machines
  - Manual handling
  - Menu planning "Healthy Eating" etc.
  - Food preparation legislation
  - Food service and presentation standard
  - Administration
  - Client Policies and procedures
- The Catering Operator shall provide a copy of his/her Health and Safety Policy.
- The Catering Operator shall provide a level of staff with appropriate skills to achieve the required standard of catering service, having regard to the numbers to be catered for and to ensure efficient queuing arrangements.
- Any proposed changes in staffing arrangements shall be agreed with the Manager of Belvedere House Gardens & Park prior to the changes being implemented.
- The Catering Operator shall ensure that its' employees are at all times free from infections and communicable diseases or septic conditions and shall ensure that a

high level of hygiene and cleanliness in respect of the catering facilities and equipment is maintained

- The Catering Operator shall ensure that adequate training and first aid supplies are provided to cover requirements. The Catering Operator's catering manager, as a minimum must be trained in First Aid and Westmeath County Council will require certification of this training.
- The Catering Operator shall be responsible for all cleaning within the food serving areas and kitchen. The Catering Operator will also be responsible for the Cold Served Area and Catering Area in Belvedere House and any other locations in use by the Catering Operator.
- Proper and recognised sanitation cleaning chemicals and methods shall be used by the Catering Operator to ensure all surfaces are cleaned and sanitised. Material Safety Data sheets must be available for all chemicals.
- The Catering Operator shall ensure that spillages are cleaned up immediately.
- The Catering Operator shall ensure that all walls up to 2 meters high are cleaned at least weekly, with all splashes wiped off daily.
- The Catering Operator shall disinfect drains and other outlets daily and keep them covered.
- The Catering Operator shall ensure that all equipment used for the production of food is stored in a correct manner to ensure that contamination cannot occur.
- The Catering Operator shall immediately bring any infestation to the attention of the Manager of Belvedere House Gardens & Park.
- A comprehensive cleaning schedule shall be implemented by the Catering Operator and visual evidence of its ongoing operation displayed at all times.
- The Catering Operator shall examine and be prepared to exploit other opportunities as negotiated by Belvedere House, Gardens and Park, such as catering requirements in the lead up to, operation of and take down of third party site rentals and large scale outside events such as Music Festivals and Sports events, which may permit catering opportunities outside normal published opening hours during those events.
- The Catering Operator shall comply with all Environmental, Food, Health and Safety Legislation, regulations and guidelines as appropriate for its facilities and operations.

### **The Retail Facility**

- Westmeath County Council requires a retail service in the Retail Facility located at Belvedere House Gardens & Park during the seasonally adjusted opening hours of

the facilities with a level of staffing to ensure quality customer service both at peak and off-peak times throughout the year.

- The offering in the Retail Facility should be relevant and agreed with the Manager of Belvedere.
- The Operator shall stock and retail for sale gift products in the Retail Facility to cater for the FIT market (Free Independent Travellers), the pre-booked tour market and other visitors to the Estate throughout the year.
- The Operator shall be responsible for the cost of all utilities associated with the Retail Facility such as Electricity, Gas, Water, Waste Disposal and Rates and shall pay an annual amount to Westmeath County Council to cover utilities as set out in Appendix 2.
- The Operator shall operate the Retail Facility to the highest possible standard and ensure competitive and cost effective retail gift products are on sale to suit the needs of visitors to Belvedere House Gardens & Park.
- The Operator shall brand the Retail Facility appropriately in agreement with Westmeath County Council's requirements.
- All costs in relation to breakages, damages, losses or replacement of products in the Retail Facility shall be for the Operator's own Account.
- The Operator shall be responsible for the provision of all cleaning materials required for the Retail Facility area.
- All waste disposals in respect of the Retail Facility shall be the responsibility of the Operator. The Operator shall comply with existing waste recycling policies by delivering waste to designated collection points on a daily basis as currently arranged on the Estate.
- A satisfaction and performance review will be carried out quarterly for the first year and subsequently bi-annually.
- Complaints shall be followed up within 24 hours.
- The Operators product prices in the Retail Facility shall at all times be market related and competitive in order to optimise income from the Retail Facility to the Operator and Westmeath County Council.
- The Operator shall at all times comply with current Irish & EU Employment Legislation and adhere to prescribed rates of pay and conditions of employment relative to the industry.
- The Operator's on-site staff shall comply with Westmeath County Council's on-site Security and Health and Safety arrangements and regulations.

- The Operator shall provide high quality uniforms to all its employees
- The Operator shall ensure that periodic “deep cleans” of the Retail Facility area are carried out.
- Cash and goods belonging to the Operator or his/her staff stored on the premises shall be solely at the Operator’s risk.
- The Operator shall clearly display gift products prices within the Retail Facility area.
- The Operator shall provide a level of staff with appropriate skills to achieve the required standard of sales and service in the Retail Facility.
- The Operator shall be responsible for all cleaning within the Retail Facility area.
- Proper and recognised sanitation cleaning chemicals and methods shall be used by the Operator to ensure all surfaces are cleaned and sanitised. Material Safety Data sheets must be available for all chemicals.
- The Operator shall ensure that spillages are cleaned up immediately.

### **HEALTH AND SAFETY**

The successful Tenderer shall comply with the Safety, Health and Welfare at Work Act 2005, the Safety, Health and Welfare at Work (Construction) Regulations 2013, and any subsequent Safety, Health and Welfare legislation, regulations and requirements.

A non-exhaustive list of Particular Risks known to the Contracting Authority at the time of issue may include but are not limited to:

- Work in close proximity of Low Voltage,
- Work at heights.

The successful Tender shall perform a risk assessment for each assignment on its own merits for all hazards, particular and other risks and shall develop and implement safe systems of work, in the event that the successful Tenderer’s current safe systems of work will not be appropriate for the services required under a particular assignment.

### **INSURANCES**

The Employers Liability and Public Liability Insurance Policies must include an amendment that will fully indemnify Westmeath County Council against any claims under these Policies.

### **TRANSITION/ CHANGEOVER**

The Catering Operator shall liaise with the incumbent Catering Operator to ensure that the transition between incumbent Catering Operator and the successful Tenderer takes place with the least disruption for the customers and visitors to Belvedere House Gardens & Park.

The inventory of equipment, delph, cutlery and other utensils on site at the Café will be agreed with the successful tenderer prior to handover.

**TRANSFER OF UNDERTAKINGS PROTECTION OF EMPLOYMENT (TUPE)**

There may be a TUPE requirement for staff currently employed by the incumbent Catering Operator to the successful Tenderer. In terms of Clause 2.11.3 of this Request for Tenders, the Tenderer shall investigate this matter, and procure legal advice, and all information required for a due diligence investigation, from the incumbent Catering Operator, to establish the Tenderer's legal obligations.

## Appendix 2: Pricing/Remuneration Schedule

This Pricing/Remuneration Schedule sets out the details of the Total Remuneration payable by the successful tenderer to the Contracting Authority.

The successful tenderer shall pay to Westmeath County Council the amounts described below on the payment terms as described below and in the Terms and Conditions of the Agreement:

1. The tenderer shall pay to Westmeath County Council a fixed annual amount of €12,000 (ex VAT) to cover rates and utilities for the facilities (water, electricity, gas, waste disposal, etc) .
2. The tenderer shall pay to Westmeath County Council an additional fixed annual amount of €300 (ex VAT) to cover container storage facilities available.
3. The tenderer shall pay an additional fixed annual amount of €1,800 (ex VAT) into a Capital Replacement Fund for the sole purpose of replacing any light and heavy equipment that is deemed irreparable and as such needs to be replaced (See Appendix 1, Page 23 for full text detail).

*The tenderer shall enter below his/her % remuneration the tenderer shall pay to Westmeath County Council:*

4. The tenderer shall pay to Westmeath County Council Remuneration of a per centum (%) of the Net of VAT turnover for the Café and the Gift Shop as tendered below and for the term of the Agreement.

*For the purposes of assessment of the tenders the Total Remuneration below will be used as described in Section 3.3.2.2.*

Description	Notational Annual Turnover for Assessment of Tenders	(%) per centum of the Net of VAT turnover for the Term of the Agreement <i>(Enter percentage tendered below)</i>	Amount due to Westmeath County Council
Café	€320,482.64	%	€
Retail	€10,900	%	€
Annual fixed Payments for utilities and storage	€12,300		€12,300
Capital Replacement Fund contribution	€1,800		€1,800
Total Remuneration payable to Westmeath County Council Tendered			€

The per centum (%) of the Net of VAT monthly turnover shall be payable monthly in arrears for the Term of the Agreement. Net of VAT monthly turnover includes the turnover in operating the Café and Retail facilities, to include turnover for operating the Retail Facility during normal opening times, unless otherwise agreed (Appendix 1) and turnover in operating the catering facilities during normal opening hours and at functions, events and all other opportunities availed of to trade on the Estate (Appendix 1).

The Tenderer shall prepare a schedule of the net of VAT monthly turnover figure for the Café and Retail Facility operations at the end of each calendar month. The Tenderer shall present this Schedule to his/her accountant or accountant nominated by Westmeath County Council for preliminary verification. The Tenderer shall forward the Schedule to the Client.

After a period of six months the Tenderer's accountant or accountant nominated by Westmeath County Council shall prepare a reconciled schedule comparing amounts previously verified with finalised monthly turnover figures for the period for certification. Any over/under estimation in the verified turnover amount shall be adjusted in the first invoice due after the reconciled schedule becomes available.

## **INVOICING**

**A. Invoicing for the fixed contributions (ex VAT) to cover rates and utilities for the facility (water, electricity, gas, waste disposal) and also including the fixed contribution (ex VAT) to cover container storage facilities available:**

Westmeath County Council shall issue monthly invoices for the fixed contribution (ex VAT) to cover rates and utilities for the facilities (water, electricity, gas, waste disposal) and also including the fixed contribution (ex VAT) to cover container storage facilities available. The Tenderer shall settle each invoice in full by the 7<sup>th</sup> day of each calendar month or the first working day after the 7<sup>th</sup>, if the 7<sup>th</sup> falls on a weekend.

**B. Invoicing for the per centum of Net of VAT monthly turnover.**

On receipt of the schedule with the monthly verified turnover figure, or the six monthly certified figures, Westmeath County Council will prepare an invoice for the amount due based on the verified or certified turnover as appropriate for the month and the per centum (%) turnover. Westmeath County Council will forward the invoice to the Tenderer who shall settle the invoice in full within 6 days from date of invoice.

**C. Invoicing for the fixed contribution (ex VAT) to the Capital Replacement Fund:**

Westmeath County Council shall issue monthly invoices in respect of the fixed contribution (ex VAT) payable into the Capital Replacement Fund (Appendix 1, page 23). The Tenderer shall settle each invoice in full by the 7<sup>th</sup> day of each calendar month or the first working day after the 7<sup>th</sup>, if the 7<sup>th</sup> falls on a weekend.

**Details of Catering Turnover for 2019 at Belvedere – Note: 2019 represents the last full years uninterrupted trading figures (Unaudited Figures Only)**

2019 Gross Turnover (Inclusive of VAT) figures are as follows:

Jan	€18020.48
Feb	€21898.18
March	€22489.40
April	€33228.45
May	€28148.25
June	€32208.75
July	€45036.52
Aug	€40265.52
Sept	€22743.47
Oct	€23513.36
Nov	€12866.09
Dec	€20064.39
	<hr/>
	<hr/>
	€320,482.64

**Details of Retail Space Turnover for 2019 at Belvedere – Note: 2019 represents the last full years uninterrupted trading figures (Unaudited Figures Only)**

2019 Gross Turnover (Inclusive of VAT) figures are as follows:

Jan	€800
Feb	€410
March	€360
April	€750
May	€600
June	€550
July	€830
Aug	€300
Sept	€600
Oct	€1800
Nov	€1100
Dec	€2800
	<hr/>
	<hr/>
	€10,900



## **Appendix 3: Tenderers' Statement**

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

### **TENDERERS' STATEMENT**

**TO:** Westmeath County Council

**RE: Request for Tenders for the Provision of Catering Services and Operation of the Catering Facilities and including the Operation of the Retail Facility at Belvedere House Gardens & Park, Mullingar, Co. Westmeath, Ireland**

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

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFT.
2. We accept all of the Terms and Conditions of the Services Contract and the Confidentiality Agreement and agree if awarded any contract to execute the Services Contract at Appendix 6 to the RFT.
3. We accept all the Qualification and Award Criteria as set out in Part 3 of the RFT.
4. We agree to provide the Contracting Authority with the Services in accordance with the RFT and our Tender.
5. We confirm that we have complied with all requirements as set out at Part 2 of the 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 the RFT, in particular but not exclusively paragraph 2.11.1 of the RFT.
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 its 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.
9. We satisfy the Qualification Criteria as set out at paragraph 3.2.A of the RFT and, if requested by the Contracting Authority, shall immediately furnish such evidence as may demonstrate our economic and financial capacity in accordance with the said paragraph 3.2.A.
10. We shall, if awarded any contract under the RFT, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFT.

**SIGNED**

**Company**

**(Authorised Signatory)**

**Print name**

**Address**

**Date**



## Appendix 4: Tenderers Aide-Memoire

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1. Have you addressed all the requirements in Part 2?
2. Have you signed and completed all the relevant pages where so required?
3. If required, have you completed the Pricing/Remuneration Schedule at Appendix 2?
4. If submitting the Tender by hand or by post, have you correctly addressed the Tender return package (including marking it 'Confidential' and setting out the RFT Title as per paragraph 1.2 of the RFT)?
5. Have you returned all the documentation required?
6. Have you noted the closing time and date for return of the Tender?
7. **If requested in paragraph 2.6 to submit** by eTenders ([www.etenders.gov.ie](http://www.etenders.gov.ie)), have you taken into account the extra time that may be required, to upload all documents? (See warning on large documents at paragraph 2.6.1 of the RFT).

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

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### **Re: Request for Tenders for the Provision of Catering Services and Operation of the Catering Facilities and including the Operation of the Retail Facility at Belvedere House Gardens & Park, Mullingar, Co. Westmeath, Ireland**

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

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

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

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

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

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

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

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

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

## **Appendix 6: Services Contract**

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Westmeath County Council

and

**TBC**

**AGREEMENT**

Relating to the Provision of Services pursuant to

**Request for tenders for the Provision of Catering  
Services and Operation of the Catering Facilities  
and including the Operation of the Retail Facility at  
Belvedere House Gardens & Park, Mullingar, Co.  
Westmeath Ireland**

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

Westmeath County Council, of Áras an Chontae, Mullingar, Co. Westmeath. (“the Client”);  
and

TBC (“the Contractor”)  
 (“the Parties”).

**WHEREAS:**

A.

**By Request for Tender dated 8<sup>th</sup> August 2022**

the Client invited tenders for the provision of Catering Services and Operation of the Catering Facilities and including the Operation of the Retail Facility at Belvedere House Gardens & Park, Mullingar, Co. Westmeath, Ireland (“the RFT”) (which document is attached hereto in Schedule F), 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 [Date of Tender: to be completed on signing.] 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.

**IT IS HEREBY AGREED AS FOLLOWS:**

1. The Contractor agrees to provide the Services described in Schedule B (“the Services”) in accordance with this Agreement (“Agreement”). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT 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 **[Stephen Masterson] of [Manager of Belvedere House Gardens & park, Mullingar]**; the Contractor’s Contact is **[TBC] of [TBC]**
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 (“the Effective Date”) and shall expire on [ ], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

The Client reserves the right to extend the Term for a period or periods of up to [12] months with a maximum of [1] such extensions permitted subject to its obligations at law.

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

## Schedule A: Terms and Conditions

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### 1. Contractor's Obligations

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

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

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

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

### **3. Key Personnel**

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

### **4. Pricing /Remuneration**

- A. The Pricing/Remuneration Schedule (Appendix 1 of RFT) sets out the details of the Total Remuneration payable by the Contractor to the Contracting Authority, on the payment terms as described in the Terms and Conditions of the Agreement: Invoicing arrangements shall be on such terms as to be agreed between the Parties.
- B. The Charges shall include any and all expenses incurred by the Contracting Authority, or, its employees, servants and agents in the performance of the Services by the Contractor.

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

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

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

- B.** The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, representations and undertakings as set out at clause 5A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

## **6. Remedies**

- A.** The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, subcontractors or agents or any of them or as a result of the Contractor’s failure to exercise care as outlined in clause 1. The terms of this clause 6A shall survive termination of this Agreement for any reason.

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

## **7. Intellectual Property**

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

Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.

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

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

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

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

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

## **8. Confidentiality**

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



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

## **9. Force Majeure**

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

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

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

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

C. If the Force Majeure Event continues for [30 days either Party may terminate at 14 days' notice.

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

## 10. Termination

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

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

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

and/or

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

## **11. Contract Management**

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

- B.** The Contractor agrees to:
1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations, including the time scale of completion of the key components of the Services;
  2. comply with the reporting arrangements and protocols required by the Client from time to time; and
  3. comply with all reasonable directions of the Client.
- C.** The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

## **12. Disputes**

Subject to clause 13A and to the Parties' respective rights to apply to the courts upon any cause of action at any time, the Parties shall seek to resolve any disputes between them, arising out of or relating in any way to the issues covered by the Agreement, amicably. The Parties may agree procedures and protocols for dispute resolution from time to time. The Client expects that the Contractor utilise the State's industrial relations procedures, including the Labour Relations Commission and/or the Labour Court, for the purpose of resolving employment disputes with its employees.

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

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

## **14. Notices**

- A.** Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will

from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.

**B.** All notices shall be deemed to have been served as follows:

1. if personally delivered, at the time of delivery;
2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
3. if sent by electronic mail, on the first day following successful transmission.

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

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

### **16. Entire Agreement**

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

### **17. Severability**

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

### **18. Waiver**

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

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

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

## **20. Media**

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

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

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

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

- A. Save as the Client may otherwise direct, the Contractor is deemed to have inspected the Client's premises, lands and facilities before submitting its Submission and to have made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement.
- B. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the

Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

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