

Stáisiún Uí Chonghaile, Baile Átha Cliath 1, D01 V6V6

Connolly Station, Dublin 1, D01 V6V6

T 01 703 4293 E foi@irishrail.ie W www.irishrail.ie



16th July 2021

Email: [REDACTED]

Re: FOI request IE_FOI_486

Dear [REDACTED]

I refer to your request dated 17th June 2021 made under the Freedom of Information Act 2014, which was received on by my office on that date, for records held by Iarnród Éireann.

Request:

- Details of tender as well as contracts (including contracted company) for the following services:
 - 1 Maintenance of lifts
 - 2 Supply and installation of new lifts, including the make and model of lifts being supplied to Irish Rail for all services (including intercity, commuter, DART etc.)

This request is to cover the period 01 January 2016 to the date of receipt of this request.

The decision maker handling your request is Ms. Karen Conroy.

Response:

I, [REDACTED], Decision Maker have now made a final decision to part grant your request on 16th July 2021.

You have sought access to the records outlined above and I consider this an appropriate form of access in this case. Accordingly a copy of the records is now enclosed including a copy of the schedule to these records.

Rights of appeal

In the event that you are not happy with this decision you can make an appeal in relation to this matter, you can do so by writing to the FOI Unit, Corporate Communications, Iarnród Éireann Irish Rail, Connolly Station, Amiens St, Dublin 1 or by e-mail to foi@irishrail.ie. You should make your appeal within 4 weeks (20 working days) from the date of this notification, where a day is defined as a working day excluding, the weekend and public holidays, however, the making of a late appeal may be permitted in appropriate circumstances.

The appeal will involve a complete reconsideration of the matter by a more senior member of the staff of this body.

Should you have any questions or concerns regarding the above, please contact the FOI Officer on [REDACTED] or by email at foi@irishrail.ie

Yours sincerely,

[REDACTED]

[REDACTED], FOI Decision Maker, Procurement, Iarnród Éireann

Schedule of Records for IE_FOI_486: Summary for Decision Making

Record No.	Date of Record	Brief Description		No. of Pages	Decision: Grant/Part Grant/Refuse	Section of Act if applicable	Record Edited/Identify Deletions
1	27/02/2019	RFT 147108 Contract Notice	Supply & Installation	4	Grant	~	
2	01/03/2019	RFT 147108 Details	Supply & Installation	3	Grant	~	
3	12/09/2019	Executed FA	Supply & Installation	10	Part Grant	S37	Personal Information relating to others
4	12/09/2019	Signed letter of acceptance	Supply & Installation	2	Part Grant	S37	Personal Information relating to others
	12/09/2019	Signed letter of acceptance	Supply & Installation	2	Part Grant	S36(1b)	Commercially sensitive information which could prejudice the competitive position of the contractor
5	27/09/2019	Rates of Pay	Supply & Installation	1	Part Grant	S37	Personal Information relating to others
6	27/09/2019	Appointment of a project supervisor	Supply & Installation	5	Part Grant	S37	Personal Information relating to others
7	12/10/2019	Contract Award notice	Maintenance of Lifts	3	Grant	~	
8	10/02/2019	RFT 146101 -Details	Maintenance of Lifts	3	Grant	~	
9	10/02/2019	RFT_146101 Contract Notice	Maintenance of Lifts	4	Grant	~	
10	~	Lift and Escalator Contract execution version	Maintenance of Lifts	59	Grant	~	
11	~	Signed Execution Block	Maintenance of Lifts	4	Part Grant	S37	Personal Information relating to others

requirements and prohibitions imposed on the Project Supervisor by this Agreement and under the relevant statutory provisions. In this Agreement, **competent person** and **relevant statutory provisions** are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005 and any amendment to it.

6. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
7. The Project Supervisor represents and warrants to the Client that the information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Contractor is required to have under clauses 3.6 and 3.7 of the Conditions of the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Agreement and the Construction Regulations.
9. Payment for the Project Supervisor's service is provided for under the Contract. Accordingly, the Client is not liable under this Agreement for the Project Supervisor's fees or expenses.
10. If the Project Supervisor breaches its obligations or warranties under this Agreement, or if the Contractor's duty to complete the Works is terminated under the Contract, the Client may terminate the Project Supervisor's appointment under this Agreement.
11. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Agreement (**Project Supervisor's Documents**). If the Project Supervisor's appointment under this Agreement terminates, the Project Supervisor shall give all Project Supervisor's Documents to the Client immediately. Ownership of and copyright in the Project Supervisor's Documents shall become the Client's when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
12. This Agreement is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

Given under the Client's seal

Affix Client's seal

Signatures of persons authorised to authenticate the seal

OR

Signed on behalf of the Client

Signature of authorised person

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In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's address

	CATERGORY BOYER.
	Inchicore DUBLIN 8.

Given under the Project Supervisor's common seal

Affix Project Supervisor's common seal

Signatures of persons authorised to authenticate the seal

OR

Signed, sealed and delivered by

Name of attorney

Signature of attorney

As lawful attorney of the Project Supervisor under a power of attorney dated

Affix attorney's personal seal

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's address

OR

Signed on behalf of

Name of the Project Supervisor

Signature of authorised person

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's address

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SALES REPRESENTATIVE

OR (if the Project Supervisor is an individual)

Signed, sealed and delivered by

Name of Project Supervisor

Signature of Project Supervisor

Affix personal seal

In the presence of

Signature of witness

Name of witness

Witness's occupation

Witness's address

OR

Signed by

Name of Project Supervisor

Signature of Project Supervisor

In the presence of

Name of witness

Signature of witness

Witness's occupation

Witness's address

Contract award notice – utilities

Results of the procurement procedure

Services

Directive 2014/25/EU

Section I: Contracting entity.

I.1) Name and addresses

Iarnrod Eireann-Irish Rail

N/A

Procurement, CIE Works,

Dublin 8

Inchicore

IE

Contact person: Fergal Riggs

Telephone: +353 017033718

E-mail: fergal.riggs@irishrail.ie

Fax: +353 014537349

Internet address(es):

Main address: WWW.IRISHRAIL.IE

Address of the buyer profile: [https://irl.eu-](https://irl.eu-supply.com/ctm/Company/CompanyInformation/Index/433)

[supply.com/ctm/Company/CompanyInformation/Index/433](https://irl.eu-supply.com/ctm/Company/CompanyInformation/Index/433)

I.6) Main activity

Railway services

Section II: Object

II.1) Scope of the procurement

II.1.1) Title

Maintenance of Lifts and Escalators

Reference number: 7174

II.1.2) Main CPV code

50740000 - Repair and maintenance services of escalators

II.1.3) Type of contract

Services

II.1.4) Short description

This is a Contract Award Notice Only by IE for the procurement of Lift and Escalator Maintenance Services for Irish Rail and the CIE Holding Company concluded in July 2019.

The Successful tenderer was Orona Mid Western Lifts Limited. This contract will have an initial award period of 3 years with an option to extend for up to 2 additional years at IE's discretion

II.1.6) Information about lots

This contract is divided into lots: no

II.2) Description

II.2.2) Additional CPV code(s)

42416000 - Lifts, skip hoists, hoists, escalators and moving walkways

45313000 - Lift and escalator installation work

- 50710000 - Repair and maintenance services of electrical and mechanical building installations
- 50750000 - Lift-maintenance services
- 71333000 - Mechanical engineering services
- 71334000 - Mechanical and electrical engineering services

II.2.4) **Description of the procurement**

This is Contract Award Notice only by IE for the procurement of Lift and Escalator Maintenance Services for Irish Rail and the CIE Holding Company. The Successful tenderer is Orona Mid Western Lifts Limited.

This contract will have an initial award period of 3 years with an option to extend for up to 2 additional years at IE discretion

II.2.11) **Information about options**

Options: yes

Description of options:

Option to extend for an additional period of up to 2 years.

II.2.13) **Information about European Union funds**

The procurement is related to a project and/or programme financed by European Union funds: no

II.2.14) **Additional information**

See PQQ attached

Section IV: Procedure

IV.1) **Description**

IV.1.1) **Type of procedure**

Negotiated procedure with prior call for competition

IV.1.8) **Information about the Government Procurement Agreement (GPA)**

The procurement is covered by the Government Procurement Agreement : no

IV.2) **Administrative information**

IV.2.1) **Previous publication concerning this procedure**

Notice number in the OJ S: 2019/S 031-070665

Section V: Award of contract

Contract No: 1

Title: Maintenance of Lifts and Escalators

A contract/lot is awarded: yes

V.2) **Award of contract**

V.2.1) **Date of conclusion of the contract**

30/09/2019

V.2.3) **Name and address of the contractor (Agree to publish? yes)**

Orona Mid Western Lifts Limited
Limerick
IE

The contractor is an SME : yes

Section VI: Complementary information

VI.4) **Procedures for review**

VI.4.1) **Review body**

The High Court
Dublin
IE

Station	Lifts type & age	Lift Locations	Projects - L1 Full or L3 Partial Replacement of lifts	EU Declaration of Conformity 2014/33/EU + Harmonised EN81 standards -Lifts	Full or partial replacement by	Lift Certified by	Type of Lift Control systems	Open Protocol (Y/N)
GRAND CANAL DOCK	2001 - Walter Mayer	Platform 1	2016/L1 - Full Lift Replacement	Yes - 2016	Orona Mid Western Lifts	Orona - 2016	Lisa 30	Yes
GRAND CANAL DOCK	2001 - Walter Mayer	Platform 2	2016/L1 - Full Lift Replacement	Yes - 2016	Orona Mid Western Lifts	Orona - 2016	Lisa 30	Yes
GRAND CANAL DOCK	2001 - Walter Mayer	Entrance Lift at Barrow Street	2016/L1 - Full Lift Replacement	Yes - 2016	Orona Mid Western Lifts	Orona - 2016	Lisa 30	Yes
MALLOW	2002 - Walter Mayer	Platform 1	2017/L1 - Full Lift Replacement	Yes - 2017	Orona Mid Western Lifts	Orona - 2017	Arca 3	Yes
MALLOW	2002 - Walter Mayer	Platform 2	2017/L1 - Full Lift Replacement	Yes - 2017	Orona Mid Western Lifts	Orona - 2017	Arca 3	Yes
CONNOLLY - DART Subway	1999 - Walter Mayer	DART Subway	2017/L1 - Full Lift Replacement	Yes - 2017	Orona Mid Western Lifts	Orona - 2017	Arca 3	Yes
CONNOLLY - P6/7	2018 - Pickerings Lifts	Platform 6&7	New lift asset put in service	Yes - 2018	Pickerings Lifts	Pickerings - 2018	Lisa 30	Yes
PORTARLINGTON	2001 - Atwell	Platform 1	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
PORTARLINGTON	2001 - Atwell	Platform 2	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
PORTLAOISE	2001 - Atwell	Platform 1	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
PORTLAOISE	2001 - Atwell	Platform 2	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
DROGHEDA	2003 - Mc Pursa	Platform 1	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
DROGHEDA	2003 - Mc Pursa	Platform 2	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
DUNDALK	1996 - Otis	Island Platform	2018/L1 - Full Lift Replacement	Yes - 2018	Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
CORK	2019 - Orona	Horgan Quay Entrance	New Lift Asset put in service	Yes - 2018	SIAC/Orona Mid Western Lifts	Orona - 2018	Arca 3	Yes
GREYSTONES	2009 - Assension	Platform 1	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
GREYSTONES	2009 - Assension	Platform 2	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
NEWBRIDGE	2010 - Assension	Platform 2	2020/ L3 - Partial Replacement	2010 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
SALTHILL & MONKSTOWN	2012 - Assension	Platform 1	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
SALTHILL & MONKSTOWN	2012 - Assension	Platform 2	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
BAYSIDE	2006 - Mid Western	Island Platform	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
DOCKLANDS	2009 - West of Ireland	Island Platform	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
DONABATE	2011 - Assension	Platform 1	2020/ L3 - Partial Replacement	2011 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
DONABATE	2011 - Assension	Platform 2	2020/ L3 - Partial Replacement	2011 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
MALAHIDE	2011 - Assension	Platform 1	2020/ L3 - Partial Replacement	2011 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
MALAHIDE	2011 - Assension	Platform 2	2020/ L3 - Partial Replacement	2011 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
NAVAN ROAD PARKWAY	2007 - West of Ireland	Platform 1	2020/ L3 - Partial Replacement	2007 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
NAVAN ROAD PARKWAY	2007 - West of Ireland	Platform 2	2020/ L3 - Partial Replacement	2007 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
RAHENY	2006-Orona	Platform 1	2020/ L3 - Partial Replacement	2006 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
RUSH & LUSK	2010 - Assension	Platform 1	2020/ L3 - Partial Replacement	2010 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
RUSH & LUSK	2010 - Assension	Platform 2	2020/ L3 - Partial Replacement	2010 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
ATHENRY	2009 - West of Ireland	Platform 1	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
ATHENRY	2009 - West of Ireland	Platform 2	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
BALBRIGGAN	2001 - Atwell	Platform 1	2020/ L1 - Full Lift Replacement	Yes - 2020	Infinity Lifts	Infinity Lifts - 2020	Altmiria 2	Yes
BALBRIGGAN	2001 - Atwell	Platform 2	2020/ L1 - Full Lift Replacement	Yes - 2020	Infinity Lifts	Infinity Lifts - 2020	Altmiria 2	Yes
SKERRIES	2001 - Atwell	Platform 1	2020/ L1 - Full Lift Replacement	Yes - 2020	Infinity Lifts	Infinity Lifts - 2020	Altmiria 2	Yes
SKERRIES	2001 - Atwell	Platform 2	2020/ L1 - Full Lift Replacement	Yes - 2020	Infinity Lifts	Infinity Lifts - 2020	Altmiria 2	Yes
DUN LAOGHAIRE	1998 - KONE-FIAMM	Platform 1	2020/ L1 - Full Lift Replacement	Yes - 2020	Infinity Lifts	Infinity Lifts - 2020	Altmiria 2	Yes
DUN LAOGHAIRE	1998 - KONE-FIAMM	Platform 2	2020/ L1 - Full Lift Replacement	Yes - 2020	Infinity Lifts	Infinity Lifts - 2020	Altmiria 2	Yes
TARA STREET	2000 - Schindler	Platform 1	2020/ L3 - Partial Replacement	2000 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
TARA STREET	1998 - KONE-FIAMM	Platform 2	2019/ L1 - Full Lift Replacement	Yes - 2019	Infinity Lifts	Orona - 2019	Arca 3	Yes
LIMERICK JUNCTION	2020 - Global/Orona	Platform 1	New Lift Asset put in service	Yes - 2020	Orona Mid Western Lifts	Orona - 2020	Arca 3	Yes
LIMERICK JUNCTION	2020 - Global/Orona	Platform 2	New Lift Asset put in service	Yes - 2020	Orona Mid Western Lifts	Orona - 2020	Arca 3	Yes
PEARSE	2012 - Assension	Platform 1, Westland Row	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
PEARSE	2012 - Assension	Platform 1, Trinity Underpass	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
PEARSE	2012 - Assension	Platform 2, Westland Row	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
PEARSE	2012 - Assension	Platform 2, Trinity Underpass	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
CLONTARF ROAD	2012 - Assension	Platform 1	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
CLONTARF ROAD	2012 - Assension	Platform 2	2020/ L3 - Partial Replacement	2012 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
CLONGRIFFIN	2009 - Mc Pursa	Platform 1	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
CLONGRIFFIN	2009 - Mc Pursa	Platform 2	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
BOOTERSTOWN	2006-Orona	Platform 1	2020/ L3 - Partial Replacement	2006 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
BOOTERSTOWN	2006-Orona	Platform 2	2020/ L3 - Partial Replacement	2006 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
BLACKROCK	2006-Orona	Platform 1	2020/ L3 - Partial Replacement	2006 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
BLACKROCK	2006-Orona	Platform 2	2020/ L3 - Partial Replacement	2006 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
SEAPOINT	2009 - Assension	Platform 1	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
SEAPOINT	2009 - Assension	Platform 2	2020/ L3 - Partial Replacement	2009 - EN 81 standards	Orona Mid Western Lifts	Orona - 2020	Edel K2	Yes
CLONSILLA	2010 - Assension	Platform 1	2020/ L3 - Partial Replacement	2010 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
CLONSILLA	2010 - Assension	Platform 2	2020/ L3 - Partial Replacement	2010 - EN 81 standards	Infinity Lifts	Infinity Lifts - 2020	Lester, Almaga 2	Yes
TEMPLEMORE	2002 - Atwell	Platform 1	L1 - Full Lift Replacement	Yes - 2021	Orona Mid Western Lifts	Orona - 2021	Arca 3	Yes
TEMPLEMORE	2002 - Atwell	Platform 2	L1 - Full Lift Replacement	Yes - 2021	Orona Mid Western Lifts	Orona - 2021	Arca 3	Yes
ENNIS	2021 - Ward & Burke	Platform 1	New Lift Asset put in service	Yes - 2021	Orona Mid Western Lifts	Orona - 2021	Arca 3	Yes
ENNIS	2021 - Ward & Burke	Platform 2	New Lift Asset put in service	Yes - 2021	Orona Mid Western Lifts	Orona - 2021	Arca 3	Yes

Framework Agreement

for

Construction Work

Department of Finance

Public Works Framework Agreement
Document Reference PW-CF9 v.1.0
15 April 2010

© 2009 Department of Finance

Published by: Department of Finance
Government Buildings
Upper Merrion Street
Dublin 2.

Agreement

THIS FRAMEWORK AGREEMENT is made on 27.09.2019 BETWEEN

The Employer: Irish Rail

Principal office of Employer: Connolly Station, Dublin 1

AND

The Contractor: Orona Mid Western Lifts Limited,
Corcanree Business Park,
Dock Road.
Limerick

Registered office of Contractor: Orona Mid Western Lifts Limited,
Corcanree Business Park,
Dock Road.
Limerick

THE EMPLOYER AND THE CONTRACTOR AGREE as follows:

1. Framework

- 1.1 The Contractor and other Participants named in the attached Framework Rules are part of a framework for the Contractor and those other Participants to do construction work for the Employer.
- 1.2 If, during the **Framework Period** defined in the attached Framework Rules, the Employer needs construction work as described in the Framework Rules, the Employer may procure the work by awarding contracts (**Works Contracts**) according to the attached Framework Rules. The Employer may also procure the work in other ways, and does not guarantee that any work will be procured under this agreement.

2. Works Contracts

- 2.1 If the Contractor is selected for any work according to the attached Framework Rules, the Employer and Contractor agree to enter a Works Contract in the terms established under this agreement.
- 2.2 Works Contracts will be on the terms of the Minor Building and Civil Engineering Works designed by the Employer, as completed by the Employer and the Contractor according to the attached Framework Rules.
- 2.3 Works Contracts awarded within the Framework Period may be for work that continues after that period.

3. Communications

- 3.1 The Contractor's contact person for communications with the Employer in relation to this agreement and Works Contracts is:

Name of Contractor's contact person

Address	Orona Mid Western Lifts Limited, Corcanree Business Park, Dock Road. Limerick		
Telephone	01 8645020	Mobile phone	[REDACTED]
Fax		eMail	

If that person (or any subsequent replacement) is no longer able to fulfil the role, the Contractor must promptly appoint a replacement, who must be a director or senior manager of the Contractor, and notify the Employer of the new contact person.

- 3.2 The Employer's contact persons for communications with the Contractor in relation to this agreement is:

Name of Employer's contact person	[REDACTED]		
Address	Building & Facilities, Irish Rail, CIE Works, Inchicore, Dublin 8		
Telephone		Mobile phone	[REDACTED]
Fax		eMail	

The Employer may change these details by notice to the Contractor.

4. Tax Clearance Certificate

At all times during the Framework Period, the Contractor must hold a valid tax clearance certificate issued by the Revenue Commissioners.

5. Performance Measurement

- 5.1 On completion of each Works Contract, and other times requested by the Employer, the Contractor must collate and give the Employer the data necessary to demonstrate compliance with the performance indicators listed in the attached Performance Measurement Table.
- 5.2 The Employer may review the Contractor's performance according to the attached Framework Rules and Performance Measurement Table. The Contractor must provide any information required by the Employer for this.

6. Confidentiality

- 6.1 The Contractor must not disclose to anyone:
- official information as defined in the Official Secrets Act 1963 or
 - other information that the Employer notifies the Contractor is confidential
- except as necessary to perform the Contractor's obligations under this agreement or a Works Contract or to comply with the law.
- 6.2 The Contractor's obligations under this clause are perpetual, and this clause survives termination of this agreement.

7. Termination

- 7.1 The Employer may terminate this agreement by written notice to the Contractor:

- if a Works Contract with the Contractor is terminated or
 - according to the attached Framework Rules or
 - if the Contractor breaks this agreement or
 - if any statement made by the Contractor in connection with the procedure by which this agreement was awarded to the Contractor was untrue when made or subsequently ceases to be true or
 - without cause, if the Employer also terminates its agreements with the other Participants listed in the Framework Rules.
- 7.2 Termination of this agreement does not affect any Works Contract already entered.
- 7.3 The Contractor is not entitled to any payment because this agreement has been terminated.

8. **Limitation on liability**

Neither the Contractor nor the Employer have any liability to the other under or in connection with this agreement for breach of contract, negligence, breach of duty or anything else. This does not affect their liability under any Works Contract.

9. **This Agreement**

- 9.1 Neither party may assign rights under this agreement.
- 9.2 This, and any Works Contracts, are the entire agreement between the Employer and the Contractor about its subject matter. Neither the Employer nor the Contractor has relied on any agreement, understanding, or statement that is not written or referred to in this agreement.
- 9.3 This agreement can only be changed in writing, signed by authorised representatives of the Employer and the Contractor.
- 9.4 This agreement is governed and to be construed according to Irish law.

SIGNED by the Employer and the Contractor on the date at the top of this agreement

Signed on behalf of the Employer:

*Signature of person authorised to
sign contracts on behalf of the
Employer:*

[Redacted signature area]

Signed on behalf of the Contractor:

*Signature of person authorised to
sign contracts on behalf of the
Contractor:*

[Redacted signature area]

Framework Rules

1. The Framework

1.1 *The Employer* Irish Rail

has established a framework for the procurement of construction work in relation to Lift and Escalator Supply and Installation

The framework consists of a **Framework Agreement** between the Employer and each of the **Participants** listed below. Each Framework Agreement incorporates these rules.

1.2 If, during the period

starting on 27.09.2019

and ending on 01.03.2020

(the **Framework Period**), the Employer needs construction work as described in rule 1.1 above, the Employer may procure it by awarding **Works Contracts** according to these rules. The Employer may also procure the work in other ways, and does not guarantee that any work will be procured under these rules.

2. Participants

2.1 The Participants in the Framework are listed below, in alphabetical order.

Orona Mid Western Lifts Limited

2.2 A Participant whose Framework Agreement has been terminated will no longer be considered a Participant under these rules.

3. **Call off by competition**

- 3.1 When the Employer decides to procure work under these rules, the Employer will send each Participant a written invitation to tender. The invitation will be sent by email to each Participant's current email address as given in or notified under its Framework Agreement. The invitation will include a draft Works Contract, based on the *Minor Building and Civil Engineering Works designed by the Employer*, with the Schedule completed by the Employer in its discretion, including details of the required Works. The invitation will fix a time limit for Participants to send in tenders taking account of such factors as the complexity of the subject-matter of the Works Contract and the time needed to send in tenders.
- 3.2 The award process for Works Contracts tendered under this rule 3 will be conducted in accordance with these rules and any procedures stated in the invitation to tender. It may include an electronic auction.
- 3.3 Participants wishing to be considered for a Works Contract must submit a tender complying with the invitation to tender. Tenders must propose resources (including key persons) that are consistent with the Participant's tender proposal for its Framework Agreement.
- 3.4 The award criteria for Works Contracts awarded under a procedure initiated under this Rule 3 will be as follows (with the range of weighting given in brackets):

Total Comparative Cost 70%

Project Execution Plan: 10% (Failure to achieve 40% of the marks available in this criterion will result in elimination from the process)

Management structure & field personnel

Lift contractors to outline overall company management structure within their local organisation and the management and field personnel responsible for carryout this project and include full CV of each employee.

Tender Particulars

Lift Contractor to must submit the technical and constructional details of the equipment proposed.

Any deviations from the Specification and any other information relevant to the Tender shall be set out. Any areas of non-compliance with Iarnród Éireann's Technical Specification may exclude the tender from further consideration.

Safety Plan 10% (Failure to achieve 40% of the marks available under this criterion will result in eliminaiton from the process)

A draft Site Specific Construction Stage Safety and Health Plan

Project Specific Plan 10% (Failure to achieve 40% of the marks available under this criterion will result in elimination from the process)

Project Programme detailing the key project activity/task schedules and milestone dates showing a Contract Award Date as per the project requirements.

The programme must also identify a Delivery of Lifts to site plan for the date specified in the project plan

The programme must also set out a plan for final commissioning by the date set out in the project plan.

The above criteria are not listed in order of importance. The Employer may attach different weightings to them for different Works Contracts, depending on the service requirement, and will indicate the weightings in the invitation to tender.

4. **Performance Review, Termination and Promotion**

- 4.1 On completion of each Works Contract, the Participant concerned must collate and provide to the Employer the information required for the Employer to review that Participants' performance according to the attached Performance Measurement Table. The Employer may review Participants' performance of their Works Contracts and the Framework Agreement at the end of each year of the Framework Period, according to the attached Performance Measurement Table.
- 4.2 If a Participant has reached 'Failure Level 1' for any indicator according to the attached Performance Measurement Table, the Employer may give that Participant a written Warning Notice and may exclude that Participant from further competitions until the Participant has demonstrated to the Employer's satisfaction that it has implemented steps to redress the problem.

- 4.3 If a Participant
- receives two Warning Notices during the Framework Period or
 - has reached 'Failure Level 2' for any indicator according to the attached Performance Measurement Table
- the Employer may terminate that Participant's Framework Agreement.
- 4.4 The Employer may give each Participant details of the result of its annual performance review, and of the average results for each item and the average overall score.

Performance Measurement Table

No	Employer's objective	Indicator	Measurement Period	Failure Level 1 (Rule 4.2)	Failure Level 2 (Rule 4.3)
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					

DATED

2019

**(1) Orona Midwestern Lifts Limited
(the “Contractor”)**

and

**(2) IARNRÓD ÉIREANN-IRISH RAIL
 (“IE”)**

and

**(3) CÓRAS IOMPAIR ÉIREANN
 (“CIE”)**

**AGREEMENT FOR
TESTING, MAINTENANCE, REPAIR & SUPPORT SERVICES ON EXISTING LIFTS &
ESCALATORS**

CCE 7174

Córas Iompair Éireann
Solicitor’s Office
Bridgewater House
Islandbridge
Dublin 8

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**AGREEMENT FOR TESTING, MAINTENANCE, REPAIR & SUPPORT SERVICES ON EXISTING
LIFTS & ESCALATORS**

PARTIES

- (1) **THE PERSON, FIRM OR COMPANY DESCRIBED IN SCHEDULE THREE** (the “**Contractor**”);
- (2) **IARNRÓD ÉIREANN-IRISH RAIL**, Connolly Station, Amiens Street, Dublin 1, Ireland (“**IE**”); and
- (3) **CÓRAS IOMPAIR ÉIREANN** having its principal office at Heuston Station in the City of Dublin (“**CIE**”).

WHEREAS

- A. IE requires the performance of certain testing, maintenance, repair, support and ancillary services in respect of various lifts & escalators.
- B. The Contractor is engaged in the business of offering the services required by IE, and has the requisite skill, knowledge and experience in that field.
- C. In reliance upon that skill, knowledge and expertise, IE wishes to engage the Contractor upon the terms and conditions set out below.
- D. In consideration of €1 (receipt of which is hereby acknowledged) the Contractor has agreed to provide certain indemnities in favour of CIE pursuant to the terms contained in the Agreement and CIE has agreed to be a party to the Agreement for the purposes of enforcing such indemnities.

NOW IT IS HEREBY AGREED AS FOLLOWS:

1 DEFINITIONS AND INTERPRETATION

1.1 In this Agreement for Testing, Maintenance, Repair & Support Services on Existing Lifts & Escalators, the following words and expressions shall have the meanings herein assigned to them:

“**Additional Charges**” means the payments described in Schedule Four payable to the Contractor for any Additional Services;

“**Additional Services**” means any works and/or services in addition to the Services as are provided by the Contractor at IE’s request in accordance with Clause 4;

“**Agreement**” means the contract between IE and the Contractor, contained in the Documents;

“**Change of Control**” means a change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the management or policies, whether through ownership of shares, by contract, or by any other means;

“**Charges**” means the fixed charges payable in accordance with Clause 6 by IE to the Contractor for the Services;

“**CIE**” means Córas Iompair Éireann and shall include its successors and assigns;

“**Commencement Date**” has the meaning given to it in Clause 14.1;

“**Construction Agreement**” means any contract(s) for the construction of any constituent part of the Project to be entered into between IE and any Construction Contractor, which

contract(s) shall, unless otherwise agreed in writing by the Parties, be substantially in the form of the short public works contract published by the Irish Office of Government Procurement with document reference PW-CF6 v1.9 30 June 2016. Each such contract (if any) shall, unless otherwise agreed in writing by the Parties, (a) be used in conjunction with, inter alia, documents substantially in the form of the tender and schedule for public works short form contract published by the Irish Office of Government Procurement with document reference FTS6 v.1.4 30 June 2016 and (b) be accompanied by a collateral warranty by the Construction Contractor to CIE substantially in the form set out in Schedule Eight, which collateral warranty shall be specified as a requirement when tenders for each such contract (if any) are sought;

“Construction Contractor” means any construction contractor(s) appointed by IE to the Project;

“Construction Cost Plan” means IE’s budget for the Project to be prepared by the Contractor in conjunction with IE and agreed by IE and the Contractor under Clause 2.19;

“Contractor’s Key Personnel” means (a) the Project Manager, (b) the safety file administrator under the Specification, appointed by the Contractor and specified in Schedule Two and (c) the senior specialist system technician under the Specification, appointed by the Contractor and specified in Schedule Two;

“Contractor’s Personnel” means the Contractor’s officers, employees, servants, agents and sub-contractors (which includes, for the avoidance of doubt, all of the Contractor’s Key Personnel and of the other personnel identified in Schedule Two except IE’s Programme Manager) and other persons working on or adjacent to the Location for the Contractor or its sub-contractors, and any other persons assisting the Contractor to perform the Agreement;

“Contractor’s Tender” means the Tender issued by the Contractor in response to the Invitation to Tender and any clarifications thereof issued by the Contractor and accepted by IE;

“Data Protection Legislation” means all applicable data protection laws, including, but not limited to, the Data Protection Acts 1988 to 2018, the European Communities (Electronic Communication Network and Services) (Privacy and Electronic Communications) Regulations 2011, the General Data Protection Regulation (Regulation (EU) 2016/679) (the **“GDPR”**), as amended or replaced from time to time, and any other legislation, codes of practice, guidance and/or opinions regarding data protection;

“Design” means the drawings, plans, specification and designs of the Works (if any) to be prepared or procured by the Contractor in accordance with the Specification (if any) and for which the Contractor takes full design responsibility;

“Dispute” has the meaning given to it in Clause 36.1;

“Dispute Notice” has the meaning given to it in Clause 36.1;

“Dispute Resolution Procedures” has the meaning given to it in Clause 36.1;

“Documents” means and includes this Agreement for Testing, Maintenance, Repair & Support Services on Existing Lifts & Escalators, the Specification (if any), the Agreement Drawings (if any), the conditions of tendering attached to the Invitation to Tender (**“Conditions of Tendering”**), the invitation to tender (if any) issued by IE in respect of the Services (the **“Invitation to Tender”**) and the Contractor’s Tender (if any);

“FOI Act” has the meaning given to it in Clause 19.3.1;

“IE” means Iarnród Éireann - Irish Rail and shall include its successors and assigns;

“IE Content” means any information, content or materials provided by IE in connection with this Agreement;

“IE Policies” means the three (3) documents in Schedule Seven and **“IE Policy”** means any one (1) of those documents;

“Initial Term” has the meaning given to it in Clause 14.1;

“Intellectual Property” means trade marks, service marks, trade names, logos (whether registered or not), patents, inventions, registered and unregistered design rights, copyrights (including rights in computer software), typography rights, rights of extraction relating to data bases, data base rights, moral rights, rights of confidence and all other similar rights together with all or any goodwill relating or attaching thereto which is created, which may subsist in any part of the world including, where such rights are obtained or enhanced by registration, any registration of such rights and applications and rights to apply for such registration;

“Know How” means know how, trade secrets, confidential technical and proprietary industrial and commercial information and techniques in any form (including paper, electronically stored data, magnetic media, film and micro film), including (without limiting the foregoing) drawings, reports, plans, specifications, notes of meetings, photographs, instruction and training manuals and any similar proprietary rights which may subsist anywhere in the world;

“Location” means the location(s) where the Services and/or Additional Services are to be provided as described in the Specification, or any other location agreed in writing from time to time by the Parties;

“Loss” has the meaning given to it in Clause 20.2;

“Normal Working Hours” means the hours of 9am to 5pm (inclusive) on any Working Day or such other times as may be described in the Specification;

“Parties” means IE, CIE and the Contractor and **“Party”** means any of them;

“Project” means the project in relation to which the Contractor is appointed as described in the Documents;

“Project Manager” means the project manager specified in Schedule Two appointed by the Contractor to manage the provision of the Services and/or Additional Services or such other person as may be approved by IE from time to time;

“Programme Manager” means the Programme Manager specified in Schedule Two appointed by IE with whom the Contractor will work and liaise in providing the Services and/or Additional Services or such other person as may be appointed by IE and notified from time to time to the Contractor;

“Purchase Order” has the meaning given to it in Clause 2.2;

“Security Measures” has the meaning given to it in Clause 20.1.4;

“Services” means the testing, maintenance, repair & support services on existing lifts & escalators to be provided by the Contractor to IE pursuant to this Agreement, as more particularly specified in the Invitation to Tender and the Specification, any Design, any Works and any other services which can reasonably be inferred as being required for the proper execution of all or any of the same but excludes the Additional Services;

“Specification” means the Specification (if any) issued with the Conditions of Tendering or supplied with the Contractor’s Tender, incorporating any modifications thereto agreed by IE, a copy of which is set out in Schedule One;

“State” means Ireland;

“Tax Clearance Certificate” means a printed copy of an electronic tax clearance application result, as issued online by the Irish Revenue Commissioners to and in respect of the applicant

or as subsequently emailed to the applicant by or on behalf of the Irish Revenue Commissioners, (a) confirming that the applicant's tax affairs are in order and that the applicant has been issued with a tax clearance certificate and (b) containing the applicant's name, tax reference number and tax clearance access number, such that IE is in a position to verify the applicant's tax clearance;

"Term Extension" has the meaning given to it in Clause 14.1;

"Working Day" means any day other than Saturday or Sunday or a bank or public holiday in the State; and

"Works" means any construction works necessary for the completion of the Project.

1.2 In this Agreement, a reference to:

1.2.1 a statutory provision or law includes a reference to the statutory provision or law as amended, modified or re-enacted or both from time to time and any subordinate legislation made under the statutory provision or law;

1.2.2 clauses, sub-clauses, paragraphs, sub-paragraphs, schedules and/or appendices are to clauses, sub-clauses, paragraphs, sub-paragraphs, schedules and/or appendices of or to this Agreement unless the context otherwise suggests;

1.2.3 a person includes a reference to a body corporate, association or partnership;

1.2.4 a person includes a reference to that person's legal personal representatives, successors and lawful assigns; and

1.2.5 a document is a reference to that document as from time to time supplemented or varied.

1.3 Headings to clauses are for convenience only and do not affect the interpretation of this Agreement.

1.4 **"including"** shall be construed as **"including without limitation"**.

1.5 In the event of any ambiguity or conflict between the Documents the order of precedence shall be as follows:

1.5.1 this Agreement for Testing, Maintenance, Repair & Support Services on Existing Lifts & Escalators (excluding Schedule One);

1.5.2 the Specification;

1.5.3 the Conditions of Tendering;

1.5.4 the Invitation to Tender; and

1.5.5 the Contractor's Tender.

2 **SERVICES TO BE PROVIDED**

2.1 IE hereby appoints the Contractor, on a non-exclusive basis, to provide the Services and the Additional Services on the terms and conditions contained in this Agreement, if and to the extent that the Contractor is required to do so by IE in accordance with Clause 2.2 or Clause 4 respectively, and the Contractor hereby accepts such appointment. The appointment of the Contractor does not constitute a commitment or guarantee by IE to procure all or any of the Services, the Additional Services or any other services from the Contractor. The Services shall only be procured from the Contractor in accordance with Clause 2.2. Nothing in the Documents precludes IE

from purchasing the Services (or other goods or services including the Additional Services) from any third party at any time during the currency of the Documents or any of them.

- 2.2 The Contractor shall provide such (if any) of the Services as IE may require from time to time. Each requirement of IE for Services from the Contractor under the Agreement (if any) shall be evidenced by a purchase order which shall be in writing and shall (a) refer to the Agreement, (b) describe the Services required and (c) be issued by IE to the Contractor during the Term (each a "**Purchase Order**"). The Contractor shall provide the Services to IE during Normal Working Hours on Working Days or at such other times as may be otherwise specified in the Documents or as may be agreed in writing from time to time by IE and the Contractor.
- 2.3 On receipt of each Purchase Order (if any), the Contractor will provide to the Programme Manager a work programme outlining how and when the Services the subject of such Purchase Order are to be performed, the assistance, if any, it requires from the Programme Manager and the anticipated time scale for completion of each element of such Services. The Programme Manager may approve the work programme or require the Contractor to amend and resubmit the work programme for approval. The approved work programme shall become the work programme for such Services (each a "**Work Programme**").
- 2.4 If, at any stage during the course of the Agreement, IE requires to vary all or any of the Services and/or any Work Programme in any way, the Programme Manager shall instruct the Contractor of such variation. If any such variation reduces the Services to be performed by the Contractor in any way, the Charges shall be reduced in accordance with Clause 6.3. If any such variation necessitates Additional Services, Additional Charges shall be payable in accordance with Clause 4. Subject to the foregoing, IE shall have no liability to the Contractor by reason of any such variation including, but not limited to, the Contractor being required not to provide the Services in their entirety.
- 2.5 The Contractor will meet with the Programme Manager as necessary in order to assist him in relation to the Project and the Contractor will comply with the briefing and reporting requirements detailed in the Specification.
- 2.6 The Contractor shall provide and complete the Services within the agreed timescale as set out in the Specification and any relevant Work Programme or such further timescales as may be agreed from time to time between IE and the Contractor.
- 2.7 The Contractor agrees:
 - 2.7.1 to carry out any Services and any Additional Services:
 - 2.7.1.1 exercising all reasonable skill, care and diligence;
 - 2.7.1.2 in conformity with the normal standards of a professional contractor in the provision of services of a similar standard and complexity as the relevant Services or Additional Services;
 - 2.7.1.3 in accordance with the terms of this Agreement; and
 - 2.7.1.4 diligently and in good time.
 - 2.7.2 to carry out all duties and responsibilities which may be required to secure the timely and satisfactory completion of the Services and Additional Services and which would ordinarily and properly be carried out by an independent contractor in relation to services comparable in size, scope, complexity and purpose to the relevant Services or Additional Services;

- 2.7.3 to act in a thoroughly competent and efficient manner and in the best interests of IE so as to give to IE the full and complete benefit of the Contractor's experience and expertise;
- 2.7.4 to give such general advice and assistance to IE as may lie within the field of the Contractor's qualifications, competence and experience and as IE may from time to time require;
- 2.7.5 to ensure that the Services and Additional Services are performed in accordance with the Documents and not to permit any alterations or additions to be made to the Documents nor to allow the use of any materials other than those specified therein without the prior written approval of IE;
- 2.7.6 to comply with all applicable laws including, without limitation, any regulations issued from time to time under the Safety, Health and Welfare at Work Act, 2005 (the "**Regulations**");
- 2.7.7 to produce to IE (if requested) a safety statement setting out the basis upon which the Services and/or Additional Services are to be carried out, and to ensure that the safety statement is complied with in all respects by its officers, employees, servants, agents and sub-contractors;
- 2.7.8 to ensure that the Services and Additional Services are completed in accordance with safety requirements and security requirements of IE notified to the Contractor from time to time and to ensure that such requirements are complied with in all respects by its officers, employees, servants, agents and sub-contractors and all personnel on the Location;
- 2.7.9 to provide all personnel, equipment, materials, services and other resources necessary or appropriate for the safe, full and proper performance of the Services and Additional Services;
- 2.7.10 to obey at all times and shall procure that any of the sub-contractors and employees shall obey all lawful and reasonable requests of the Programme Manager including but not limited to liaising with and interfacing with any other contractors or agents of IE as the Programme Manager may require;
- 2.7.11 if and when requested by IE, the Contractor shall perform the role of Project Supervisor for Design Process in accordance with the Regulations and the Contractor shall execute such agreement(s) substantially in the form of the Appointment of Project Supervisor for Design Process set out in Appendix 1A to this Agreement as IE may require; and
- 2.7.12 if and when requested by IE, the Contractor shall perform the role of Project Supervisor for the Construction Stage in accordance with the Regulations and the Contractor shall execute such agreement(s) substantially in the form of the Appointment of Project Supervisor for Construction Stage set out in Appendix 1B to this Agreement as IE may require.
- 2.8 The Contractor shall immediately inform IE if it becomes aware of an error or mis-description in the Documents.
- 2.9 The Contractor agrees that any and all Services and any and all Additional Services required by IE shall be provided by the Contractor's Personnel. No change in the Contractor's Key Personnel shall be made without IE's prior written consent and the Contractor must provide IE with a copy of the curriculum vitae for any proposed replacement for any of the Contractor's Key Personnel.

- 2.10 The Contractor shall at the Contractor's cost attend such meetings with the Programme Manager or any other person or body approved by IE, as may be specified in the Documents or as may be notified from time to time to the Contractor.
- 2.11 The Contractor will promptly inform the Programme Manager in writing of anything the Contractor believes the likely effect of which would be materially either to:
- 2.11.1 vary the Services, the Additional Services and/or the Project;
- 2.11.2 increase the cost of the Project or change its financial viability, quality or function; or
- 2.11.3 cause a delay in the completion of any Work Programme.
- 2.12 If at any time the Contractor shall be put in breach of this Agreement by reason of any breach of sub-contract by any sub-contractor, the Contractor shall notify the Programme Manager immediately and shall take such steps in consultation with the Programme Manager to secure the remedying of the said breach including the appointment of a replacement sub-contractor where appropriate. The Contractor's compliance with this Clause 2.12 shall not release the Contractor, either in whole or in part, from any liability it may have to IE and/or CIE.
- 2.13 The Contractor shall:
- 2.13.1 comply with all standards (including the IE Policies) prepared and/or developed by or on behalf of IE and/or CIE which are, in the opinion of IE and/or CIE, relevant to the Project and are notified from time to time by IE to the Contractor;
- 2.13.2 not knowingly authorise, or cause to be used, or use on or in relation to the Project or specify for use in the Project any material known to be deleterious or affecting the durability of the Project or any material not in accordance with IE's standards, or the higher of Irish and European standards or codes of practice or, if no Irish or European standards or codes exist, the relevant British standards and codes of practice. The Contractor shall forthwith report to the Programme Manager if he knows or has reason to suspect that any deleterious materials have been or are intended to be used in the Project.
- 2.14 The Contractor shall keep detailed records of all deliverables required to be prepared by it pursuant to the provision of the Services and/or Additional Services and at IE's request shall make them available for inspection and shall provide copies to IE.
- 2.15 The Contractor shall at all times during the period of this Agreement co-operate with, liaise with and obey all lawful and reasonable requests of the Programme Manager.
- 2.16 The Contractor hereby agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by them in respect of income tax relating to the provision of the Services and/or Additional Services by the Contractor. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 2.16 shall be paid by it on demand being made of it by CIE and/or IE.
- 2.17 The Contractor shall use all reasonable skill and care to ensure that any Construction Contractor implements the Design and that the Project is completed in compliance with their respective contractual obligations and the relevant Work Programme and shall immediately inform IE or the Programme Manager if it becomes aware of any non-compliance by any Construction Contractor with such Design, Work Programme or contractual obligation (as the case may be) and advise on the steps which need to be taken to ensure compliance.

- 2.18 The Contractor shall consult with IE regarding IE's safety requirements and site rules for the Project and ensure that all personnel providing the Services and/or Additional Services shall be made aware of and comply with same and shall communicate them to any Construction Contractor or supplier of plant and ensure that the Construction Contractor or supplier of plant complies with such requirements.
- 2.19 As soon as practicable following the Commencement Date IE and the Contractor shall agree the Construction Cost Plan.

3 CONTRACTOR'S AUTHORITY

- 3.1 The Contractor shall exercise all rights and undertake all obligations conferred upon it in connection with any and all Construction Agreements, but shall not without IE's prior written consent:
- 3.1.1 instruct any Construction Contractor to make any material variation to or issue a change or variation order under any such Construction Agreement or approve the quality of materials or workmanship or of any design carried out by any such Construction Contractor; nor
- 3.1.2 issue any instruction under any Construction Agreement which increases the cost of the Project to IE.

4 ADDITIONAL SERVICES

- 4.1 The Contractor agrees to perform, as and when so requested by IE, any Additional Services within the Contractor's competence, whether such Additional Services are necessitated by any changes in the detail or scope of the Project or otherwise.
- 4.2 Subject to Clause 4.3, the Contractor shall be paid for any Additional Services at the Additional Charges and otherwise in the manner and at the times provided in Clause 6.
- 4.3 The Contractor shall advise IE in writing of any design fee and/or costs implications over and above the Charges identified at Clause 6 before it undertakes any works or services which it considers to be additional to the Services and/or which it otherwise considers to be an Additional Service. If IE agrees that the works or services are an Additional Service and instructs the Contractor in writing to proceed with that Additional Service, the applicable fee for such Additional Service shall be determined in accordance with Clause 4.2 and shall be paid on the completion of the Additional Service (or as otherwise agreed in writing between the parties). The Contractor shall supply IE with such particulars of any claim in respect of Additional Services as IE requires. The Contractor's compliance with the requirements of this Clause 4 shall be a condition precedent to any entitlement to any payment in addition to the Charges identified at Clause 6.

5 INSPECTION

- 5.1 The Programme Manager shall be entitled to inspect and review the performance by the Contractor of the Services and/or Additional Services, or may arrange for an independent party to inspect and review the performance of the Services and/or Additional Services during the term of this Agreement.
- 5.2 If as a result of any such inspection or review as aforesaid, the Programme Manager is of opinion that any of the Services and/or Additional Services are not being performed in accordance with the Agreement, he shall so inform the Contractor in writing and the Contractor shall take such steps as may be necessary to ensure such compliance. Any notification under this Clause 5 shall not constitute a waiver and shall be without prejudice to any of IE's other rights under the Agreement.

- 5.3 No approval or comment by IE or the Programme Manager shall derogate from the Contractor's obligations under the Documents.

6 CHARGES

- 6.1 In consideration of the provision of the Services in accordance with the provisions of this Agreement, IE shall pay to the Contractor the Charges agreed between the Contractor and IE and described in Schedule Four.
- 6.2 The Contractor must raise an invoice in respect of any Services provided at the times specified in Schedule Four. Such invoice must quote IE official order number and must be addressed to Accounts Payable, Iarnród Éireann - Irish Rail, Inchicore, Dublin 8, Ireland.
- 6.3 If the Services are reduced pursuant to Clause 2.4, IE shall reduce the Charges by an amount proportionate to any such reduction in the Services to be performed by the Contractor.
- 6.4 Unless otherwise specified in Schedule Four, payment in respect of amounts due to the Contractor under this Agreement shall be made within thirty (30) days of the end of the month following the month during which a correctly completed invoice is received by IE.
- 6.5 In the event of a disputed application for payment, IE shall use all reasonable endeavours to pay any undisputed portion to the Contractor within thirty (30) days of the end of the month following the month during which a correctly submitted invoice is received by IE, but shall in any event, pay any such undisputed portion within sixty (60) days from receipt of such invoice.
- 6.6 All invoices shall be accompanied by such additional information as IE may reasonably request to verify the amounts so involved.
- 6.7 All payments to be made by IE under this Agreement shall be made entirely in euro (€) and shall be made by electronic funds transfer ("EFT") to the bank account of the Contractor details of which (including the bank name and address, the account name and number, the bank sort code, the BIC/SWIFT code and the IBAN number) shall be notified to IE in writing by the Contractor.
- 6.8 The Contractor agrees and acknowledges that payment will be made by EFT and that therefore the onus is on the Contractor to ensure that IE has received the correct bank and account details at all times and further that it is the responsibility of the Contractor to ensure that any changes to bank or account details are notified to IE by the Contractor in writing. IE accepts no responsibility or liability in relation to any payment to an incorrect account where the Contractor has failed to notify IE in writing of the correct account and bank details prior to payments being made.

7 PAY AND CONDITIONS OF EMPLOYMENT

- 7.1 The Contractor shall fully observe and comply with the provisions of all applicable employment legislation and regulations in force from time to time in Ireland during the term of this Agreement including, without limitation, the National Minimum Wage Acts 2000 and 2015, the Employment Equality Acts 1998 and 2004, any employment regulation orders made under Section 42C of the Industrial Relations Acts 1946 to 2015, registered employment agreements as provided by Section 27 of the Industrial Relations Acts 1946 to 2015 or within the meaning of chapter 2 of the Industrial Relations (Amendment) Act 2015, an sectoral employment orders made under Section 17 of the Industrial Relations (Amendment) Act 2015 and any legally binding determinations of the Labour Court ("**Employment Law**").
- 7.2 Without prejudice to the generality of Clause 7.1, the Contractor shall in respect of:

- 7.2.1 Contractor's Personnel employed by, or otherwise working for, the Contractor; and
- 7.2.2 all other Contractor's Personnel, ensure that their employers, or the persons for whom they are working;
 - do all of the following:
 - 7.2.2.1 ensure that the rates of pay and the conditions of employment (including in relation to pension contributions) of each Contractor's Personnel comply with all applicable law, and that those rates and conditions are no less favourable than those for the relevant category of Contractor's Personnel in any employment agreements registered under the Industrial Relations Acts 1946 to 2015;
 - 7.2.2.2 pay all wages and other money due to each Contractor's Personnel;
 - 7.2.2.3 ensure that Contractor's Personnel's wages are paid in accordance with the Payment of Wages Act 1991 and are never more than one month in arrears or unpaid;
 - 7.2.2.4 pay all pension contributions and other amounts due to be paid on behalf of each Contractor's Personnel;
 - 7.2.2.5 make all deductions from payments to Contractor's Personnel required by applicable law, and pay them on as required by applicable law;
 - 7.2.2.6 keep all consents and records which the Contractor is required to keep under Employment Law. Without prejudice to the generality of the foregoing, the Contractor shall keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each Contractor's Personnel, deductions from each Contractor's Personnel's pay and their disposition, and pension and other contributions made in respect of each Contractor's Personnel, and produce on demand those records for inspection and copying by IE and any persons authorised by IE, whenever required by IE;
 - 7.2.2.7 produce on demand any other records relating to the rates of pay, pension and other contributions, deductions from pay and their disposition, conditions of employment of Contractor's Personnel, rest periods and annual leave for inspection and copying by IE and any persons authorised by IE, whenever required by IE;
- 7.3 IE shall be entitled to make random checks requiring production of records under Clause 7.2.2.6 and Clause 7.2.2.7.
- 7.4 If IE so requests, the Contractor shall, within 5 Working Days after the receipt of the request, give to IE a statement showing the amount of wages and other payments due at the date of the request to and in respect of each Contractor's Personnel, or, in respect of Contractor's Personnel not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 7.5 If the Contractor has not complied with this Clause 7, IE shall (without limiting its other rights or remedies) be entitled to estimate the amount that should have been paid to the Contractor's Personnel and contributions that should have been made on their behalf, and IE may deduct the estimated amount from any payment due to the Contractor, until IE is satisfied that all proper amounts have been paid.

- 7.6 The Contractor shall at the cost of the Contractor and whenever required by IE, furnish to IE a certificate from the Contractor's auditors verifying compliance by the Contractor and its subcontractors with Employment Law.
- 7.7 If the Contractor does not comply with this Clause 7, it shall pay to IE any costs IE (including any persons authorised by IE) incurs in investigating and dealing with the non-compliance.
- 7.8 IE shall be entitled to treat any breach of this Clause 7 as a material breach of this Agreement which is incapable of remedy for the purposes of Clause 14.2.4 and accordingly IE may, without prejudice to any other right or remedy, terminate this Agreement forthwith by giving the Contractor written notice thereof to take effect in accordance with Clause 31 or upon such other day as may be specified in the notice. Notwithstanding any other provision of this Agreement, the Contractor shall not be entitled to any compensation in consequence of any such termination.

8 **NON-SOLICITATION**

- 8.1 The Contractor agrees that, both during the continuance of this Agreement and for a period of six months thereafter, it shall not employ or solicit or endeavour to solicit or entice away from the service of IE any person employed by IE in any capacity whatsoever, whether or not such an employee would commit a breach of his employment contract in so doing.

9 **TAX CLEARANCE**

- 9.1 The award of this Agreement is conditional on the provision by the Contractor to IE of a current Tax Clearance Certificate in respect of the Contractor as applicant and of a current Tax Clearance Certificate in respect of each sub-contractor (if any) as applicant in each case. Any payment under this Agreement is conditional on IE having in its possession, at the time of payment, a current Tax Clearance Certificate in respect of the Contractor as applicant and a current Tax Clearance Certificate in respect of each sub-contractor (if any) as applicant in each case.

10 **INDEMNITY AND LIABILITY**

- 10.1 The Contractor acknowledges that CIE and IE will be relying on the Contractor's skill, expertise and experience in providing services of the nature to be provided in this Agreement. CIE and IE will also be relying on the accuracy of all representations or statements made and the advice given by the Contractor in connection with the performance of this Agreement, including the provision of the Services and the accuracy of any invention, confidential information, copyright works or documents concerned, originated, made or developed by the Contractor in connection with the performance of this Agreement, including the provision of the Services. The Contractor hereby agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by them arising out of the Contractor's breach of contract, non performance, breach of duty, breach of statutory duty or negligence in connection with the performance of this Agreement, including the provision of the Services. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 10.1 shall be paid by it on demand being made of it by CIE and/or IE.
- 10.2 Without limiting Clause 10.1, the Contractor agrees to indemnify, keep indemnified and hold harmless CIE and IE and their respective officers, employees, servants, agents and sub-contractors from and against all proceedings, actions, costs (including legal costs), charges, claims, expenses, damages, liability, losses and demands in respect of:

10.2.1 any disease or injury to, or the death of any person whatsoever; and

10.2.2 any loss of or damage to any property,

caused by or arising from any act, neglect, default or omission of the Contractor, its officers, employees, servants, agents or sub-contractors in connection with the performance of this Agreement, including the provision of the Services, or while present on CIE's or IE's premises or at the Location. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 10.2 shall be paid by it on demand being made of it by CIE and/or IE.

10.3 The Contractor's liability to IE and/or CIE in respect of this Agreement shall be limited to €250,000 (two hundred and fifty thousand euro) per annum (i.e. in any 12 (twelve) month period), provided that this limitation shall not apply:

10.3.1 where any such liability is indemnified by any insurance which the Contractor is required to obtain pursuant to this Agreement or any other policy of insurance;

10.3.2 where any such liability would be indemnified under a policy of insurance required to be obtained by the Contractor pursuant to this Agreement, but for the failure or inability of the Contractor to obtain, maintain or make a claim under such insurance;

10.3.3 where any such liability arises due to an act of wilful default, wilful misconduct or fraud of the Contractor, its officers, employees, servants, agents or subcontractors;

10.3.4 where any such liability relates to the death, disease or personal injury of any person resulting from the Contractor's, breach of contract, breach of duty or breach of statutory duty or that of its officers, employees, servants, agents and/or subcontractors; and/or

10.3.5 where any such liability relates to any breach of the Contractor's obligations under Clause 11 (Intellectual Property), Clause 19 (Confidentiality) or Clause 20 (Data Protection and Freedom of Information).

10.4 In no event shall IE or CIE be liable to the Contractor for any loss of profit, contracts, goodwill, business opportunity or anticipated saving suffered or incurred by the Contractor arising out of or in connection with the Agreement for any reason or in any circumstances, including, for the avoidance of doubt, in the event of a declaration by a court that this Agreement is ineffective or an order by a court that this Agreement be terminated or that the duration of this Agreement be shortened.

11 **INTELLECTUAL PROPERTY**

11.1 All Intellectual Property relating to and/or subsisting in any Know How created by the Contractor in the performance of this Agreement shall be the exclusive property of IE provided that upon termination or expiry of the Agreement, IE shall grant to the Contractor a non-exclusive, irrevocable, royalty-free licence to use, copy, alter, make available to the public, adapt, translate, modify, have modified, maintain and have maintained such Know How. The Contractor shall, at the written request of IE, execute all such further assignments, transfers, deeds or documents and do all such acts as IE may require to enable IE to secure full benefit of the Know How created by the Contractor hereunder. The Contractor shall procure that its officers, employees, servants, agents and sub-contractors shall be subject to the same obligations and restrictions as the Contractor hereunder.

11.2 Media on which the Specifications and any other deliverables delivered by the Contractor to IE are recorded shall be the exclusive property of IE.

11.3 The Contractor as legal and beneficial owner hereby grants to IE a non-exclusive, perpetual, irrevocable, royalty-free licence to use, copy, alter, make available to the public, adapt, translate, modify, have modified, maintain and have maintained the

Intellectual Property of the Contractor (whether existing at the date of this Agreement or developed or created by the Contractor in the performance of or during this Agreement) which is required for the receipt and proper enjoyment of the Services and/or Additional Services, together with the right to sub-license the foregoing.

- 11.4 The Contractor shall provide IE with a full copy of the source code for any software including the source code for any upgrades and enhancements provided by the Contractor to IE.
- 11.5 The Contractor hereby agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by them arising out of any infringement or any alleged infringement of any Intellectual Property of a third party by the use of, or the provision of the Services, the Additional Services or any deliverables, or any part of any of them (including without limitation any software and documentation). Any amount that may be payable by the Contractor pursuant to this Sub-Clause 11.5 shall be paid by it on demand being made of it by CIE and/or IE.
- 11.6 IE shall notify the Contractor in writing of any claims to which Clause 11.5 applies within a reasonable time of receiving notice of any such claims.
- 11.7 IE, at the Contractor's request and expense, shall allow the Contractor to conduct all negotiations or litigation arising from any claim to which Clause 11.5 applies, provided that the Contractor takes over such conduct within a reasonable time after being notified of the claim in question.
- 11.8 The Contractor shall keep IE fully informed and pay due regard to the interests and views of IE in the conduct of any negotiations or any defence to a claim to which Clause 11.5 applies. IE shall, at the request and expense of the Contractor, provide all reasonable assistance to the Contractor for the purpose of conducting such negotiations or litigation.
- 11.9 In the event of any claim, demand or action being made to which this Clause 11 applies, the Contractor shall forthwith and in addition to its obligations pursuant to Clause 11.5 take one or more of the following actions at its own expense:
- 11.9.1 procure for IE the right to continue availing of the Services and Additional Services or using the deliverables or the relevant part of them;
- 11.9.2 modify that part of the Services, Additional Services and/or deliverables which is, or is likely to, constitute an infringement (without detracting from its overall performance or functionality) so as to avoid the infringement;
- 11.9.3 in the event that the Contractor fails to take action as set out above, or if the performance of the Services or of the Additional Services or the use of the deliverables or any part thereof is permanently enjoined by a court order, to refund to IE all Charges and Additional Charges paid.
- 11.10 The Contractor warrants and represents that:
- 11.10.1 it has the necessary right and authority to such Intellectual Property as is required for the receipt and proper enjoyment by IE of the Services and Additional Services hereunder; and
- 11.10.2 the use by IE of any deliverables provided under this Agreement shall not result in the infringement of any third party's Intellectual Property.

- 11.11 The Contractor acknowledges and agrees that the IE Content is and shall at all times remain the exclusive property of IE and/or its licensors. All right, interest and title in and to all Intellectual Property in the IE Content shall be and remain vested in IE.
- 11.12 The Contractor agrees on request at any time to give IE or any person authorised by IE access to the Intellectual Property or Know How referred to in Clause 11.1 and Clause 11.3 above and to provide copies of same at IE's expense.
- 11.13 Patented articles supplied under this Agreement must be marked in accordance with the provisions of the Patents Acts 1964 - 2006.
- 11.14 The provisions of this Clause 11 will continue to apply notwithstanding the termination of this Agreement for any reason and notwithstanding the completion of the performance of the Agreement.

12 **INSURANCE**

- 12.1 The Contractor agrees to maintain the insurances set out in Schedule Five for the particular terms specified with insurers approved by IE.
- 12.2 At the request of IE the Contractor shall increase the required insurance limits or obtain additional coverage at IE's expense.
- 12.3 Prior to the execution of this Agreement and at any time thereafter if requested by IE, the Contractor shall provide IE with such evidence as it shall require verifying that all insurance is in force for the periods specified. The Contractor shall notify IE and CIE immediately in the event that any of the insurances ceases to be available or maintained.
- 12.4 Any public liability, product liability and employers liability insurance policies described Schedule Five shall include an indemnity to principals clause specifically indemnifying IE and CIE. None of the policies described in Schedule Five shall include any terms or conditions to the effect that the Contractor must discharge any liability before being able to recover from the insurers.
- 12.5 The Contractor agrees, represents and warrants to IE that the insurance policies set out in Schedule Five will also indemnify IE and CIE against the acts, omissions, negligence or breach of any officers, employees, servants, agents or sub-contractors of the Contractor, or that such sub-contractors or agents will carry insurance to the same levels and on terms at least as favourable to IE and CIE as those required from the Contractor. The Contractor shall indemnify IE and CIE for any loss suffered by IE and/or CIE due to the failure of the Contractor to comply with this obligation.
- 12.6 If the Contractor fails to provide the insurance cover specified in Schedule Five, IE may do so for the whole or part of the period for which such cover is required, without being under any obligation so to do, and may deduct any costs it incurs in obtaining such cover from any sums due to the Contractor under the Agreement, or otherwise recover such sums from the Contractor.
- 12.7 The Contractor shall be liable to pay the full amount of any deductibles or excess amounts payable under the policies of insurance referred to in Schedule Five in the event of a claim under any of the policies referred to therein.
- 12.8 Where the level of indemnity to be provided under any insurance policy referred to in this Clause 12 is an aggregate amount, the Contractor shall notify IE and CIE of any claims made under such policy forthwith. Each of IE and CIE reserves the right to request that such policies provide a separate aggregate limit in respect of any claims arising out of or relating to this Agreement.

- 12.9 Nothing in this Clause 12 limits, or shall be deemed to limit, the obligations, liabilities or responsibilities of the Contractor under the other terms of this Agreement or otherwise.

13 REPRESENTATIONS AND WARRANTIES

- 13.1 The Contractor represents and warrants to IE that:
- 13.1.1 it has all necessary power and authority to execute, deliver and perform its obligations under this Agreement;
 - 13.1.2 the execution, delivery and performance by it of the Agreement has been authorised by all necessary action on its part;
 - 13.1.3 each of the obligations of the Contractor under this Agreement constitute legally binding obligations;
 - 13.1.4 it will provide the Services and Additional Services with all the skill, care and diligence to be expected of professionals qualified and experienced in carrying out such services on projects of a similar nature, size and scope as the Project; and
 - 13.1.5 it will provide the Services and Additional Services diligently and in good time and with all necessary resources.

14 DURATION AND TERMINATION

- 14.1 The Agreement shall come into force on 4th October, 2019 (the “**Commencement Date**”) and shall continue in force for a period of three (3) years from the Commencement Date (the “**Initial Term**”), unless terminated earlier hereunder.

The Initial Term may be extended by IE in its sole and absolute discretion and without any obligation to do so, by notice in writing to the Contractor issued at any time prior to the expiration of the Initial Term for a further period of up to two (2) years (a “**Term Extension**”), such that the maximum duration of this Agreement shall be a period of five (5) years from the Commencement Date unless terminated earlier in accordance with the provisions hereof. For the avoidance of doubt, any such Term Extension shall be governed by the terms and conditions of this Agreement, including without limitation the provisions of Clause 6.

For the avoidance of doubt, notwithstanding the expiry of the Term, the provisions of this Agreement shall continue to bind the Contractor insofar as and for so long as may be necessary to give effect to IE’s and/or CIE’s rights and the Contractor’s obligations under the Agreement.

- 14.2 If the Contractor:
- 14.2.1 fails to comply with a notice under Clause 5 requiring him to improve the Services and/or Additional Services being performed pursuant to the Agreement within 14 days of receipt of the notice;
 - 14.2.2 contravenes the provisions of Clause 31 (Assignment/Sub-Contracting/Change of Control);
 - 14.2.3 abandons or threatens to abandon the Agreement;
 - 14.2.4 commits a material or persistent breach thereof and fails to remedy the breach (if capable of remedy) within 14 days of receipt of written notice from IE giving details of the breach and requiring it to be remedied;

- 14.2.5 becomes bankrupt, or makes any composition or arrangement with, or conveyance or assignment for the benefit of the Contractor's creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of the Contractor's estate, or a trustee is granted by the Contractor on behalf of the Contractor's creditors, or if the Contractor, being a company, enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation), or if a receiver or examiner of any of its assets is appointed;
- 14.2.6 undergoes a Change of Control and IE does not give its prior written consent to such Change of Control;
- 14.2.7 contravenes the provisions of Clause 2.9 (Contractor's Key Personnel); or
- 14.2.8 becomes in a position where any of the exclusion grounds set out in Article 57 of Directive 2014/24/EU applies to the Contractor.

IE may, without prejudice to any other right or remedy, terminate the Agreement by giving the Contractor written notice thereof in accordance with Clause 32 (Notices and Service) to take effect upon such day as may be specified in the notice.

- 14.3 Notwithstanding any other provision of this Agreement, IE may terminate this Agreement upon 10 Working Days' written notice to the Contractor. Such a termination shall be effected in the manner specified in the said notice and shall be without prejudice to any claims which any Party may have against any other under this Agreement. The Contractor shall comply with the provisions of the notice. In the event of such termination by IE, IE shall pay to the Contractor such of the Charges as are owing to the Contractor hereunder for Services performed up to the date of such termination and such of the Additional Charges as are owing to the Contractor for Additional Services performed up to the date of such termination.
- 14.4 In the event of termination of this Agreement for any reason, the Contractor shall only be entitled to payment of such Charges or Additional Charges directly attributable to the proportion of the relevant Services or Additional Services properly completed in accordance with this Agreement, prior to such termination of this Agreement. Any prepaid charges for Services and/or Additional Services to be completed after such termination shall forthwith, upon termination, be refunded to IE.
- 14.5 Termination of this Agreement shall be without prejudice to the rights and remedies of any Party in relation to any negligence, omission or default of another Party prior to termination.
- 14.6 Notwithstanding termination of this Agreement, the provisions of this Agreement shall continue to bind each Party insofar as and for as long as may be necessary to give effect to their respective rights and obligations hereunder.
- 14.7 On termination of this Agreement, the Contractor shall execute and deliver all documentation prepared by the Contractor and all other documentation in its custody or control relating to the Project to IE and shall take further steps as IE may reasonably require for the purpose of fully vesting in IE all rights and benefits of the Contractor arising therefrom.

15 THE LOCATION

- 15.1 IE shall procure that the Contractor and its representatives have reasonable access to the Location if required for the purposes of the Services and/or Additional Services PROVIDED THAT such access may be restricted by IE or the Programme Manager for the purposes of regulating access to such Location as is required for the ordinary use of such Location by IE or on the grounds of safety.

- 15.2 The Contractor shall be deemed to be satisfied as to the suitability and availability of access to the Location to perform the Services and/or Additional Services.
- 15.3 The Contractor shall not permit any other persons, whose presence on the Location is not necessary pursuant to the terms of this Agreement or for the execution of other work on behalf of IE, to enter the Location without the prior written consent of IE or the Programme Manager.
- 15.4 The Contractor shall take full responsibility for the safety of all of the Contractor's Personnel, including sub-contractors' personnel, on the Location at any time during the term of this Agreement.

16 TRANSFER OF UNDERTAKINGS AND HANDOVER CO-OPERATION

- 16.1 The Contractor confirms that it is aware of the terms of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations, 2003 (the "**2003 Regulations**") and the Employees (Provision of Information and Consultation) Act, 2006 (the "**2006 Act**") and has assessed the import of the 2003 Regulations and the 2006 Act to the award of this Agreement. The Contractor shall comply in full with the requirements of the 2003 Regulations and the 2006 Act, employ any person required by the Regulations to be employed by the Contractor and the Contractor shall pay redundancy payments to such persons as may be entitled to any such redundancy payments and which the Contractor is obliged to pay by virtue of the application of the Regulations. The Contractor hereby agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by them arising out of the award of this Agreement caused as a result of the failure of the Contractor to comply with the requirements of the 2003 Regulations and/or the 2006 Act. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 16.1 shall be paid by it on demand being made of it by CIE and/or IE.
- 16.2 The Contractor hereby further agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by them in the event that persons who are (or are deemed to be) employees of the Contractor at the time of assignment, expiration or termination (howsoever arising) of this Agreement (or part thereof), claim or are held to be employees of IE and/or CIE or of any other person to whom IE and/or CIE may, following such assignment, termination or expiration, grant a similar contract where such claim arises by reason of the application of the 2003 Regulations to such assignment, termination and/or subsequent grant. The Contractor acknowledges that IE has relied on the obligations assumed by the Contractor in this Clause 16 in awarding this Agreement. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 16.2 shall be paid by it on demand being made of it by CIE and/or IE.
- 16.3 IE shall notify the Contractor in writing of any claims made against IE to which Clause 16.2 applies within a reasonable time of receiving such notice.
- 16.4 IE at the Contractor's request and expense shall allow the Contractor to conduct all negotiations or litigation arising from any claim to which Clause 16.2 applies, provided that the Contractor takes over such conduct within a reasonable time after being notified of the claim in question.
- 16.5 The Contractor shall keep IE fully informed and pay due regard to the interests and views of IE in the conduct of any negotiations or any defence to a claim to which Clause 16.2 applies. IE shall, at the request and expense of the Contractor, provide

all reasonable assistance to the Contractor for the purpose of conducting such negotiations or litigation.

- 16.6 On assignment, termination or expiry of this Agreement, the Contractor shall co-operate in the transfer to a new contractor, if applicable, under such arrangements as may be notified by IE to the Contractor. The Contractor shall co-operate fully with IE and any new contractor, if applicable, during the transition phase leading to expiry of this Agreement or following termination or assignment. This co-operation shall extend to full access to all documents, reports, summaries and any other information required to achieve an effective transition without disruption to routine operational requirements.
- 16.7 Without prejudice to the generality of Clause 16.6, the Contractor shall provide to IE, at least six Months prior to the expiry of this Agreement and at such other times as may be required by IE, the information specified in Schedule Six. The Contractor acknowledges and irrevocably agrees that, notwithstanding any other provision of this Agreement, IE shall be entitled to use any documents, reports, summaries and any other information provided to IE under Clause 16.6 and this Clause 16.7, including disclosure of the same to third parties for the purposes of a tender process in relation to this Agreement.

17 SUSPENSION

- 17.1 The Contractor shall, upon receipt of a notice of suspension from IE, suspend the performance of such of its obligations and for such time and in such manner as IE shall set out in its notice of suspension.
- 17.2 Unless such suspension is necessary by reason of some default of or breach of this Agreement by the Contractor for which it is responsible the provisions of Clause 17.3 shall apply.
- 17.3 Subject to Clause 17.2, where IE suspends performance of any of the obligations of the Contractor pursuant to Clause 17.1, the Contractor shall be entitled to an extension of time referred to in the Work Programme relevant for performance of the obligation(s) to which the suspension relates.
- 17.4 Where the suspension continues for a period of six (6) months, at the expiration of six months the Contractor shall be entitled to issue a written notice to IE requiring IE to lift the suspension of the obligation(s). If the suspension is not lifted within 30 days of IE receiving the written notice from the Contractor, the Contractor shall be entitled to terminate this Agreement.

18 FORCE MAJEURE

- 18.1 “**Force Majeure**” in this Clause 18 means an event beyond the reasonable control of a Party involving an act of God, war, riot, civil commotion, malicious damage, disease, pestilence, accident, fire, flood, storm, strike, lock-out or other industrial dispute (in the case of strike, lock-out or other industrial dispute not confined to employees, servants, agents or sub-contractors of the Contractor), which could not have been avoided by taking reasonable precautions which, having regard to all matters known to it before the occurrence of the Force Majeure and all other relevant factors, it ought reasonably to have taken but did not take.
- 18.2 If a Party is affected by a Force Majeure (the “**Affected Party**”) it shall promptly notify the other Parties of the nature and extent of the circumstances in question.
- 18.3 Notwithstanding any other provisions of this Agreement, the Affected Party shall be deemed not to be in breach of this Agreement, or otherwise liable to any other Party,

for any delay in performance or the non-performance of any of its obligations under this Agreement to the extent that the delay or non-performance is due to any Force Majeure of which it has notified the other Parties in accordance with Clause 18.2 and the time for performance of the affected obligations shall be extended accordingly.

- 18.4 The Affected Party shall use its reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under this Agreement.
- 18.5 The Affected Party shall notify the other Parties immediately in writing once the Force Majeure has ended and shall forthwith resume performance of all of its obligations under this Agreement.
- 18.6 If the Force Majeure resulting in the delay in performance or the non-performance by a Party of any obligations under this Agreement continues for more than three months after the date on which the Force Majeure begins, any Party may by notice in writing to the other Parties terminate this Agreement forthwith. The provisions of Clause 14.4 to Clause 14.7, inclusive, shall apply in respect of any termination hereunder.
- 18.7 If because of an event of Force Majeure, the Contractor is unable to provide the Services and/or Additional Services in whole or in part, IE shall have the right to make alternative arrangements for the provision of all or part of such Services and/or Additional Services. Under those circumstances, IE shall not be obliged to resume its obligations under the Agreement and the Contractor shall not be permitted to recommence providing the relevant Services and/or Additional Services until any contractual obligations of IE with a third party in making such alternative arrangements have ceased or expired.

19 CONFIDENTIALITY

- 19.1 “**Confidential Information**” means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a Party (the “**Disclosing Party**”) to another Party (the “**Receiving Party**”) whether before, on or after the date of this Agreement including, without limitation, information relating to the negotiation, provisions and subject matter of this Agreement or the Disclosing Party’s operations, processes, plans or intentions, know-how, design rights, trade secrets or business affairs and for the avoidance of doubt, this Agreement shall constitute Confidential Information.
- 19.2 Subject to Clause 19.3, during the term of this Agreement and at any time after the termination or expiry of this Agreement (for any reason) the Receiving Party:
 - 19.2.1 may not use any Confidential Information for any purpose other than in the performance of its obligations under this Agreement;
 - 19.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 19.3; and
 - 19.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.
- 19.3 The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:
 - 19.3.1 it is required by law including, for the avoidance of doubt, any disclosure required under the Freedom of Information Act 2014 (the “**FOI Act**”);
 - 19.3.2 in the case of IE, disclosure is required by its parent company, or shareholder, or a Minister of the Government of Ireland, or the National Transport Authority;

- 19.3.3 the information has come into the public domain or into the knowledge of the Receiving Party, otherwise than through a breach of this Clause 19 or any other confidentiality agreement with the Disclosing Party by the Receiving Party;
 - 19.3.4 it is required by existing contractual obligations of which the Disclosing Party is aware;
 - 19.3.5 it is required by any securities exchange or regulatory or governmental body to which it is subject; or
 - 19.3.6 the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees, servants, agents and sub-contractors (a “**Recipient**”) to the extent that disclosure is reasonably necessary for the purposes of this Agreement.
- 19.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under this Agreement as if the Recipient was a Party to this Agreement.
- 19.5 The Contractor will indemnify and keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all liability, claims, damages, costs (including legal costs) and expenses incurred by any of them in respect of any breach of this Clause 19 by the Contractor or any person acting on behalf of the Contractor. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 19.5 shall be paid by it on demand being made of it by CIE and/or IE. For the avoidance of doubt, nothing in Clause 10 (Indemnity and Liability) of this Agreement shall limit or exclude the Contractor’s liability under this Clause 19.

20 **DATA PROTECTION AND FREEDOM OF INFORMATION**

- 20.1 The Contractor acknowledges that in performing its obligations under this Agreement, the Contractor may process personal data (within the meaning set out in Data Protection Legislation) on behalf of IE and/or CIE. In such circumstances, the Contractor acknowledges that IE and/or CIE is the controller and the Contractor is the processor as each such term is defined in Data Protection Legislation and the Contractor agrees that:
- 20.1.1 the Contractor shall comply with the data protection principles specified in Data Protection Legislation that are applicable to the Contractor in connection with the performance of the Contractor’s obligations;
 - 20.1.2 the Contractor shall have access to and process certain personal data relating to the data categories (as set out in the Data Schedule in Schedule Nine to this Agreement) belonging to the categories of data subjects (as set out in the Data Schedule in Schedule Nine to this Agreement) in order and for as long as is necessary to perform its obligations under the Agreement. The obligations and rights of IE and/or CIE shall be as set out in this Agreement;
 - 20.1.3 the Contractor shall only process such personal data in accordance with the documented instructions of IE and/or CIE, including with regard to transfers of personal data to a third country or an international organisation, and only to the extent and in such a manner as is strictly necessary for the performance of the Contractor’s obligations under this Agreement unless otherwise required to do so by European Union (EU) or EU Member State law to which the Contractor is subject and in such a case, the Contractor shall inform IE and/or CIE of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
 - 20.1.4 the Contractor shall ensure that it has appropriate security, technical and organisational measures (the “**Security Measures**”), including as set forth in this Agreement, to ensure a level of security appropriate to the then current risk and to protect against unauthorised or unlawful processing of personal data and

against accidental loss or destruction of, or damage to, personal data. In assessing the appropriate level of security, account shall be taken in particular of the risks that are presented by processing, in particular from accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to personal data transmitted, stored or otherwise processed. The Security Measures shall include as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of the Contractor's systems used for such processing;
- (c) the ability to restore the availability and access to personal data in the event of a physical or technical incident; and
- (d) a process for regularly testing, assessing and evaluating the effectiveness of technical and organisational measures for ensuring the security of the processing;

- 20.1.5 any material changes to the Security Measures shall be agreed in writing by the Parties;
- 20.1.6 the Contractor shall assist IE and/or CIE in ensuring compliance with IE and/or CIE's obligations in respect of security of personal data under Data Protection Legislation;
- 20.1.7 the Contractor shall make available to IE and/or CIE all information necessary to demonstrate compliance with its obligations set out in this Clause 20.1 and allow for and contribute to audits, including inspections, conducted by IE and/or CIE or another auditor mandated by IE and/or CIE to ensure compliance with the obligations laid down in this Clause 20.1, including the Contractor's data security obligations under Data Protection Legislation provided however that IE and/or CIE shall be entitled, at IE and/or CIE's discretion, to accept adherence by the Contractor to an approved code of conduct or an approved certification mechanism to aid demonstration by the Contractor that the Contractor is compliant with the provisions of this Clause 20.1;
- 20.1.8 the Contractor shall, in accordance with Article 28(3) of the GDPR, immediately inform IE and/or CIE if, in its opinion, an instruction infringes the GDPR or other EU Member State law;
- 20.1.9 the Contractor shall promptly (and in any event within 48 hours) inform IE and/or CIE in the event of receiving a request from a data subject to exercise their data subject rights under Data Protection Legislation and provide such co-operation and assistance in relation to such a request, without responding to that request unless otherwise authorised by IE and/or CIE to do so;
- 20.1.10 the Contractor shall assist IE and/or CIE, including by implementing appropriate technical and organisational measures, to allow IE and/or CIE to comply with requests from data subjects to exercise their rights under Data Protection Legislation;
- 20.1.11 the Contractor shall ensure that access to IE and/or CIE's personal data is limited to (i) those persons who need access to IE and/or CIE's personal data to meet the Contractor's obligations under the Agreement, (ii) in the case of any access by such persons, such part or parts of the personal data as is strictly necessary for that person to perform its duties; and (iii) such persons authorised to process such personal data have committed themselves to binding and enforceable confidentiality obligations or are under an appropriate statutory obligation of confidentiality;

- 20.1.12 the Contractor shall not use any sub-contractor in the performance of its obligations under this Agreement that will have access to such personal data without the prior written consent of IE and/or CIE and where IE and/or CIE has consented to the appointment of a sub-contractor, the Contractor shall not replace or engage other sub-contractors without the prior written consent of IE and/or CIE;
- 20.1.13 where any sub-contractor of the Contractor will be processing such personal data on behalf of IE and/or CIE, the Contractor shall ensure that a written contract exists between the Contractor and the sub-contractor containing clauses that impose at least the equivalent obligations to those imposed on the Contractor in this Clause 20.1. In the event that any sub-contractor fails to meet its data protection obligations, the Contractor shall remain fully liable to IE and/or CIE for the performance of the sub-contractor's obligations;
- 20.1.14 the Contractor shall ensure compliance with this Clause 20.1 by any sub-contractor and any other person acting under the Contractor's authority who has access to such personal data;
- 20.1.15 the Contractor shall without undue delay, and in any event within 24 hours, notify IE and/or CIE (i) of any suspected or actual breaches of the Contractor's or any of its sub-contractor's systems which may put the personal data at risk of disclosure, unauthorised processing or accidental or unlawful destruction, loss, alteration, or access to personal data, including without limitation ransomware or denial of service attacks and (ii) if any personal data is otherwise lost, stolen, misappropriated, destroyed or becomes damaged, corrupted or unusable, and the Contractor shall provide IE and/or CIE with such co-operation and assistance as may be required to mitigate against the effects of, and comply with any reporting obligations which may apply in respect of, any such breach;
- 20.1.16 the Contractor shall, at IE and/or CIE's request, cooperate with and assist IE and/or CIE to enable IE and/or CIE to comply, in accordance with Data Protection Legislation, with any assessment, enquiry, notice, investigation, audit or consultation under Data Protection Legislation, which shall include the provision of all data requested by CIE within the timescale specified by IE and/or CIE;
- 20.1.17 the Contractor shall keep accurate and up-to-date records of its processing of the personal data processed pursuant to this Agreement and share such records with IE and/or CIE immediately upon request;
- 20.1.18 the Contractor shall, at the choice of IE and/or CIE, delete or return all such personal data to IE and/or CIE when the Contractor ceases to provide services relating to data processing under this Agreement and delete all existing copies and extracts of such personal data unless applicable EU law or the laws of an EU Member State require storage of the personal data;
- 20.1.19 if the Contractor receives any complaint, notice or communication in respect of the Agreement or in respect of the performance of the Contractor's obligations under the Agreement and which relates directly or indirectly to the processing of personal data and/or to compliance with Data Protection Legislation, the Contractor shall immediately notify IE and/or CIE and shall provide IE and/or CIE with full co-operation and assistance in relation to any such complaint, notice or communication;
- 20.1.20 no such personal data shall be transferred outside of the European Economic Area (which the Parties acknowledge may in the future include the United Kingdom) by the Contractor or any of its agents or sub-contractors without the prior written consent of IE and/or CIE which consent may be subject to terms and conditions (including, without limitation, that the data importer enters into

model clauses in the form approved by the European Commission and, where relevant, complies with the provisions regarding sub-processors contained in such model contracts in respect of any sub-processors). The Contractor shall comply with the requirements of Data Protection Legislation in respect of transfers of such personal data outside of the European Economic Area, to the extent that IE and/or CIE consents to any such transfer; and

20.1.21 nothing contained in this Agreement shall relieve the Contractor of its direct responsibilities and liabilities under the GDPR.

20.2 The Contractor hereby agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against any and all losses, expenses (including reasonable legal fees), damages, costs, penalties and regulatory fines ("**Loss**") incurred or suffered by them or for which they may become liable including:

20.2.1 civil claims where a final award of damages has been granted (including in relation to a court approved settlement) in favour of a data subject; and/or

20.2.2 administrative fines imposed by a supervisory authority and approved by a court of competent jurisdiction,

in each case, to the extent that such Loss arises from or in connection with the Contractor acting outside or contrary to the lawful instructions of IE and/or CIE and/or any other breach by the Contractor of its data protection obligations under this Agreement or Data Protection Legislation. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 20.2 shall be paid by it on demand being made of it by CIE and/or IE.

20.3 In the event that transfers of data outside of the European Economic Area have been permitted by IE and/or CIE under Clause 20.1.20, and the mechanism that is used to facilitate those transfers under Data Protection Legislation is declared invalid by any relevant authority, the Contractor shall cease such transfers and work with IE and/or CIE to put in place an alternative mechanism which complies with Data Protection Legislation.

20.4 The Contractor shall cooperate with IE and CIE and provide such information as IE and/or CIE may reasonably require in relation to any information required to be given by IE and/or CIE in relation to this Agreement to any party at any time under applicable law, including for the avoidance of doubt and without limitation, the FOI Act, subject to such caveats and protections as may be afforded to IE and/or CIE in relation to the furnishing of such information under applicable law. IE is a partially exempt body under the FOI Act (Part 1, Schedule 1, paragraph (p)) and will comply with any obligations imposed on it under the FOI Act in respect of its non-exempt activities. CIE is listed as one of the exempt bodies under Part 2, Schedule 2 of the FOI Act and therefore the FOI Act does not apply to CIE. The Contractor shall identify to IE and/or CIE any information that it considers should not be disclosed on grounds of commercial sensitivity, and shall state the reasons for such sensitivity. Each of IE and CIE will consult with the Contractor about any such commercially sensitive information before making any decision on any obligation on it or request to it to provide information under applicable law, provided that nothing in this Agreement shall prevent IE and/or CIE from disclosing any information or materials required to be disclosed under applicable law.

20.5 The Contractor hereby agrees to indemnify, keep indemnified and hold harmless each of CIE and IE and each of their respective officers, employees, servants, agents and sub-contractors against all losses, damages, costs (including legal costs) and professional and other expenses of any nature whatsoever incurred or suffered by them arising out of any breach of Clause 20.4 by the Contractor or any person acting on behalf of the Contractor. Any amount that may be payable by the Contractor pursuant to this Sub-Clause 20.5 shall be paid by it on demand being made of it by CIE and/or IE.

21 ANNOUNCEMENTS

- 21.1 Subject to Clause 19, no announcement concerning the transaction contemplated by this Agreement or any ancillary matter shall be made by the Contractor, without the prior written consent of IE.
- 21.2 Clause 21.1 does not apply to a public announcement, communication or circular to be made or sent by the Contractor, if it is required by law, or any securities exchange, or regulatory or governmental body, to which it is subject.

22 COSTS AND EXPENSES

- 22.1 Except where this Agreement expressly provides otherwise, each Party shall pay its own costs and expenses relating to the negotiation, preparation, execution and implementation by it of this Agreement and any document referred to herein.

23 RE-ORGANISATION OF IE AND/OR CIE

- 23.1 Notwithstanding anything to the contrary in this Agreement, if IE or CIE or the Oireachtas or the Government of Ireland or any Minister or Department thereof should re-organise the business and/or legal structure of IE and/or CIE (whether by dividing and/or transferring and/or restructuring their respective businesses between or into two or more corporate bodies, statutory bodies, state agencies, divisions, subsidiaries, companies, entities or otherwise ("**Entities**")), the obligations of IE and/or CIE may be divided or transferred between such Entities and the Contractor shall thereafter deal with such Entities as if the parts of this Agreement relevant to the business of such Entities formed a contract between the Contractor and such Entities.

24 FURTHER ASSURANCE

- 24.1 Each Party shall, at its own cost, from time to time and being required to do so by another Party, now or at any time in the future, do or procure the doing of all such acts and/or execute or procure the execution of all such documents in a form satisfactory to such other Party as such other Party may reasonably consider necessary, to give full effect to this Agreement.

25 LEGAL OPINION

- 25.1 The Contractor shall, if requested by IE, at the Contractor's expense, procure the provision of a written legal opinion of a qualified barrister or solicitor certifying that:
- 25.1.1 the Contractor has all requisite corporate power to execute, deliver and perform its obligations under the Agreement and any bonds required to be procured by the Contractor under the Agreement;
- 25.1.2 such execution, delivery and performance of the Agreement and any bonds required to be procured by the Contractor under the Agreement have been duly authorised by appropriate corporate action; and
- 25.1.3 the Agreement and any bonds required to be procured by the Contractor under the Agreement constitute legally binding obligations on the Contractor or the surety as the case may be.
- 25.2 Any legal opinion requested by IE in accordance with Clause 25.1 shall have such form and content as shall be approved by IE.

26 BONDS

- 26.1 The Contractor shall, at its expense, procure the execution and delivery to IE of any bonds specified in the Invitation to Tender (if any) or otherwise required by IE to be

provided by the Contractor in a form approved by IE and by a bank or other financial institution acceptable to IE.

26.2 Payment of the Charges and Additional Charges to the Contractor hereunder shall be conditional upon the execution and delivery of any such bonds.

27 **VARIATIONS**

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

28 **WAIVERS AND ALTERNATIVE REMEDIES**

28.1 No delay, omission or forbearance on the part of any Party to this Agreement in exercising any right, power, privilege or remedy provided by law or under this Agreement shall operate to or be construed or interpreted as operating to:

28.1.1 impair such rights, power, privilege or remedy; or

28.1.2 operate as a waiver thereof.

28.2 The single or partial exercise by IE and/or CIE of any right, power, privilege or remedy provided by law or under this Agreement shall, whether or not exercised, not preclude any other or further exercise thereof.

28.3 The rights, powers, privileges and remedies of each of IE and CIE provided in this Agreement are cumulative and not exclusive of any rights, powers, privileges and remedies it would otherwise be entitled to under common law or statute.

28.4 IE shall be entitled to withhold and set-off monies owing to the Contractor in accordance with this Agreement in the event and to the extent the Contractor defaults in paying any monies, damages, costs or expenses owed to IE as a result of or in connection with the Contractor's performance or failure to perform its obligations under this Agreement.

29 **NO PARTNERSHIP**

29.1 Nothing in this Agreement and no action taken by the Parties pursuant to this Agreement shall create, or be interpreted or construed as creating a partnership, association, joint venture or, other co-operative entity between any of the Parties.

30 **SCOPE OF AUTHORITY**

30.1 No Party shall have any right, power or authority to enter into any agreement, or act on behalf of, or to act as or to be an agent or representative of, or to otherwise bind any other Party unless expressly provided otherwise in this Agreement.

31 **ASSIGNMENT/SUB-CONTRACTING/CHANGE OF CONTROL**

31.1 Each of CIE and IE may assign or transfer its rights and/or obligations under this Agreement, in whole or in part, to any person without the consent of the Contractor.

31.2 This Agreement is personal to the Contractor and the Contractor shall not without the written consent of IE, assign, sub-contract, mortgage, charge, create an interest in any trust over, or dispose of any of its rights or obligations under this Agreement.

31.3 If the Contractor wishes to apply for the consent of IE to appoint or change a sub-contractor, the Contractor shall give IE not less than fourteen (14) days' notice of:

31.3.1 the intended appointment of the sub-contractor, with detailed particulars which shall include its relevant experience; and

31.3.2 the intended commencement date and scope of the sub-contractor's work.

31.4 For the avoidance of doubt, sub-contracting shall not in any way relieve the Contractor of any obligations under this Agreement and the Contractor shall be responsible for all the acts, omissions, obligations, negligence and/or defaults of any sub-contractor and/or supplier, its officers, servants, agents, sub-contractors and/or employees, as if they were the acts, omissions, obligations, negligence and/ or defaults of the Contractor.

Without prejudice to the generality of the foregoing paragraph of this Sub-Clause 31.4, where IE becomes aware that any of the exclusion grounds set out in Article 57 of Directive 2014/24/EU applies to any sub-contractor, IE reserves the right to require the Contractor to immediately replace such sub-contractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of such exclusion grounds applies to the sub-contractor and a requirement that the sub-contractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

31.5 The Contractor shall obtain IE's prior written consent to any Change of Control of the Contractor.

32 **NOTICES AND SERVICE**

32.1 Any notice required or authorised by this Agreement to be given by any Party to another shall be in writing and may be given by hand or sent by registered post or fax transmission to such other Party to the addresses and facsimile numbers and marked for the attention of the persons specified in Schedule Three.

32.2 Any notice or other information given by post under Clause 32.1 which is not returned to the sender as undelivered shall be deemed to have been given on the fourth day after the envelope containing the same was so posted (or in the case of air-mail of overseas post, on the sixth day after the envelope containing the same was so posted) and proof that the envelope containing any such notice or information was properly addressed and sent by registered post, and that it has not been so returned to the sender, shall be sufficient evidence that such notice of information has been duly given.

32.3 Any notice or other information sent by fax transmission shall be deemed to have been duly given on the date of transmission provided that such date is a Working Day.

32.4 Any notice or other information given by hand shall be deemed to have been given at the time of delivery.

32.5 Any Party may, by notice to the others (in compliance with this Clause 32), change the address, fax or the person to which such notice is to be sent or delivered.

33 **COUNTERPARTS**

33.1 This Agreement may be executed by the Parties in any number of counterparts and on separate counterparts, but shall not be so effective until each Party has executed at least one counterpart.

33.2 Each counterpart shall constitute an original of this Agreement, but all the counterparts shall together constitute but one and the same instrument.

34 **SEVERANCE**

34.1 Each of the provisions of this Agreement is severable and if any provision of this Agreement is held by any court or other competent authority to be illegal, void or unenforceable in whole or in part, the legality, validity and enforceability of the remaining provisions of this Agreement shall not be affected or impaired thereby.

35 **ENTIRE AGREEMENT**

35.1 This Agreement contains the entire agreement between the Parties and contains all the terms which the Parties have agreed with respect to its subject matter and this Agreement supersedes and extinguishes all previous drafts, agreements, contracts and undertakings between the Parties.

35.2 The Contractor acknowledges that it has not been induced to enter into this Agreement by a statement or promise, which this Agreement does not contain.

35.3 IE is not liable in equity, contract or tort or in any other way for a representation that is not set out in this Agreement.

35.4 Nothing in this Clause 35 shall have the effect of limiting or restricting any liability of a Party arising as a result of any fraud.

36 **DISPUTE RESOLUTION PROCEDURE**

36.1 If any dispute or difference arises between the Parties as to any matter or thing arising under or in connection with the Agreement (a "**Dispute**") the Parties shall initially attempt to resolve the matter by mutual agreement. Any Dispute that has not been so resolved within the time limit referred to in Clause 36.1.1 below shall become the subject of the dispute resolution procedures set out in this Clause 36 (the "**Dispute Resolution Procedures**"). For the resolution of such a Dispute the following procedures shall apply:

36.1.1 If a Dispute has not been resolved within ten (10) Working Days from when it was first raised at a meeting between the Contractor and IE, it shall be referred to IE's Director of New Works and the Contractor's Contract Director by either IE or the Contractor serving a notice on the other, with a copy to CIE (a "**Dispute Notice**") such notice to be served in accordance with Clause 32;

36.1.2 If the Dispute has not been resolved by IE's Director of New Works and the Contractor's Contract Director within ten (10) Working Days of being referred to them, it shall be referred to the Chief Executive of IE and the Operations Director of the Contractor;

36.1.3 If the Parties reach agreement on the Dispute, such agreement shall be recorded in writing in a document in an agreed form and shall be binding on the Parties once it is signed by the duly authorised representatives of the Parties or executed under seal as may be required in order to render such agreement fully effective. Nothing in the Dispute Resolution Procedures shall operate so as to constitute a contract amendment or variation of any provision of the Agreement which may only be amended in accordance with Clause 27;

36.1.4 If the Dispute has not been resolved by the Chief Executive of IE and the Operations Director of the Contractor within ten (10) Working Days of being referred to them, the Dispute may be referred to the courts of Ireland by any Party. For the avoidance of doubt and without prejudice to the respective rights and remedies of the Parties howsoever arising, and in particular, but without limitation, without prejudice to the right of any Party to seek relief from and/or judgement of the courts of Ireland, the

Parties will consider mediation and mediation procedures and each Party will take its own legal advice in relation to any mediation which is proposed to resolve any Dispute. If, following receipt of such advice, the Parties propose to enter into mediation, the terms of any "agreement to mediate" between the Parties shall be recorded in writing (including, for example, the subject matter of the Dispute in question, the identity of the mediator, the duration and location of the mediation, the outcome of the mediation and costs & expenses) and signed by or on behalf of the Parties. The Parties may also agree, without obligation, to some other form of dispute resolution process, which if they do, must be recorded in writing as an amendment to this Agreement in accordance with Clause 27.;

- 36.2 Each of the Parties agrees that it shall act amicably and in good faith for the purpose of resolving a Dispute. The authorised representatives of the Parties shall meet, promptly following referral to them, in Dublin, Ireland (attending in person or via video or telephone conference facilities) in order to try to resolve the Dispute;
- 36.3 Each of the Parties shall bear its own costs and expenses associated with attending meetings, negotiations and preparing documentation or reports for the purposes of resolving a Dispute.
- 36.4 CIE shall be given notice of all meetings where a Dispute is to be discussed and shall be entitled to attend all such meetings and be given copies of all relevant documentation relating to a Dispute.
- 36.5 Each of the Parties acknowledges that all proceedings, meetings, discussions, negotiations, statements and representations, whether written or oral, and documentation or reports made in the course of any attempt to resolve a Dispute shall be confidential to the Parties and made strictly without prejudice to the rights of the Parties in any litigation, future or pending, or anticipated, or any expert determination, arbitration, mediation, conciliation or other dispute resolution process.
- 36.6 Nothing in the Dispute Resolution Procedures shall prevent the Parties or any Party from seeking from any court of competent jurisdiction an interim order or interlocutory relief in restraining the other Parties or any Party from doing any act, or compelling the other Parties or any Party to do any act.
- 36.7 The obligations of the Parties under the Agreement shall not cease or be suspended or delayed pending resolution of a Dispute save as may be otherwise directed by IE and/or CIE by notice in writing issued in accordance with Clause 32.

37 **GOVERNING LAW**

- 37.1 This Agreement shall in all respects be governed by and construed in accordance with the laws of Ireland.

38 **JURISDICTION**

- 38.1 Each Party irrevocably agrees for the benefit of each of IE and CIE that the courts of Ireland have exclusive jurisdiction to hear and decide any suit, action or proceedings and to settle any disputes which may arise out of or are in connection with this Agreement, and, for these purposes, irrevocably submits to the jurisdiction of the courts of Ireland.
- 38.2 The submission to the jurisdiction of the courts of Ireland does not limit IE's and/or CIE's right to take proceedings against the Contractor in another court of competent jurisdiction, nor does the taking of proceedings by IE and/or CIE in any one or more

jurisdictions preclude IE and/or CIE from taking proceedings in another jurisdiction (whether concurrently or not) if and to the extent permitted by applicable law.

SCHEDULE ONE

Specification

SCHEDULE TWO

Personnel

Contractor's Personnel

Project Manager -	Ken McCarthy
Contract supervisor under the Specification -	Ken McCarthy
Project Supervisor for Design Process -	Niall O'Brien
Project Supervisor for Construction Stage) -	Niall O'Brien
Safety file administrator under the Specification -	Josan Rogers
Senior specialist system technician under the Specification-	Alex Kirby
Other specialist system technicians under the Specification -	Fergal Anderson

Others:

- Repair engineer -	Fergal Anderson
- Contractor's programme manager -	Lina Ryan
- Contractor's Contract Director -	Alan Sexton
- Contractor's Operations Director -	Iñigo Egaña

IE's Programme Manager – Gerry Kennedy

SCHEDULE THREE

The Contractor

Name of Company: Orona Midwestern Lifts Limited
Incorporated under the laws of: Ireland
Registration Number: 90721
Address of Registered Office: Corcanree Business Park
Dock Road
Limerick

Notices

If to the Contractor, to: Orona Midwestern Lifts Limited
Address: Corcanree Business Park
Dock Road
Limerick
Fax: 061 400121
Marked for the attention of: Alan Sexton

If to IE, to: Iarnród Éireann-Irish Rail
Address: Inchicore Railway Works,
Dublin 8,
D08 K6Y3
Fax: {no fax machine available}
Marked for the attention of: Eamonn Ballance

If to CIE, to: Coras Iompair Eireann
Address: Heuston Station,
Dublin 8,
Ireland
Fax: 00 353 (1) 7032276
Marked for the attention of: The Company Secretary

SCHEDULE FOUR

Charges

1. Amount of Charge

See attached schedule of rates, showing all amounts in euros, exclusive of VAT but inclusive of all expenses

2. Time for issue of invoice for payment of Charge

Following (a) the issue (in accordance with Clause 2.2) by IE to the Contractor of a Purchase Order in respect of any Services, (b) the performance by the Contractor of such Services, (c) the submission by the Contractor to IE (by email to ieirstationservices@irishrail.ie) of both the weekly risk assessments(s) and the signed worksheet(s) (each as described in the Specification) in respect of such Services and (d) the submission by the Contractor to IE (by email to ieirstationservices@irishrail.ie) of both a service report card and a close out report (each in accordance with the Specification) in respect of such Services, the Programme Manager will (if satisfied that the Contractor has performed the relevant Services and submitted the associated weekly risk assessment(s), signed worksheet(s), service report card and close out report in accordance with the Agreement) confirm to the Contractor that an invoice for such Services may be issued by the Contractor to IE in accordance with Clause 6.

SCHEDULE FIVE

Insurance Requirements

The Contractor shall maintain and shall procure that any of its sub-contractors shall maintain the following insurances for the following terms:

1. a policy insuring against liability for any losses or damages due to damage or destruction of property or death or personal injury of any person arising out of the Contractor's performance of the Agreement and including any such liability arising out of sudden and unforeseen pollution (**public liability** insurance) for an amount of not less than five million euro (€5,000,000) per occurrence to be maintained at all times during the continuance of this Agreement and extending to specifically indemnify Iarród Éireann - Irish Rail and Coras Iompair Éireann;
2. a policy insuring against liability for any claims, damages, losses and expenses (including legal fees and expenses) arising out of the injury to, or disease or death of any person employed by the Contractor in the course of the Contractor's performance of the Agreement (**employer's liability** insurance) for an amount of not less than thirteen million euro (€13,000,000) per occurrence to be maintained at all times during the continuance of this Agreement and extending to specifically indemnify Iarród Éireann - Irish Rail and Coras Iompair Éireann;
3. **motor** insurance (including third party property damage) for an amount of not less than two million six hundred thousand euro (€2,600,000) maintained at all times during the continuance of this Agreement;
4. a policy insuring against liability for any losses or damages due to damage or destruction of property or death or personal injury of any person arising due to the products used by the Contractor in the performance of the Services and/or Additional Services under the Agreement (**product liability** insurance) for an amount of not less than five million euro (€5,000,000) per occurrence and in the aggregate to be maintained at all times during the continuance of this Agreement and extending to specifically indemnify Iarród Éireann - Irish Rail and Coras Iompair Éireann; and
5. a policy insuring against loss or damage to contract works (**contractors all risks** insurance) for an amount (a) during the Initial Term, of not less than four million euro (€4,000,000) per occurrence and (b) during any Term Extension, representing contract value plus 15% per occurrence, such policy to be maintained at all times during the continuance of this Agreement, to include each of Iarród Éireann - Irish Rail and Coras Iompair Éireann as joint insured and to include a waiver of rights of recovery against Iarród Éireann - Irish Rail and Coras Iompair Éireann.

SCHEDULE SIX

Information to be provided to IE under Clause 16.7

1. The Contractor shall provide to IE the following anonymised information:
 - 1.1 the total number of staff that currently undertake the Services and/or Additional Services and who may therefore be transferred under the 2003 Regulations;
 - 1.2 the total number of posts or proportion of posts expressed as a full-time equivalent value that currently undertakes the Services and/or Additional Services that are to transfer;
 - 1.3 total pay costs in respect of the preceding 12 month period;
 - 1.4 total redundancy liability if all transferring employees were to be made redundant.
2. The Contractor shall provide to IE the following anonymised information in respect of those members of staff included in the total at paragraph 1.1 of this Schedule Six:
 - 2.1 age (not date of birth);
 - 2.2 employment status (i.e. permanent, fixed term, casual);
 - 2.3 length of current period of continuous employment (in years and months);
 - 2.4 weekly contracted hours of attendance (gross);
 - 2.5 standard annual holiday entitlement/current holidays accrued;
 - 2.6 redundancy liability information;
 - 2.7 annual salary;
 - 2.8 details of any regular overtime commitments (- these may be weekly, monthly or annual commitments for which staff may receive an overtime payment);
 - 2.9 details of shift pay, overtime rates, Sunday premium and any other attendance patterns that attract enhanced rates of pay or allowances; and
 - 2.10 regular/recurring allowances.
3. The Contractor shall provide to IE any additional information about factors that may influence staffing levels and costs.
4. The information to be provided by the Contractor under paragraphs 1, 2 and 3 of this Schedule Six should not identify an individual member of staff by name or other unique personal identifier.
5. The Contractor shall provide to IE:
 - 5.1 the general employment terms and conditions applicable to those members of staff identified at paragraph 2 of this Schedule Six; and

5.2 anonymised details of any employment terms or terms and conditions that deviate from those disclosed at paragraph 5.1 of this Schedule Six.

SCHEDULE SEVEN

IE Policies

Part 1 of 3

Iarnród Éireann Infrastructure, Safety Management Standard CCE-SMS-005 (Plant & Labour Services) Contractors Permit to Access - Version 3 - Operative Date 7/2/14

SCHEDULE SEVEN

IE Policies

Part 2 of 3

Iarnród Éireann, Drugs & Alcohol Policy

SCHEDULE SEVEN

IE Policies

Part 3 of 3

Iarnród Éireann – Irish Rail, Code of Conduct for Suppliers & Business Partners – January 2008

Code of Conduct for Suppliers & Business Partners

Iarnród Éireann – Irish Rail

Procurement & Materials Department
Inchicore Railway Works
Dublin 8
IRELAND

January 2008

1. Guiding Principles

The guiding principles governing our employees relationship with our Business Partners,¹ which are detailed in the CIÉ Group Code of Business Ethics for Employees, include;

1. Integrity
2. Confidentiality of information
3. Legality
4. Disclosure of Interest
5. Loyalty
6. Fairness
7. Consideration for work/external environment

These principles apply equally to our Business Partners. The purpose of this document is to inform our Business Partners of Iarnród Éireann expectations of in relation to conducting business or seeking to conduct business with Iarnród Éireann.

2. Basis of purchasing decisions

Purchasing decisions and contract awards are made **solely** on the basis of the offers submitted, in accordance with the award criteria for the particular tender or request for quotation. At all times any impropriety, or even the perception of any impropriety, must be avoided.

3. Responsibilities of our Business Partners

Iarnród Éireann's Business Partners are required to comply with this Code of Conduct for Suppliers and must ensure that all of their employees, sub-contractors, and agents, who come in contact with Iarnród Éireann are made aware of, and comply with this Code of Conduct. The Statement of Commitment (see Appendix 1) must be signed off by all Business Partners who conduct or wish to conduct business with Iarnród Éireann.

4. Main Requirements.

a. Bribes, Kickbacks and Commissions

- These are PROHIBITED.
- They may not be given, received, offered or solicited; whether directly or indirectly through a third party.

b. Gifts and Hospitality

- Gifts are not necessary nor are they expected
- Where gifts are given, they should be infrequent and of nominal value. Under the Iarnród Éireann Employees Code of Business Ethics the maximum total value of gifts that can be accepted by an Iarnród Éireann employee is €65.
- In the event of gifts of higher value (e.g. Christmas Hampers) being received by employees, it is company policy that the employee advises their supervisor or manager and returns the gift.
- Iarnród Éireann employees are prohibited from soliciting gifts or favours from Business Partners and any such requests should be advised to Iarnród Éireann (see 4g below).

¹ Defined as suppliers, contractors, service providers and consultants (including their employees, servants, agents and sub-contractors)

c. Hospitality

- Hospitality should be modest and appropriate to the business situation
- The provision of overnight accommodation, overseas travel, motor vehicles or use of motor vehicles is PROHIBITED.
- Meals may be provided in the business context, such as when an employee is on a visit to a business partners premises, but they should not be lavish or overly expensive or frequent.
- Employees are obliged to report all offers of hospitality to their supervisor

d. Conflict of Interest

- Iarnród Éireann employees and Business Partners must avoid any situation that is, or may be perceived as, a Conflict of Interest.
- Iarnród Éireann employees must represent Iarnród Éireann's best interests and both the employee and the Business Partner are required to disclose the following
 - Any close relationship that could affect the business relationship or a business decision
 - Any common business interests
 - Close family ties with persons who can influence the business decision.

e. Use of Coras Iompair Éireann / Iarnród Éireann name or logo

1. Business Partners may not use the names or logos of Coras Iompair Éireann or Iarnród Éireann without prior specific written permission of the Company Secretary.
2. This is dealt with in detail in our Conditions of Contract.

f. Attempt to canvass or influence a Purchase Decision

1. Any improper attempt to influence a purchasing decision or to canvass can, and will, lead to exclusion from the tender process and other actions.
2. This is dealt with in detail in our Conditions of Tender.

g. Confidentiality and Reporting

1. Business Partners are required to report concerns regarding ethical issues or violations of this Code of Conduct by an employee of Iarnród Éireann, by their employees, or by a third party to:
 - The Head of Internal Audit, CIE Group, Áras Éanna, 60 Gardiner Street Lower, Dublin 1
 - Or
 - The Chief Financial Officer, Iarnród Éireann, Connolly Station, Dublin 1
 - Or
 - Group Chief Financial Officer, CIE, Heuston Station, Dublin 8
2. Preferably in writing
3. Signed is preferable and confidentiality will be assured, but anonymous claims will also be investigated.
4. If you make a signed report, and do not get a prompt acknowledgement and response, please contact the Chief Executive Officer, Iarnród Éireann, Connolly Station, Dublin 1 directly.
5. If you require direction or advice in respect on any aspect of the Code, please contact the Manager, Procurement & Materials, Iarnród Éireann, CIE Works, Inchicore, Dublin 8. {Telephone (+353) 1 7033714}.

h. Consequences

1. Iarnród Éireann will treat substantiated contraventions of this Code of Conduct as a serious matter.

i. Contracts / Purchase Orders

1. It is Iarnród Éireann's policy and practice to issue an official purchase order prior to supply of materials or services or the commitment of resource by a supplier
2. In addition, for major contracts, a formal contract must be executed by the parties prior to commencement.
3. Invoices will not be processed without a valid purchase order
4. Accurate records (timesheets, delivery notes, etc.) must be kept and produced on request – falsification of records is PROHIBITED.
5. Iarnród Éireann pays only on verified receipt of goods, works or services.

j. Drugs and Alcohol Policy

1. Suppliers and business partners are bound by the Iarnród Éireann's Drugs and Alcohol Policy
2. The policy seeks to prevent accidents or damage to property , arising through oversights and errors of judgement as a result of the consumption of alcohol or drugs by staff, or Business Partners
3. Working on Iarnród Éireann property under the influence of alcohol or drugs is strictly prohibited.
4. Suppliers and service providers must ensure that all of their staff who work on Iarnród Éireann sites are familiar with this policy on drugs and alcohol and have systems in place to ensure that their employees abide by the policy.
5. Random testing of staff, suppliers, contractors and service providers will be undertaken and action taken against any staff member or supplier found to be in breach.

5. Summary

It is Iarnród Éireann's objective that all our business is conducted with uncompromising fairness, integrity and professionalism; with

- Strict compliance with the legal requirements of Irish and EU law
- Fair and open competitions
- Neither actual, nor perceived, conflict of interest.

Appendix 1

Statement of Commitment to Iarnród Éireann Code of Conduct for Suppliers and Business Partners

We, _____ (NAME OF COMPANY)

ADDRESS: _____

Undertake to fully implement the requirements in this Code of Conduct for Suppliers and Business Partners in respect of all our dealings with Iarnród Éireann and Coras Iompair Éireann.

We understand that the Code applies to our employees, agents and sub-contractors.

We confirm our acceptance of the Iarnród Éireann Drugs and Alcohol Policy.

We understand that breaches of this Code may lead to our organisation being excluded from participation in future tenders.

SIGNATURE: _____ DATE: _____

POSITION _____ IN _____ COMPANY: _____

NAME (Please print): _____ TEL: _____

POSITION: _____

Signed (Director or Company Secretary): _____

Name _____ (in _____ BLOCK _____ CAPITALS): _____

Date: _____

AFFIX Company Stamp

Please return this signed and completed page with your tender.

SCHEDULE EIGHT

Form of Collateral Warranty by the Construction Contractor to CIE

FORM OF COLLATERAL WARRANTY BY CONTRACTOR TO CIE

THIS DEED is made on the day of 20[].

BETWEEN:

- 1 [.....] (registered company number [.....] whose registered office is at [.....] (the “**Contractor**”); and
- 2 **CÓRAS IOMPAIR ÉIREANN** whose principal office is at Heuston Station, Dublin 8, Ireland (the “**Beneficiary**”).

BACKGROUND:

- A Iarnród Éireann-Irish Rail (the “**Employer**”) is about to enter into a contract (the “**Contract**”) by which the Contractor will undertake [.....*IE insert short description of the Works the subject of this PW-CF6 Short Form Contract.....*] (the “**Works**”) on behalf of the Employer.
- B Terms and expressions defined in that Contract have the same meaning in this Deed as is given to them in the Contract.
- C The Contractor has agreed to provide this Collateral Warranty to the Beneficiary.

NOW IT IS HEREBY AGREED as follows, in consideration of the payment of €1 by the Beneficiary to the Contractor (receipt and adequacy of which the Contractor acknowledges):

1 Contractor’s Undertaking to the Beneficiary

- 1.1 The Contractor warrants and undertakes to the Beneficiary that it has not broken and will not break any express or implied term of the Contract.
- 1.2 The Contractor covenants with the Beneficiary that, in carrying out the Contract, that the Works, when completed, will be fully in accordance with the provisions of the Contract, and in particular, Clause 3 thereof.

2 Insurance

- 2.1 When it reasonably requested to do so by the Beneficiary, the Contractor will produce for inspection satisfactory documentary evidence that its insurances pursuant to the Contract are being maintained.
- 2.2 The Contractor will immediately notify the Beneficiary in writing of any cancellation, non-renewal or material reduction in any of its insurances.

3 Assignment

The benefit of this Deed is assignable by the Beneficiary.

4 Indemnity

The Contractor shall indemnify the Beneficiary and the Beneficiary's employees, directors, and managers against:

- (a) claims, liability, proceedings, and
- (b) loss of or damage to the Beneficiary's property

arising from or in the course of the Contractor's performance or non-performance of the Contract.

Subject to what is stated below in this Clause 4, the Contractor's indemnity does not apply to the extent that the liability is caused by the negligence of the Beneficiary or is property damage that is the unavoidable result of executing the Works in accordance with the Works Requirements.

The Contractor's indemnity for liability for death, injury or illness or any of Contractor's personnel shall apply regardless of whether the death, illness or injury was caused wholly or in part by the negligence of the Beneficiary or any of the Beneficiary's personnel.

5 Notices

Any notice to be given under this Deed must be in writing and will be considered given if delivered by hand or sent by pre-paid registered post to the address to the relevant party at the top of this Deed, or at any other address the relevant party may specify by written notice to the other parties. A notice will be taken to have been received on the day of delivery if delivered by hand, or 48 hours later if sent by pre-paid registered post.

6 Common Law Rights

Nothing in this Deed limits the Beneficiary's rights at law.

7 Law

This Deed is governed by and construed according to Irish law. The parties submit to the exclusive jurisdiction of the Irish courts in relation to all matters concerning it.

8 Procedure

If there is a conflict between this Deed and the Contract, this Deed takes precedence in relation to the subject matter of this Deed.

9 Joint and Several Liability

The obligations in this Deed of the persons comprising the Contractor are joint and several.

**GIVEN UNDER THE COMMON SEAL² OF
THE CONTRACTOR AND EXECUTED AND DELIVERED AS A DEED:**

Director

{ SEAL }

Director/Secretary

SIGNED on behalf of the BENEFICIARY

By _____

In the presence of

[name]

² If the Contractor is a joint venture or consortium, execution must be by each member of the joint venture/consortium and additional execution blocks inserted, in the same form as given above, inserting name of Joint Venture/Consortium Member

APPENDIX 1A

Form of Appointment of Project Supervisor for Design Process

THIS DEED is made on the day of 20

BETWEEN

(1) **IARNRÓD ÉIREANN-IRISH RAIL, CONNOLLY STATION, AMIENS STREET, DUBLIN 1, IRELAND (“IE”) AND**

(2) [●] whose registered office is at [●] (the “**Project Supervisor**”)

BACKGROUND

By an agreement (the “**Construction Agreement**”) made on or about [●], IE, as employer, has appointed [●] as contractor (the “**Construction Contractor**”), for [insert name of Construction Agreement] (the “**Works**”).

This Deed is collateral to the Construction Agreement.

IT IS AGREED AS FOLLOWS:

1. IE appoints the Project Supervisor as project supervisor for the design process according to the Safety, Health and Welfare at Work (Construction) Regulations 2013, and any amendment to them (the “**Construction Regulations**”) for the project comprising the Works (the “**Project**”).
2. The Project Supervisor’s appointment starts on the date of this Deed and continues for as long as, under the Construction Regulations, IE is required to have a project supervisor for the design process for the Project, unless the appointment is terminated earlier.
3. The Project Supervisor accepts the appointment.
4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the design process for the Project.
5. The Project Supervisor represents and warrants to IE that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Deed and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with requirements and prohibitions imposed on the Project Supervisor by this Deed and under the relevant statutory provisions. In this Deed, competent person and relevant statutory provisions are construed according to section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.
6. The Project Supervisor represents and warrants to IE that the time allowed by the Construction Agreement for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
7. The Project Supervisor represents and warrants to IE that the information provided by IE to the Project Supervisor about the state or condition of the Site (as defined in the Construction Agreement) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Construction Contractor is required to have under Clause 10 of the Construction Agreement, and that those insurances comply with all the requirements of the Construction Agreement, and are kept in force for the same period as required by the

Construction Agreement, and include cover for death or injury resulting from the Project Supervisor's performance or non-performance of its duties under this Deed and the Construction Regulations.

9. If the Project Supervisor breaches its obligations or warranties under this Deed, or if the Construction Contractor's duty to complete the Works is terminated under the Construction Agreement, IE may terminate the Project Supervisor's appointment under this Deed.
10. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give IE all documents it prepares in the course of and for the purpose of performing its duties under this Deed (the "**Project Supervisor's Documents**"). If the Project Supervisor's appointment under this Deed terminates, the Project Supervisor shall give all Project Supervisor's Documents to IE immediately. Ownership of and copyright in the Project Supervisor's Documents shall become IE's when the Project Supervisor delivers them to IE, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify IE against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
11. This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

IN WITNESS whereof this Deed is duly executed by the parties on the day and year first herein written.

Present when the common seal of the **PROJECT SUPERVISOR** was affixed hereto and **EXECUTED** and **DELIVERED** as a **DEED** by the **PROJECT SUPERVISOR**:

Director

Secretary

OR

SIGNED for and on behalf of **PROJECT SUPERVISOR** by
in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

SIGNED for and on behalf of
IARNRÓD ÉIREANN-IRISH RAIL by
in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

APPENDIX 1B

Form of Appointment of Project Supervisor for Construction Stage

THIS DEED is made on the day of 20

BETWEEN

- (1) **IARNRÓD ÉIREANN – IRISH RAIL**, Connolly Station, Amiens Street, Dublin 1, Ireland (“**IE**”) and
- (2) [●] whose registered office is at [●] (the “**Project Supervisor**”)

BACKGROUND

By an agreement (the “**Construction Agreement**”) made on or about [●], IE, as employer, has appointed [the Project Supervisor or [●]] as contractor (the “**Construction Contractor**”), for [name of **Construction Agreement**] (the “**Works**”).

This Deed is collateral to the Agreement.

IT IS AGREED AS FOLLOWS:

1. IE appoints the Project Supervisor as project supervisor for the construction stage according to the Safety, Health and Welfare at Work (Construction) Regulations 2013, and any amendment to them (the “**Construction Regulations**”) for the project comprising the Works (the “**Project**”).
2. The Project Supervisor’s appointment starts on the date of this Deed and continues for as long as, under the Construction Regulations, IE is required to have a project supervisor for the construction stage for the Project, unless the appointment is terminated earlier.
3. The Project Supervisor accepts the appointment.
4. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the construction stage for the Project.
5. The Project Supervisor represents and warrants to IE that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Deed and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with requirements and prohibitions imposed on the Project Supervisor by this Deed and under the relevant statutory provisions. In this Deed, **competent person** and **relevant statutory provisions** are construed according to Section 2 of the Safety, Health and Welfare at Work Act 2005, and any amendment to it.
6. The Project Supervisor represents and warrants to IE that the time allowed by the Construction Agreement for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
7. The Project Supervisor represents and warrants to IE that the information provided by IE to the Project Supervisor about the state or condition of the Site (as defined in the Construction Agreement) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Deed and the Construction Regulations.
8. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Construction Contractor is required to have under Clause 10 of the Construction Agreement, and that those insurances comply with all the requirements of the Construction Agreement, and are kept in force for the same period as required by the Construction Agreement, and include cover for death or injury resulting from the Project Supervisor’s performance or non-performance of its duties under this Deed and the Construction Regulations.

9. If the Project Supervisor breaches its obligations or warranties under this Deed, or if the Construction Contractor's duty to complete the Works is terminated under the Construction Agreement, IE may terminate the Project Supervisor's appointment under this Deed.
10. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give IE all documents it prepares in the course of and for the purpose of performing its duties under this Deed (the "**Project Supervisor's Documents**"). If the Project Supervisor's appointment under this Deed terminates, the Project Supervisor shall give all Project Supervisor's Documents to IE immediately. Ownership of and copyright in the Project Supervisor's Documents shall become IE's when the Project Supervisor delivers them to IE, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify IE against any liability resulting from the use or copying of the Project Supervisor's Documents infringing the property (including intellectual property) rights of any person.
11. This Deed is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

IN WITNESS whereof this Deed is duly executed by the parties on the day and year first herein written.

Present when the common seal of the **PROJECT SUPERVISOR** was affixed hereto and **EXECUTED** and **DELIVERED** as a **DEED** by the **PROJECT SUPERVISOR**:

Director

Secretary

OR

SIGNED for and on behalf of **PROJECT SUPERVISOR** by in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

SIGNED for and on behalf of
IARNRÓD ÉIREANN-IRISH RAIL by
in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

SCHEDULE NINE

DATA

This Schedule describes the categories of personal data and data subjects processed by the Contractor in the provision of the Services and/or Additional Services under the Agreement.

1. Data subjects

The personal data to be processed by the Contractor in the provision of the Services and/or Additional Services concerns the following categories of data subjects:

- **People working in the IE Building & Facilities M&E Department;**
- **IE Station Masters & Deputies;**
- **People working in IE District Offices; and**
- **People working in the IE Procurement Department.**

2. Data categories of personal data

The personal data to be processed by the Contractor in the provision of the Services and/or Additional Services includes the following:

Name, telephone number, email address and work address of each data subject.

IN WITNESS whereof this Agreement is duly executed the _____ day of _____ 2019.

Present when the common seal of the **CONTRACTOR** was affixed hereto and **EXECUTED** and **DELIVERED** as a **DEED** by the **CONTRACTOR**:

Director

Secretary

OR

SIGNED for and on behalf of **CONTRACTOR** by _____ in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

SIGNED for and on behalf of **IARNRÓD ÉIREANN-IRISH RAIL** by _____ in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

SIGNED for and on behalf of
CÓRAS IOMPAIR ÉIREANN by
in the presence of:

Signature

Name of signatory (printed)

Signature of witness to signature

Name of witness to signature (printed)

Witness' address

Witness' occupation

Rates of Pay and Conditions of Employment Certificate

To:	<i>The Employer</i>	Irish Rail	
	<i>Address of Employer</i>	CIE Works, Inchicore, Dublin 8	
	<i>For the attention of</i>	[REDACTED]	
Date:	27/09/2019		
From:	<i>The Contractor's Representative</i>	Orona Mid Western Lifts Limited	
Regarding:	<i>The Contract</i>	7221-001 Removal, Sisposal and Replacement of two escalators at Tara Street Train Station	
	<i>Period of interim statement</i>	From 27/09/2019	To 27/09/2020

A Dhaoine Uaisle

We refer to the above Contract.

Terms defined in the Conditions of the Contract have the same meaning in this certificate.

The Contractor certifies that, in respect of the work to which the interim statement referred to above relates, clause 5.3 of the Contract has been observed by the Contractor and the employers of all work persons on the Site. This certification includes, but is not limited to, the following:

- the rates of pay and the conditions of employment (including in relation to pension contributions) of each work person comply with all applicable statutory provisions, and those rates and conditions have been no less favourable than those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented under the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act that have not otherwise been superceded)
- all wages and other money due to each work person have been paid in accordance with the Payment of Wages Act 1991 and have not been more than 1 month in arrears or unpaid
- payments due to be paid on behalf of each work person (including pension contributions, where applicable) have been paid
- all deductions from payments to work persons required by law have been made and paid on, as required by Law
- in relation to the employment of work persons on the Site, the Safety, Health and Welfare at Work Act, 2005 to 2014 and all employment law including the Employment Equality Act 1998 to 2005, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015, and regulations, codes of practices, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements implemented under those Laws have been observed.

Is mise, le meas

Signed by

<i>Name of Contractor</i>	Orona Mid Western Lifts Limited
<i>Signature of Contractor i.e Contractor's Representative</i>	[REDACTED]



Transaction 147108 -
Framework Agreement
for the Supply and
Installation of Lifts and
Escalators



Company:

Iarnród Éireann-Irish Rail
Iarnród Éireann-Irish Rail
Connolly Station,
Dublin
Dublin

Contact details:

Fergal Riggs
Phone: +353 017033718
fergal.riggs@irishrail.ie

This is a call by IE for the establishment of a Single Lot, multi-vendor Framework Agreement for the supply and installation of Lift and Escalators to Irish Rail and the CIE Holding Company. This requirement is being advertised in the Irish Government tendering website www.etenders.gov.ie on 27th February and subsequently in the OJEU

The current Iarnród Éireann lift and escalator landscape consists of 132 Lifts and 11 escalators. It is anticipated that this Framework Agreement will be utilised to replace our life expired lift assets on a prioritised basis. It is anticipated that this Framework Agreement will have a duration of up to 5 years.

Dates (Irish time)Preliminary dates

Publication of notice:
01-03-2019 17:18

Step 1

Response deadline:
03-04-2019 12:00

Step 2

Response deadline:
02-08-2019 12:00

Award dates**Type of Contract:**

Supplies

Currency :

EUR

CPV codes

42416000-5 Lifts, skip hoists, hoists, escalators and moving walkways

42416400-9 Escalators

42417000-2 Elevators and conveyors

42417100-3 Pneumatic elevators or conveyors

Lot 1 - Framework Agreement for the Supply and Installation of Lifts and Escalators

Delivery address:

Questions

Questions			
No	Question	Requested answer	Version number
Information			
	<p>To download a copy of the pre-qualification questionnaire for this tender process, please click on the 'Access Documents' tab of the contract notice. Please read the document carefully and fill in all of the required sections.</p> <p>Once completed, please unload your completed questionnaire and all supporting documents in advance of the closing date for submissions.</p>	None - Information only	1

Attached documents

Document name	Size (KB)	Created
Pre Qualification Questionnaire (7221 PQQ Supply Lifts and Escalators Issue.docx) <small>Comments (0) Actions</small>	129	27-02-2019 16:07

Transaction 146101 - Maintenance of Lifts and Escalators

**Company:**

Iarnród Éireann-Irish Rail
Iarnród Éireann-Irish Rail
Connolly Station,
Dublin
Dublin

Contact details:

Fergal Riggs
Phone: +353 017033718
fergal.riggs@irishrail.ie

This is a call to competition by IE for the procurement of Lift and Escalator Maintenance Services for Irish Rail and the CIE Holding Company.

Iarnród Éireann requires the services of a contractor in the provision of Lift & Escalator maintenance services to undertake both planned and unplanned maintenance activities as well as providing a call center, training for IE staff and upgrade works as required during the course of the contract. The existing scale of our requirements is 132 lifts and 11 escalators across the Iarnród Éireann network. The scope of this contract includes the CIE Holding Company requirements.

This contract will have an initial award period of 3 years with an option to extend for up to 2 additional years at IE discretion

Dates (Irish time)Preliminary dates

Publication of notice:

10-02-2019 16:33

Step 1

Deadline of clarification questions:

26-02-2019 12:00

Response deadline:

08-03-2019 12:00

Step 2

Response deadline:

29-05-2019 12:00

Award dates

Publication of award:

12-10-2019 13:11

Type of Contract:

Services

Currency :

EUR

CPV codes

50740000-4 Repair and maintenance services of escalators

42416000-5 Lifts, skip hoists, hoists, escalators and moving walkways

50710000-5 Repair and maintenance services of electrical and mechanical building installations

71333000-1 Mechanical engineering services

71334000-8 Mechanical and electrical engineering services

45313000-4 Lift and escalator installation work

50750000-7 Lift-maintenance services

Lot 1 - Maintenance of Lifts and Escalators

Delivery address:

Attached documents

Document name	Size (KB)	Created
PQQ (7174 PQQ Maint. Lifts and Escalators <i>Issue.docx</i> Comments (0) Actions	130	08-02-2019 15:15

IN WITNESS whereof this Agreement is duly executed the 30th day of September 2019.

Present when the common seal of the **CONTRACTOR** was affixed hereto and **EXECUTED** and **DELIVERED** as a **DEED** by the **CONTRACTOR**:

[Redacted]

Director

[Redacted]

Secretary

OR

SIGNED for and on behalf of **CONTRACTOR** by in the presence of:

Signature

[Redacted]

Name of signatory (printed)

[Redacted]

Name of witness to signature (printed)

Procurement Institute
Witness' address

Indirect Work

Procurement Executive
Witness' occupation

SIGNED for and on behalf of **IARNRÓD ÉIREANN-IRISH RAIL** by in the presence of:

[Redacted]

Name of signatory (printed)

[Redacted]

Signature of witness to signature

[Redacted]

Procurer's Address
Witness' address

Indreasa Wals

Procurer's Executive
Witness' occupation

SIGNED for and on behalf of
CÓRAS IOMPAIR ÉIREANN by
in the presence of:

[Redacted]
Signature

[Redacted]
Name of signatory (printed)

[Redacted]
Signature of witness to signature

[Redacted]
Name of witness to signature (printed)

Procurer's Address
Witness' address

Procurer's Executive

Procurer's Executive
Witness' occupation

Procurement, Inchicore Works, Dublin 8
An Roinn Soláthar, Inse Chór, Baile Átha Cliath 8

T 01 703 3718  www.irishrail.ie

Letter of Acceptance

To:	Orona Mid-Western Lifts Limited, Corcanree Business Park, Dock Road Limerick.
Regarding:	7221-001 Removal and Disposal of 2 no Escalators and replacement of same at Tara Street Station
Date:	12th September 2019

A Dhaoine Uaisle

I refer to your tender for the above Contract dated 02nd August 2019 ¹ (the **Tender**). Terms used in this letter that are defined in the Conditions of that Contract have the same meaning in this letter.

On the basis that the contract formed by acceptance of your Tender will consist of the documents set out below, I accept your Tender:

- This Letter of Acceptance
- The Conditions of Short Public Works Contract Document Reference (PW-CF6 v1.12 5 June 2019)
- The Tender and Schedule appended² to this Letter of Acceptance

This is the Letter of Acceptance referred to in the Conditions.

The Contract Sum is  [excluding VAT].

I draw attention to your obligations in clause 9.1 of the Conditions about documents to be provided before the Starting Date.

Please return to me a copy of this letter acknowledging receipt as indicated below.

Is mise, le meas

Signed 
On behalf of *Iarnród Éireann*, duly authorised to accept the Tender

ACKNOWLEDGEMENT

¹ Insert date of tender

² Ensure that Schedule is appended to the letter

We acknowledge receipt of this letter on 13th SEPTEMBER 2019 (date).

Sign 
On behalf of Ground and Western Lifts Limited.

