



European Union Network for the Implementation
and Enforcement of Environmental Law

INVITATION TO TENDER

FOR

**PROVISION OF ICT SERVICES:
Shipments of Waste Enforcement Actions: Reporting application and data
storage and exchange**

Order number: IMPEL/2019/LIFESWEAP/000480/001 /B8

Date of issue: 15 March 2019

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SECTION 1 – TENDER INSTRUCTIONS

1.1 Tender Conditions

Submission of a Tender will imply acceptance of the provisions contained in the Statement of Requirements set out in Section 2 without qualification. Any attempt to qualify any of the following provisions, expressly or implied, may result in a Tenderer being disqualified.

1.2 Confirmation of Intention to Tender

Tenderers shall confirm whether it is their intention to tender by e-mailing Nancy.isarin@impel.eu within five working days of IMPEL issuing this Invitation to Tender.

1.3 Completion of Tender

Your tender shall be submitted in accordance with the Statement of Requirements in Section 2 of this document.

1.4 Confidentiality

Tenderers shall treat the Invitation to Tender, and any other information provided by IMPEL to the Tenderers, as private and confidential and restrict their circulation of the Invitation to Tender and such additional information to a “need to know” basis for the purposes of preparing their Tender submissions. Tenderers shall not disclose their Tender in whole or in part to any third party prior to the award of the Contract by IMPEL.

1.5 Environmental Infringements

Within the tender submissions all suppliers must provide details of any prosecutions for environmental infringements that have occurred in the last three years or any current pending cases. Where a supplier has none, this should be confirmed in the tender.

Tenderers are required to sign and return, along with their tender, the Confirmation re Environmental Accreditation set out at Appendix 1.

1.6 Anti-Collusion

A Tenderer shall not, in connection with this procurement:

- (i) enter into any agreement or arrangement with any person (other than, where relevant, a member of its own consortium or Joint Venture) with the aim of fixing or adjusting the amount of any Tender or the conditions on which any Tender is made; or
- (ii) enter into any agreement or arrangement with any person with the aim of preventing Tenders being made; or

- (iii) cause or induce any person to enter such agreement as is mentioned in above; or
- (iv) offer or agree to pay or to give or pay or give any sum of money, inducement or valuable consideration directly or indirectly to any person for doing or having done or causing or having caused to be done in relation to any other Tender or proposed Tender by any act or omission; or
- (v) communicate to any person other than IMPEL the amount or approximate amount of its proposed Tender (except where such disclosure is made in confidence in order to obtain quotations necessary for the preparation of the Tender or professional advice required for the preparation of a Tender).

IMPEL may, at its discretion, disqualify any Tenderer that breaches this condition (without prejudice to any other civil remedies available to IMPEL and without prejudice to any criminal liability, which such conduct by the Tenderer concerned may attract).

Tenderers are required to sign and return, along with their tender, the Anti-Collusion Certificate set out at Appendix 2.

1.7 Canvassing

A Tenderer shall not, in connection with this procurement:

- (i) offer any inducement, fee or reward to any member or officer of IMPEL or any person acting as an advisor for IMPEL in connection with this procurement; or
- (ii) do anything which would constitute an act of bribery; or
- (iii) contact any officer of IMPEL about any aspect of the procurement, except as authorised by this Invitation to Tender, including (but without limitation) for the purposes of soliciting information in connection with the procurement; or
- (iv) canvass any of the persons referred to above.

IMPEL may, at its discretion, disqualify any Tenderer that breaches this condition (without prejudice to any other civil remedies available to IMPEL and without prejudice to any criminal liability, which such conduct by the Tenderer concerned may attract).

Tenderers are required to sign and return the Non-Canvassing Certificate set out at Appendix 3.

1.8 Sufficiency & Accuracy of Tender

Tenderers will be deemed to have examined all the documents and by their own independent observations and enquiries will be held to have fully informed themselves as to the nature and extent of the requirements of the Invitation to Tender.

Tenderers are cautioned to check the accuracy of their Tender prior to submission. A tender found containing any clerical errors or omissions may, at the sole discretion of IMPEL, be referred back to the Tenderer for correction.

1.9 Tender Queries

Any queries in relation to this Invitation to Tender documentation should be submitted electronically using the email option as soon as possible but **before 17:00 GMT on Friday 22 March 2019.** Queries received after this date may not be replied to by the date fixed for return of tenders.

The response by IMPEL, as well as the nature of the query, will be notified to all Tenderers, without disclosing the name of the Tenderer who initiated the query. Tenderers are reminded that they should not divulge details of the invitation to tender (ITT) to any other third parties prior to Contract Award, unless specifically requested to do so by IMPEL.

1.10 Tender Submissions

Tenderers shall submit the information required by this Invitation to Tender together with the following Appendices, duly completed:

- Environmental Certificate (Appendix 1)
- Certificate of Non-Collusion (Appendix 2)
- Certificate of Non-Canvassing (Appendix 3)
- Certificate of Acceptance of IMPEL Terms and Conditions (Appendix 4)

1.11 Tender Return Date & Time

The Tender must send the tender as in PDF format **before 17:00 GMT on Friday 5 April 2019.**

1.12 Modification by IMPEL

Any advice or any modification to the Invitation to Tender shall be issued as soon as possible before the date fixed for return of tenders and shall be issued as an addendum. This addendum shall be deemed to constitute part of the Invitation to Tender.

1.13 Incurred Tender & Other Expenses

IMPEL shall not be responsible for, or pay any costs and expenses which may be incurred by the Tenderer in connection with the preparation and submission of their Tender, including the attendance at any Pre or Post Tender meetings, site visits, negotiations etc.

1.14 Tender Validity

Your Tender shall remain open for acceptance for a period of not less than ninety (90) days from the date fixed for return of tenders or any extended period to this date. Your Tender may be accepted by IMPEL at any time during this period.

1.15 Language of Tender

The Tender and all accompanying documents are to be submitted in English.

1.16 Currency of Tender

The currency in which all prices and rates shall be tendered, and which payments under the Contract will be paid, shall be euro (€). **All prices and rates quoted should be exclusive of VAT. This includes costs for expenses.**

1.17 References

Tenderer's shall provide the names and contact details of other Public Sector organisations with which they have been awarded similar contracts. Should any Tenderer be shortlisted these organisations may be contacted for obtaining references. Prior to return of your tender, IMPEL would require you to ensure that those named contacts are aware and agreeable to an approach being made to them, by IMPEL, for references.

1.18 Reliance

Information in this Invitation to Tender, together with any other information to be provided at any time during the procurement process, is provided in the interests of assisting the Tenderers to develop relevant Tenders. It is intended only as an explanation of IMPEL's requirements and is not intended to form the basis of the Tenderers' decisions on whether to enter into any contractual relationship with IMPEL.

Accordingly, information provided does not purport to be all-inclusive or to contain all the information that a prospective Tenderer may require. The Tenderers and their advisors must take their own steps to verify information which they use and must make an independent assessment of the opportunity described in this Invitation to Tender after making such investigation and taking such professional advice as they deem necessary.

No IMPEL officers, employees, advisors or representatives who are involved with the procurement process shall be considered to make or be deemed to have made any representation or warranty as to the adequacy, accuracy, reasonableness or completeness of the information provided. IMPEL does not exclude any liability that it may have for fraudulent misrepresentation or any other liability not capable of being excluded by law.

Neither IMPEL nor its professional advisors shall be liable for any loss or damage arising as a result of reliance on the information provided or other information subsequently provided, nor for any expenses incurred by the Tenderers at any time. No third party has been or will be authorised to accept or agree to accept on behalf of IMPEL any such liability.

1.19 Right to Reject, Vary or Cancel Process

The issue of this Invitation to Tender in no way commits IMPEL to award any contract pursuant to the tendering process. IMPEL reserves the right not to accept part or all of any Tender received, or to accept all or any part of any Tender received. Nothing in this Invitation to Tender shall oblige IMPEL to award a contract and IMPEL shall be able to withdraw from the tendering process at any stage.

The subject matter of this Invitation to Tender shall only have any contractual effect when it is covered and contained in the express terms of an executed contract. Any such contract will be governed by Belgian law.

IMPEL reserves the right, subject to relevant legislation, and at any time, to reject any Tender and/or to terminate discussions with any Tenderer.

IMPEL reserves the right (without liability) to cancel the selection and evaluation process at any stage, to amend the terms and conditions of the tender process and to require a Tenderer to clarify its submission in writing and/or provide additional information.

1.20 Treatment of Tender

IMPEL does not undertake to accept the lowest Tender, or part, or all of any Tender and the acknowledgement of receipt of any submitted Tender shall not constitute any actual or implied agreement between IMPEL and the Tenderer. IMPEL reserve the right to accept any part, or all of any Tender or Tenders at its sole discretion.

An evaluation team will be convened to consider all Tenders correctly submitted and may shortlist Tenderers with a view to reaching a Contractual Agreement subject to clarification of any outstanding matters. When the Contract Award decision has been made all Tenderers shall be informed as to whether they have been successful or not. No other information shall be given on the progress of the tendering process.

1.21 Tender Evaluation Criteria

Tenders will be evaluated to ascertain the most economically advantageous tender, according to the best price-quality ratio award method. The quality of the tender will be evaluated based on the following criteria. The maximum total quality score is 100 points.

- Quality of the proposed solution (25 points) including the overall methodology, how to obtain details of the inspection process across the range of locations IMPEL members must report from, how to ensure that data security arrangements are sufficient for all IMPEL members, Police and Customs, how to ensure that participation in the trial by those selected, how the methodology will deliver the objectives, deliverables and outputs.

- Data security (35 points). This criterion will assess the security of the proposed solution with regards to the inspection data gathered that will include personal data, and the requirement for a retention schedule per country.
- Organisation of the work and resources (25 points) This criterion will assess how the roles, skills and responsibilities of the proposed team are distributed for each task. It also assesses the global allocation of time and resources to the project and to each task or deliverable, and whether this allocation is adequate for the work. The tender should provide details on the allocation of time and human resources and the rationale behind the choice of this allocation.
- Quality control measures (15 points). This criterion will assess the quality control system applied to the service foreseen in this tender specification concerning the quality of the deliverables, the continuity of the service in case of absence of a member of the team. The quality system should be detailed in the tender and specific to the tasks at hand; a generic quality system will result in a low score.
- Account will be taken of any factors which impact on the Tenderer's suitability that emerges from or during the tendering process.

1.22 The ranking of tenders

The contract will be awarded to the most economically advantageous tender, i.e. the tender offering the best price-quality ratio determined in accordance with the formula below. A weight of 70/30 is given to quality and price.

$$\text{Score for Tender X} = \frac{\text{Cheapest price}}{\text{Price of tender X}} * 100 * \text{Price weighting (30\%)} + \text{Totally quality score (out of 100) for all award criteria of tender X} * \text{Quality criteria weighting (70\%)}$$

SECTION 2 – STATEMENT OF REQUIREMENTS

Action: Shipments of Waste Enforcement Actions Project: Reporting application, data storage and management

Overview

The Shipment of Waste Enforcement Actions Project (SWEAP) project is co-funded by the European Commission LIFE fund and co-ordinated by the IMPEL Network. The project runs between September 2018 to June 2023. The overall purpose of the project is to support the circular economy by disrupting the illegal waste trade at the EU level by:

- Increasing skill set amongst inspectors and law enforcement agencies
- Intensifying collaboration nationally and internationally
- Developing innovative tools and techniques
- Creating EU-wide inspection data set
- Providing intelligence products

IMPEL requires a contractor for an **envisaged** delivery period of nine months to:

- **deliver an electronic reporting application**
 - The reporting application should be available to all IMPEL members to record their inspections in the field and subsequent inspection updates. The app is to be trialled with at least five IMPEL member authorities from November 2019, and receive approval to receive from IMPEL for roll out (subject to amendments identified in the trial) to all IMPEL members by March 2020
- **provide data storage and feed in to specified systems until July 2023**
 - Data storage and feed solution to be rolled out and maintained from the beginning of the trial in November 2019 until June 2023 (as specified further below.)

IMPEL members undertake inspections of waste shipments to fulfil their obligations under Article 50 of Regulation 1013/06 on waste shipments (non-Member States also have similar requirements in their national legislation). Inspections take place at transport hubs (e.g. ports and roadside) and at waste management sites. Without these inspections and verifications, compliance monitoring is not possible. Moreover, on the ground inspections provide the critical input for any data analysing and risk assessment on waste flows (legal and illegal shipment routes) and priority waste streams.

In previous projects, inspections were scheduled to take place during three days in March, June and September – a total of nine days – so that comparable ‘snapshot’ data can be provided on waste shipments. During the last two-year inspection reporting period of the IMPEL Enforcement Actions project over 23,000 inspections were undertaken. It is envisaged that this may increase to 20,000 per year. The data will also give a much clearer indication of the level and type of illegal shipments taking place. It will also show policy makers both nationally and at the European level, emerging trends in illegal activity.

It is expected that the successful contractor will develop a reporting application to record their findings in an easy and structured manner. The electronic information can then be used for various purposes, like the geographical mapping tool Spotfire, data for analysing purposes, national and European reporting requirements.

The app should also include the option to take pictures and set up video conferencing to discuss problematic interpretations in the field. Currently 83% of competent authorities co-operate with their national Customs, and over 60% with their Police authorities. Therefore, the reporting app may be used by Police, Customs and other regulatory bodies.

It is anticipated that the successful contractor will use a cloud-based storage and document management system. Hosting (and ongoing support) will need to be available from December 2019 until July 2023, after this date, the data must remain available to IMPEL participants. Personal data will be collected as a consequence of inspections. Each authority will be the owner of its data, retaining in accordance with their national requirements. A 'flagging' system is to be used whereby competent authorities can notify each other that they have information to share. This may be shared outside the system but this may be within where allowed by individual competent authorities' data security policies. The solution will be subject to formal acceptance by IMPEL.

Technical requirements:

- Application to be available on all three main Operating Systems (Android, Apple, Windows)
- Web-based portal for data input and reporting
- All data must be easily reportable including data fields, workflow task, status, system users and any other relevant data.
- Back office staff should be able to enter new containers or sites into the table and assign it to an Officer. Other competent authorities should also be able to request a 'verification' check on a site waste is moving to.
- Able to feed into Europol's systems
- Able to feed inspection data into SEPA's Spotfire Tool
- GPS location
- Ability to take and record pictures and videos
- Live chat
- Allows users to export pdf forms populated with list data (which occasionally need to be shared with the shipping lines, port authorities, etc.)
- Allow users to export user-defined data for internal reporting
- Allow users to download reports for national reporting (Annex IX of WSR)
- Login
- Data safety protocols and hosting (secured channels)
- Registration process for new users and profile
- Perpetual licences

Number	Actions	Deliverables	Timing	Indicator
1.1	Business and user requirements	Report	May 2019	Number of interviews and completion of user stories (at least eight competent authorities requirements to be analysed)
1.2	Proof of concept (storage and systems architecture and reporting application)	Report	August 2019	Approval from SWEAP Project Team

Number	Actions	Deliverables	Timing	Indicator
1.3	Trial	Report	December 2019	Number of inspections recorded by at least five authorities trialling the app. Feedback from participating countries using questionnaire
1.4	Roll out	Report	March 2020	Number of inspectors with logins. At least 85% of member authorities to have user accounts.
1.5	Assessment and propose ongoing system with costings and proposed charging arrangements detailed for post-SWEAP phase	Report	November 2020	100% of member authorities to have user accounts. Number of inspections recorded: At least 10,000 inspections to be recorded. Number of flagged data fields exchanged to be at least 100. Feedback from participating countries using questionnaire

Method

The contractor must present an appropriate ICT solution to IMPEL project team, for agreement, before development, which must include at least interviews and questionnaires and an assessment and clear presentation of the proposed system.

The successful contractor will have experience in developing IT architecture and applications across a number of European countries.

Project Management, Reporting and Delivery

IMPEL anticipate project completion within the following key milestones. Any tender submission should provide more detail around these proposed key milestones to give assurance to IMPEL that this can be delivered on time.

Project Meetings

The successful supplier will work closely with the IMPEL project team (Project Manager, Project officer and SWEAP Project Group) and will have a dedicated point of contact. This will include weekly contact with the IMPEL project team and a start-up meeting of all key staff (these will be held in a venue provided by IMPEL at a convenient location or provided by the supplier where appropriate. All other meetings should be by teleconference and/or videoconferences). It may also include the project managers, or other technical leads from both sides working together in the offices of either IMPEL and/or the successful supplier. A draft schedule of meetings and venue/VC/telecon arrangements, in addition to proposed dates for key deliverables shall be provided within the tender submission. At the start of the project an inception meeting will be held at which all necessary controls (including an agreed action list) will be established.

Month of work (envisaged)	TASKS /DELIVERABLES / DOCUMENTATION	Indicative Meeting Dates
M1	<p>Envisaged Contract start 15-4- 2019</p> <p>Meeting 1 (Pre-Meeting r.e. User/ business needs between contractor, project manager & Technical Experts)</p> <p>Supplier will produce minutes of start-up meeting</p>	18 April 2019
M2-M3	<p>Supplier to (in consultation with the IMPEL Project team): Prepare interview (which must be agreed by project team) to</p> <ul style="list-style-type: none"> ▪ Identify user and business requirements <p>Meeting 2 (on the requirements between consultant, project manager & Technical Experts)</p> <p>Supplier to produce final requirements report</p>	19-20 May 2019
M4	Supplier to finalise data feed provision	1 August 2019
M8	<p>Supplier to (in consultation with IMPEL Project team): Prepare data management and reporting app (which must be agreed by project team)</p> <ul style="list-style-type: none"> ▪ Undertake trial <p>Supplier to produce trial outcome report</p>	December 2019
M9	<p>Supplier to (in consultation with IMPEL Project team): Release data management and reporting app (which must be agreed by project team) to all IMPEL members</p> <p>Propose ongoing system with costings and proposed charging arrangements detailed for post-SWEAP phase</p> <p>Meeting 4 Supplier to produce evaluation report</p>	March 2020
	Contract end	July 2023
Date	INFORMAL MEETINGS	Meeting
Weekly or two-weekly as needed	Supplier with SWEAP Project Manager and experts	Teleconference

Budget

The budget allocated to this contract is a maximum of **€75,000 excluding VAT**. This includes support and maintenance of the product and minor changes and amendments. The tender should include the number of developer days available for minor changes to the existing application. IMPEL reserves the right not to accept any Tender received which exceeds the stated maximum budget.

Invoicing

Tasks	DELIVERABLES	% of payment	Envisaged timing
End of Phase 1	Minutes of start-up meeting	10%	M1
End of Phase 2	Business and user needs report	10%	M3
End of Phase 3	Data feed report	10%	M4
End of Phase 3	Trial outcome report	20%	M8
End of Phase 4	Approved Evaluation report	20%	M11
End of Phase 5	Secure data hosting and management system and reporting application until July 2023	30%	M49
All invoices must be sent to IMPEL in electronic format must quote IMPEL order number and project details when being submitted.			

Invoices may only be submitted on completion of the project or against the completion of scheduled tasks agreed at the Inception Meeting.

Intellectual Property Rights

The results of the research and development generated in this collaboration will constitute foreground intellectual property rights owned by IMPEL. Any proprietary information generated by the contractor prior to collaboration in the Project will remain the intellectual property of the contractor but will be granted to the project under a non-exclusive license with conditions set out and agreed in contracts.

All copyright and Intellectual Property Rights (IPR) will be transferred to IMPEL in accordance with the Terms and Conditions.

Risks, Assumptions and Dependencies

Within the tender submission the supplier should provide highlights to (1) any assumptions they have made in their proposed solution, (2) any dependencies they have identified and (3) any risks they see in relation to delivering their proposed element of the project to time, scope and budget. Any dependencies on IMPEL (e.g.

provision of data/information, resource, access or funds), that, if not met, would affect the supplier's ability to deliver to time, quality or scope should be clearly highlighted.

How to apply?

Please read the attached documents carefully and ensure that you have all the information required to enable you to submit a valid tender. If you consider that you are missing a critical document or need to seek clarification on any aspect, please contact the person listed here:

Ms Nancy Isarin

Email: Nancy.isarin@impel.eu

The closing date for receipt of tenders is before 17:00 GMT on Friday 5 April 2019

Please submit your proposal by email to Ms Isarin.

Note that tenders submitted after the deadline will not be considered.

The following information should be included (but not limited to) in the proposal:

- **Name** of the tenderer(s), status in the organisation, and name of person for further contact (if different);
- A brief statement detailing an **understanding and interpretation** of the purpose, specific objectives and scope of the research;
- **Curricula vitae of key staff to be involved (3 pages of A4 maximum), including details of their role, their particular expertise and time input in person days** (including, where applicable, staff not yet appointed) and associated management arrangements for the provision of ICT services;
- Details of **capacity, experience and track record** of the tenderer in application building, data storage and exchange of information;
- Details of **experience in the data security and exchange**;
- Contact details for two clients who have agreed to be approached to supply **references** in relation to this work;
- Details of the **proposed solution** covering stages of the work as detailed in the specification;
- **Activity schedule** (Gantt chart or similar list of tasks/activities with a timeline allowing tracking of progress against time)
- Details of how you ensure that the data security arrangements are suitable for all IMPEL participants;
- Details of how you ensure that cloud-based storage is secure and that data feed provisions to participants, Spotfire and Europol are robust;
- Details of approach to **quality assurance** (including adherence to timescales and the quality of key outputs) and any relevant procedures.

Sustainability

The sustainability agenda is of growing importance to government and the wider public sector. IMPEL has a responsibility to ensure that the services and products it procures align with Green Procurement policies. As part of the Tender submission, Tenderers shall explain their organisation's approach and commitment to social, economic and environmental sustainability both internally and externally through the supply chain.

Assessment methods:

- Work history
- References
- Interview
- Presentation

SECTION 3 – PRICING SCHEDULE

Tender Ref: IMPEL/2019/LIFESWEAP/000480/001 /B8

Contract Price: Tenderers are required to submit a fixed price for the goods/services detailed in the above Section 2 Statement of Requirements in a separate document to be entitled **Pricing Schedule**.

An activity schedule indicating how tasks have been distributed to personnel involved in the project should be supplied.

Day rates for appropriate staff should also be included.

All costs submitted will be exclusive of VAT. All costs appropriate to the proposal must be included and summarised in the *Pricing Schedule*. **Costs should not appear in the main body of the proposal.** Costs which appear elsewhere in the proposal but which are not included in the *Pricing Schedule* will be presumed to have been waived.

All costs submitted will be exclusive of VAT. All costs appropriate to the proposal must be included. Costs should **not** appear in the main body of the proposal.

Notes:

Prices quoted should be inclusive of all charges likely to be incurred by the contractor/supplier in the completion of this project.

Variant Bids should only be included on the Pricing Schedule if the Invitation to Tender specifically requests such bids.

VAT

All costs should be submitted exclusive of VAT. This includes costs for Expenses. Where VAT is paid at the point of purchase, eg. accommodation and meals, the costs submitted in both the tender submission and subsequent invoices should be submitted net of VAT. Invoices should be accompanied by bona fide receipts.

SECTION 4 – TERMS & CONDITIONS OF CONTRACT

IMPEL General Conditions for Suppliers and Services will apply to this tender.

SECTION 5 – SUSTAINABILITY & CORPORATE SOCIAL RESPONSIBILITY (CSR)

Introduction

The goal of sustainable development is to enable all people throughout the world to satisfy their basic needs and enjoy a better quality of life without compromising the quality of life of future generations. A sustainable business, therefore, has been described as an organisation that meets its present needs while still enabling future generations to meet their needs.

The sustainability agenda is of growing importance to government and the wider public sector. Where consultancy advice and services are provided that have sustainability implications, public sector customers need to assure themselves that actions taken on the basis of these services are in alignment with their sustainability and corporate social responsibility (CSR) objectives and help them to meet their targets. Therefore, it is of crucial importance that consultants, and sub-contractors, are increasingly knowledgeable about sustainability and CSR implications of their advice and services, and public sector objectives, policies, standards, targets and legislation.

IMPEL is committed to being an excellent employer and we want everyone to be treated fairly and consistently. To this end we expect providers to have a similar commitment to fair employment practices. This includes not only direct employees but personnel who will be engaged with, through this Framework Agreement and/or call-off contracts.

IMPEL has adopted workforce policies to meet these requirements. These policies include:

- fair employment practices;
- clear managerial responsibility to nurture talent and help individuals fulfil their potential;
- support for learning and development;
- flexible working.

Tenderers are asked to explain how the organisation and/or any sub-contractors will ensure the sustainability and CSR implications – economic, social and environmental – including government/public sector sustainability and CSR requirements, are factored into the services provided in carrying out this Framework Agreement and call-off contracts.

APPENDIX 1 - FORMAL CONFIRMATION OF ENVIRONMENTAL ACCREDITATION

To: Nancy Isarin
IMPEL Office
Chemin des deux maisons 73, box 3
1200, Brussels, Belgium

**PROVISION OF ICT SERVICES: Shipments of INVITATION TO TENDER FOR THE PROVISION OF ICT SERVICES:
Shipments of Waste Enforcement Actions: Reporting application and data storage and exchange (Ref:
IMPEL/2019/LIFESWEAP/000480/001 /B8)**

ENVIRONMENTAL ACCREDITATION

Please indicate if your organisation has ISO14001 or ISO 14002 accreditation **YES / NO**

If YES, please provide a copy of the Certificate within your Tender Submission.

If NO, but you wish to provide relevant information, please include within your Tender Submission.

ENVIRONMENTAL INFRINGEMENTS

I confirm that the organisation has had no prosecutions for Environmental Infringements during the last 3 years.

NAME:

DATE:

SIGNATURE:

IN THE CAPACITY OF: Director_____

(Duly authorised to enter into a contractual arrangement on behalf of)

COMPANY NAME & REGISTERED ADDRESS:

APPENDIX 2 – CERTIFICATE OF NON-COLLUSION

To: Nancy Isarin
IMPEL Office
Chemin des deux maisons 73, box 3
1200, Brussels, Belgium

PROVISION OF ICT SERVICES: Shipments of INVITATION TO TENDER FOR THE PROVISION OF ICT SERVICES: Shipments of Waste Enforcement Actions: Reporting application and data storage and exchange (Ref: IMPEL/2019/LIFESWEAP/000480/001 /B8)

We certify that we will submit a bona fide tender and that we have not adjusted and will not adjust our tender in agreement or by arrangement with any other person. We also certify that we have not done and we undertake not to do at any time during the competition any of the following acts:

1. Entered into any agreement with any other person with the aim of preventing tenders being made or as to the fixing or adjusting of the amount of any tender or the conditions on which any tender is made; or
2. Caused or induced any person to enter into such an agreement as is mentioned in paragraph 1 above, or to inform us of the amount, or the approximate amount, of any rival tender for the contract; or
3. Communicated to any other person, other than IMPEL, the amount or the approximate amount of the tender (except where the disclosure, in confidence, was made to obtain quotations necessary for the preparation of the tender or for professional advice required for the preparation of the tender); or
4. Offered or agreed to pay or give any sum of money, inducement or valuable consideration, directly or indirectly, to any person for doing or having done or causing or having cause to be done in relation to any other tender or proposed tender for the contract, any act or omission; or
5. Canvassed any other persons referred to in paragraphs 1 or 2 above, in connection with the contract.

We also undertake not to procure the doing of any of the acts mentioned in paragraphs 1 to 5 above before the hour and date specified for the return of the tender nor (in the event of the tender being accepted) shall we do so while the resulting contract continues in force between us (or our successors in title) and IMPEL.

In this Certificate, the word "person" includes any persons and anybody or association, corporate or unincorporate, and "agreement" or "arrangement" include any such transactions, whether formal or informal, legally binding or not.

NAME:

DATE:

SIGNATURE:

IN THE CAPACITY OF: Director _____
(Duly authorised to enter into a contractual arrangement on behalf of)

COMPANY NAME & REGISTERED ADDRESS:

APPENDIX 3 - CERTIFICATE OF NON-CANVASSING

To: Nancy Isarin
IMPEL Office
Chemin des deux maisons 73, box 3
1200, Brussels, Belgium

**PROVISION OF ICT SERVICES: Shipments of INVITATION TO TENDER FOR THE PROVISION OF ICT SERVICES:
Shipments of Waste Enforcement Actions: Reporting application and data storage and exchange (Ref:
IMPEL/2019/LIFESWEAP/000480/001 /B8)**

We hereby undertake that we have not (nor will we in the future):

1. Contacted any officer of IMPEL about any aspect of the procurement, except as authorised by the Invitation to Tender, including (but without limitation) for the purposes of soliciting information in connection with the procurement; or
2. Offered any inducement, fee or reward to any member or officer of IMPEL or any person acting as an advisor for IMPEL or in connection with this procurement; or
3. Canvassed any of the persons referred to in paragraph 2 above in connection with the procurement.

In this Certificate the word "person" includes any persons and anybody or association, corporate or unincorporate and "agreement" or "arrangement" include any such transactions, whether formal or informal, legally binding or not.

NAME:

DATE:

SIGNATURE:

IN THE CAPACITY OF: Director _____
(Duly authorised to enter into a contractual arrangement on behalf of)

COMPANY NAME & REGISTERED ADDRESS:

APPENDIX 4 – CERTIFICATE OF ACCEPTANCE OF TERMS AND CONDITIONS OF CONTRACT

To: Nancy Isarin
IMPEL Office
Chemin des deux maisons 73, box 3
1200, Brussels, Belgium

**PROVISION OF ICT SERVICES: Shipments of INVITATION TO TENDER FOR THE PROVISION OF ICT SERVICES:
Shipments of Waste Enforcement Actions: Reporting application and data storage and exchange (Ref:
IMPEL/2019/LIFESWEAP/000480/001 /B8)**

With reference to the above Invitation to Tender we hereby acknowledge that the IMPEL General Conditions of the resulting Contract shall be the General Conditions referred to and set out in Section 4 of this Invitation to Tender documentation (separate file).

NAME:
DATE:
SIGNATURE:

IN THE CAPACITY OF: Director _____
(Duly authorised to enter into a contractual arrangement on behalf of)

COMPANY NAME & REGISTERED ADDRESS:



European Union Network for the Implementation
and Enforcement of Environmental Law

Annex

IMPEL GENERALTERMS AND CONDITIONS

FOR SUPPLIERS

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1 Definitions and Interpretation

1.1 The expressions listed in this Clause are given these meanings unless the context in which they are used requires a different meaning:

1.1.1 **"this Agreement"** means these terms together with the Contract Award Document, any Purchase Order and the Tender Documents. The expression also extends to cover any amendments to this Agreement from time to time;

1.1.2 **"Company"** means the Company providing the Services to IMPEL as named in the Contract Award Document;

1.1.3 **"Commencement Date"** means the date on which this Agreement comes into force as set out in the Contract Award Document;

1.1.4 **"Confidential Information"** means information that is marked as confidential or otherwise designated by supplying it as 'confidential', or which by its nature is clearly confidential. Confidential Information includes any information concerning the business affairs of IMPEL, including information in relation to the past, present and potential future finances, policies, projects, procedures, plans, contractual arrangements, staff, customers, members or other contractors of IMPEL. Confidential Information may (but will not necessarily) take the form of:

1.1.4.3 documents, reports, correspondence, data, drawings, plans, process descriptions, photographs, technology, knowhow, techniques, working papers graphs or databases, whether in documentary, electronic or other form; or

1.1.4.4 oral descriptions, demonstrations or observations;

1.1.5 **"Consultant(s)"** means the employee(s) or agent(s) of the Company who have been engaged to provide the Services to IMPEL;

1.1.6 **"Consultant Background IP"** means all Intellectual Property Rights of any nature which are material to the supply of the Services and which are owned by the Company and/or any Consultant or to which the Company and/or any Consultant has rights including but not limited to rights in documentation, information, data, software, source code and equipment which is in existence prior to first providing the Services to IMPEL and which is or should be made available by the Company and/or a Consultant in order to enable IMPEL to receive the Services;

1.1.7 **"Contract Award Document"** means the contract award document issued by IMPEL to the Company upon awarding the contract for the provision of the Services;

1.1.8 **"Data Protection Legislation"** means any law applicable relating to the processing, privacy and use of personal data, including: (i) the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003, SI 2003/2426, and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive) or Directive 2002/581EC; and/or

(ii) the General Data Protection Regulation (EU) 2016/679, and/or any corresponding or equivalent national laws or regulations; (iii) any judicial or administrative implementation of any of the above, any guidance, guidelines, codes of practice, codes of conduct or approved certification mechanisms issued by the Information Commissioners Office, or other regulatory or supervisory authority responsible for administering Data Protection Legislation;

- 1.1.9 **"Deliverables"** means any records, reports, papers, diagrams, drawings, designs, photographs, graphs, models and any other materials (whether in documentary, electronic or other form) produced by or on behalf of the Company and / or any Consultant for IMPEL, or otherwise supplied to IMPEL by the Company and/ or any Consultant, as part of the Services;
- 1.1.10 **"Expiry Date"** means the date on which this Agreement contract comes to an end as set out in the Contract Award Document;
- 1.1.11 **"Fees"** means the fees to be paid by IMPEL to the Company for the Services, as set out in the Contract Award Document;
- 1.1.12 **"Force Majeure Event"** means an event beyond the reasonable control of the Company that renders the performance of the Agreement impossible whether temporarily or otherwise which for the avoidance of doubt may include prohibitive government regulation, flood, lightening or other extreme weather conditions, fire, explosion, malicious damage, industrial actions or lockouts, terrorism, war, civil commotion, military operations, riot, national emergency, the act or omission of any third party not being its agent or sub-contractor, any change in the law or in the interpretation of the law by the courts;
- 1.1.13 **"Foreground IP"** means all Intellectual Property Rights arising as a result, directly or indirectly, of the provision of the Services by the Company including, without limitation, Intellectual Property Rights in any Deliverables;
- 1.1.14 **"GDPR"** means General Data Protection Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC;
- 1.1.19 **"Good Industry Practice"** means the standard of skill, care and knowledge which could reasonably be expected from an experienced person who is in the business of providing services which are the same as or similar to the Services;
- 1.1.20 **"Intellectual Property Rights"** means any of the following rights:
- 1.1.20.1 patents, trade marks, rights in designs, get-up, trade, business or domain names, copyrights or database rights (in each case whether registered or not and, where these rights can be registered, any applications to register or rights to apply for registration of any of them); and

- 1.1.20.2 unregistered rights in inventions, know-how, and trade secrets; and
 - 1.1.20.3 any other intellectual property rights which may exist at any time in any part of the world;
 - 1.1.21 **"Personal Data", "Process"** (and any derivatives thereof), **"Data Controller", "Data Subjects"** and **"Data Processor"** have the meanings given to them in the Data Protection Legislation;
 - 1.1.22 **"Premises"** means the location where the Services are to be performed;
 - 1.1.23 **"Purchase Order"** means a purchase order issued in accordance with the terms of the Contract Award Document and this Agreement;
 - 1.1.24 **"IMPEL"** means The European Union Network for the Implementation and Enforcement of Environmental Law, Chemin des deux maisons 73, box 3, 1200, Brussels, Belgium. VAT number: BE 898.135.767;
 - 1.1.25 **"IMPEL Background IP"** means all Intellectual Property Rights of any nature owned by IMPEL or to which IMPEL has rights including but not limited to rights in documentation, information, data, software, source code and equipment which is in existence prior to the Company first providing the Services to IMPEL and which is made available by or used by IMPEL in order to enable the Company to provide the Services;
 - 1.1.26 **"Services"** means the Services as described in the Contract Award Document;
 - 1.1.27 **"Service Levels"** means the performance criteria specified in the Contract Award Document;
 - 1.1.28 **"Supervisory Authority"** has the meaning given in the Data Protection Legislation;
 - 1.1.29 **"Term"** means the term of this Agreement as set out in the Contract Award Document;
 - 1.1.30 **"Tender Documents"** means IMPEL's invitation to tender and clarifications issued or accepted by IMPEL (if any); and
 - 1.1.31 **"Year"** means a period of twelve (12) months beginning on the Commencement Date or any anniversary of the Commencement Date.
- 1.2 Unless the context requires a different interpretation, the following rules should be used to interpret this Agreement:
- 1.2.1 any reference to a provision of a statute includes references to that provision as amended, extended or applied by any other provision regardless of whether the other provision became law before or after the Commencement Date;
 - 1.2.2 words used in the singular should be interpreted to include the plural and vice versa. Words which refer to one gender should be interpreted to include the other gender;

- 1.2.3 the word "**party**" means a party to this Agreement, that is either IMPEL or the Company. The phrase "third party" means a person other than IMPEL or the Company;
- 1.2.4 the word "**including**" means "**including but not only**"; and
- 1.2.5 in the event of any conflict or inconsistency between them, the terms of the main body of this Agreement will prevail over the terms of the Schedule and its Parts.

2 Term

- 2.1 This Agreement will come into force on the Commencement Date, and unless terminated earlier by either party pursuant to Clause 19, will remain in force until the Expiry Date.
- 2.2 IMPEL may serve notice in writing to the Company not less than one month prior to the Expiry Date to extend the term of this Agreement for a further period as shall be mutually agreed between the parties in writing.

3 The Services

- 3.1 For so long as this Agreement is in force the Company will provide the Services to IMPEL in accordance with:
 - 3.1.1 the Contract Award Document;
 - 3.1.2 these terms and conditions;
 - 3.1.3 the Tender Documents; and
 - 3.1.4 otherwise in accordance with this Agreement.
- 3.2 The Company undertakes to IMPEL that:
 - 3.2.1 the Services will be provided in accordance with:
 - 3.2.1.1 this Agreement;
 - 3.2.1.2 Good Industry Practice;
 - 3.2.1.3 the best interests of IMPEL;
 - 3.2.1.4 all applicable legislative and regulatory requirements including, but not limited to, environmental legislation and bribery acts; and
 - 3.2.1.5 all reasonable instructions provided by IMPEL to the Company and/or the Consultant from time to time;
 - 3.2.2 prior to a Consultant being proposed to IMPEL the Company shall:

- 3.2.2.1 ensure that the Consultant has the necessary skills, qualifications and experience to perform the Services, and;
 - 3.2.2.3 provide IMPEL with reasonably requested personal and career information about the Consultant;
 - 3.2.3 it will not remove or replace any appointed Consultant without the prior written consent of IMPEL;
 - 3.2.4 it will be available upon reasonable notice and will, at its own expense, ensure that any appointed Consultant is available to meet with IMPEL to discuss the Services;
 - 3.2.5 it or any appointed Consultant will not hold itself/themselves out as being authorised to bind IMPEL in any way or act in any way which may give such impression; and
 - 3.2.6 it or any appointed Consultant will not make or incur any legally binding obligation on behalf IMPEL without the prior written consent of IMPEL.
- 3.3 IMPEL will be entitled to reject any of the Consultants proposed by the Company without reason and at any time during the Term.
- 3.4 The Company will provide IMPEL with reasonable notice if, for any reason, an appointed consultant is unable to provide the Services and if possible the Company will provide IMPEL with an alternative Consultant.
- 3.5 Where a Consultant is required to work at or go to IMPEL's Premises for any reason in connection with this Agreement, the Company will ensure that the Consultant will comply with:
- 3.5.2 any and all applicable laws including health and safety and environmental laws; and
 - 3.5.3 any reasonable instructions, procedures or policies issued by IMPEL from time to time.

4 Manner of carrying out the Services

- 4.1 The Company shall make no delivery of materials, plant or other things nor commence any work on the Premises without obtaining IMPEL's prior written consent.
- 4.2 Access to the Premises shall not be exclusive to the Company but shall enable the Consultant(s) to carry out the Services concurrently with the execution of work by others. The Company and Consultant shall co-operate with any other person as IMPEL may reasonably require and comply with all applicable laws and regulations as well as any policies and procedures provided by IMPEL from time to time.
- 4.3 IMPEL shall have the power at any time during the progress of the Services to order in writing:
 - 4.3.2 the removal from the Premises of any materials which in the opinion of IMPEL are either hazardous, noxious or not in accordance with this Agreement; and/or

- 4.3.3 the substitution of proper and suitable materials; and/or
- 4.3.4 the removal and proper re-execution notwithstanding any previous test thereof or interim payment thereof of any work which, in respect of material or workmanship is not in the opinion of IMPEL in accordance with this Agreement.

5 Health and safety

- 5.1 The Company shall perform the Services in such a manner as to be safe and without risk to the health or safety of persons in the vicinity of the place where the Services are being performed (whether such persons are in the vicinity of the said place at the time when the Services are being performed or otherwise) and in such a manner as to comply with any relevant health and safety or other legislation (including Statutory Instrument, Orders, or Regulations made under the said legislation) and any requirements imposed by a local or other regulatory authority in connection with the performance of services of the type supplied to IMPEL, whether specifically or generally. The Company shall indemnify IMPEL against all actions, suits, claims, demands, losses, charges, costs and expenses which IMPEL may suffer or incur as a result of or in connection with any breach of this Clause.

6 Failure to provide the Services

If the Company fails to provide the Services in accordance with this Agreement, then without prejudice to any right or remedy IMPEL is entitled to by law or under this Agreement, IMPEL shall be entitled to immediately:

- 6.1 terminate the relevant Purchase Order;
- 6.2 refuse to accept any subsequent performance of the Services which the Company attempts to make;
- 6.3 terminate this Agreement in whole or in part in accordance with Clause 19; and/or
- 6.4 recover from the Company any expenditure reasonably incurred by IMPEL in:
 - 6.4.2 obtaining the Services in substitution from another supplier; and/or
 - 6.4.3 carrying out any work necessary to make the Services comply with this Agreement.

7 Acceptance of Deliverables

- 7.1 IMPEL will not be treated as having accepted any Deliverable until it has had a reasonable opportunity to inspect it following delivery. IMPEL will have the right to reject any Deliverable which does not comply with this Agreement.
- 7.2 If IMPEL rejects a Deliverable under Clause 7.11, it will have the right to either require the Company to correct the Deliverable (at the Company's own cost) so that it does comply with this Agreement, or to withhold payment of the Fees in respect of that Deliverable. IMPEL will be free to decide which of these

options to choose, entirely at its own discretion. If IMPEL chooses the first option, but the amended or replacement Deliverable provided by the Company still does not comply with this Agreement, IMPEL will again have the right to choose between the above two options. If IMPEL rejects a Deliverable three or more times in accordance with this Clause 7, IMPEL will have the right to choose between the above two options, or to terminate the relevant Purchase Order by giving the Company at least five Business Days' notice to that effect.

8 Fees and payment

- 8.1 In return for the provision by the Company of the Services in accordance with this Agreement, IMPEL will pay the Company the Fees, in accordance with this Clause 8.
- 8.2 The price of the Services shall be as stated in the Contract Award Document and no increase will be accepted by IMPEL unless agreed by IMPEL in writing before the commencement of performance of this Agreement.
- 8.3 Subject to the Company performing the Services, IMPEL will pay to the Company any undisputed Fees due to it under this Agreement within thirty (30) days of its receipt of a valid invoice for those Fees, which has been raised in accordance with this Clause 8, and provided that such invoice is accompanied by such information as IMPEL requires to check that the amount invoiced is properly due in terms of this Agreement.
- 8.4 IMPEL will have the right to retain any payments that would otherwise be due to the Company where it disputes, in good faith, that the Company has properly performed its obligations under this Agreement.
- 8.5 Any sums payable under this Agreement are exclusive of value added tax which will be paid where applicable by IMPEL at the rate for the time being required by law, provided that a valid VAT invoice has been received by IMPEL.
- 8.6 Neither party shall in any circumstances be required to pay to the other any sum representing interest, penalties, fines or charges which is due to the wilful default, omission or negligence of the party liable to account for value added tax to HM Revenue and Customs.
- 8.7 The Company will pay all taxes and expenses arising under this Agreement. The Company will indemnify IMPEL in respect of any tax or employer's national insurance contributions or other expense suffered by IMPEL in respect of the Company, the Company's employees, agents or sub-contractors in relation to the supply of the Services during the Term or following termination of this Agreement.

9 Change to Agreement requirements

- 9.1 IMPEL may order any variations to any part of the Services that for any other reason shall in its opinion be desirable. Any such variation may include (but shall not be restricted to) additions, omissions, alterations, substitutions to the Services and changes in quality, form, character, kind, timing, method or sequence of the Services.

- 9.2 Save as otherwise provided herein, no variation of the Services as provided for in Clause 9.1 hereof shall be valid unless given or confirmed in the form of an order given by IMPEL. All such orders shall be given in writing provided that if for any reason IMPEL shall find it necessary to give any such order orally in the first instance the Company shall comply with such oral order which must be confirmed in writing by IMPEL within 2 Business Days of the giving of such oral order by IMPEL, failing which the variation made by such oral order shall cease to have effect on the expiry of the said 2 Business Day period.
- 9.3 Where any such variation of the Services made in accordance with Clauses 9.1 and 9.2 has affected or may affect the costs incurred by the Company in providing the Services, the Company will notify IMPEL in writing of the effect which it has had or may have on the said costs and such notification shall be considered by IMPEL, who shall take all of the facts into account (including such information as may be provided by the Company in respect of the effect which such variation has had or may have on the costs incurred by the Company in providing the Services) and may authorise such alteration to the sums to be paid to the Company in accordance with the provisions of this Agreement as are, in his opinion, appropriate and reasonable in the circumstances.

10 Warranties

The Company warrants and undertakes to IMPEL at the Commencement Date and on an ongoing basis during the Term that:

- 10.1 the Company has full capacity and authority and all necessary licences, permits and consents to enter into and to perform this Agreement;
- 10.2 the Services will be provided with all due skill and care, in accordance with this Agreement; and
- 10.3 the Company has sufficient resources to properly perform its obligations under this Agreement, and will continue to have sufficient resources to do so throughout the period that this Agreement is in force.

11 Intellectual Property Rights

- 11.1 The Company will not obtain any rights in any IMPEL Background IP. If asked to do so by IMPEL at any time or otherwise on the expiry or termination of this Agreement, the Company will at its own expense promptly return to IMPEL any IMPEL Background IP in the Company's possession.
- 11.2 The Company hereby assigns to IMPEL absolutely (where appropriate by way of present assignation of future copyright), all and whole its present and future right, title and interest in and to the Foreground IP.
- 11.3 If asked to do so by IMPEL, the Company will, at IMPEL's expense, promptly sign such documents, and do such other things as IMPEL requires to perfect its title to the Intellectual Property Rights assigned to it in terms of Clause 11.2, including by registering any of those Intellectual Property Rights in any part of the world.
- 11.4 The Company hereby waives, and warrants that its employees and contractors have waived, any moral rights arising in the Foreground IP.

- 11.5 All right, title and interest in and to any IMPEL Background IP shall remain the property of IMPEL.
- 11.6 All right, title and interest in and to any Consultant Background IP shall remain the property of the Company or the Consultant as the case may be.
- 11.7 The Company warrants and undertakes that in the performance of the Services it will not infringe the Intellectual Property Rights of any third party, and that the use or possession by IMPEL, or any licensee of IMPEL, of the Deliverables will not infringe the Intellectual Property Rights of any third party.
- 11.8 The Company will indemnify IMPEL against all losses, costs, claims, demands, expenses and liabilities of any nature (including legal costs), arising from or relating to any claim arising from a breach or alleged breach by the Company of Clause 11.7.

12 Records and audit rights

- 12.1 The Company will maintain full and accurate records and accounts relating to the provision of the Services to IMPEL, including records of amounts paid for goods, services and materials, including labour costs.
- 12.2 The Company will permit IMPEL and IMPEL's internal and external auditors to inspect all of the Company's records and accounts relating to this Agreement, to verify the Fees payable by IMPEL, and to enable IMPEL to comply with its internal and external audit requirements.
- 12.3 The Company's obligation to maintain records and accounts under Clause 12.1, and IMPEL's and its auditors' rights to have access to those records and accounts under Clause 12.2, will continue for so long as this Agreement is in force, and for a period of five (5) Years following the expiry or other termination of this Agreement.

13 Limitation of liability and insurance

- 13.1 Nothing in this Agreement shall limit or exclude the Company's liability:
- 13.1.2 for a breach of its obligations under Clauses 3.2.1.4, **Erro! A origem da referência não foi encontrada.**, 14, 15 or 16; and
- 13.1.3 under the indemnities at Clauses 11.8, 13.3, 17.2 or 18.8.
- 13.2 The Company shall be liable for and shall indemnify IMPEL for any loss, liability, costs (including reasonable legal costs), damages or expenses arising from the provision of the Services and shall maintain in force during the period of this Agreement adequate insurance cover with reputable insurers acceptable to IMPEL, evidence of such insurance shall be made available to IMPEL on its request.

- 13.3 The Company will indemnify IMPEL against all losses, costs, claims, demands, expenses and liabilities of any nature (including legal costs), arising from or relating to any claim arising from a breach or alleged breach by the Company of any environmental legislation or regulations.
- 13.4 Subject to Clause 13.1, the Company's maximum aggregate liability to IMPEL per claim or series of related claims arising during the term of this Agreement shall be the greater of:
- 13.4.2 150% of all sums paid or payable by IMPEL to the Company in the twelve (12) months prior to the date giving rise to such claim; and
- 13.4.3 FIVE MILLION POUNDS STERLING (£5,000,000).
- 13.5 IMPEL's maximum aggregate liability to the Company for all claims arising during the Term (excluding any liability to pay the Fees) shall not exceed the amount paid or payable to the Company for any Services under this Agreement in the twelve (12) months prior to the date giving rise to a claim.
- 13.6 Any limitation of liability set out in this Agreement shall not apply so as to restrict either party's liability for death or personal injury resulting from that party's negligence, nor will it apply to any liability for fraudulent misrepresentation.
- 13.7 In no event shall either party be liable under or in connection with this Agreement, whether in contract, delict (including negligence or breach of statutory duty) or otherwise, for any indirect or consequential loss or damage, howsoever arising, or for any loss of revenues, profits, goodwill or anticipated savings, or loss or corruption of data.
- 13.8 Nothing in this clause shall affect the right of either party to terminate this Agreement in accordance with its terms.

14 Confidentiality

- 14.1 The Company will each treat as confidential all Confidential Information obtained from IMPEL under or in connection with this Agreement, unless such Confidential Information is already public knowledge or which becomes so at a future date (otherwise than as a result of a breach of this Clause 14). The Company will not without the prior written consent of IMPEL disclose any such Confidential Information to any person, or use the same.
- 14.2 Neither the Company nor IMPEL will make any announcement about this Agreement, or disclose its existence or terms, without the prior written consent of the other.
- 14.3 The obligations of confidentiality in this Clause 14 (but not the rights to use Confidential Information) will remain in force following the expiry or other termination of this Agreement.

15 Data protection

- 15.1 The Company undertakes to IMPEL that it will take all necessary steps to ensure that in providing the Services it operates at all times in compliance with the Data Protection Legislation.
- 15.2 Without limiting Clause 15.1, if IMPEL passes to the Company, or otherwise gives the Company access to, Personal Data under this Agreement, IMPEL and the Company agree that IMPEL shall be the Data Controller and the Company shall be the Data Processor of any Personal Data Processed by the Company of which IMPEL is the Data Controller ("**IMPEL Personal Data**") pursuant to this Agreement. As Data Processor, the Company undertakes:
- 15.2.1 to Process the IMPEL Personal Data strictly in accordance with this Agreement, or otherwise on the instructions of IMPEL from time to time, and the Data Protection Legislation;
 - 15.2.2 not to acquire any rights in the IMPEL Personal Data, and will return the IMPEL Personal Data to IMPEL immediately, if IMPEL requests it to do so;
 - 15.2.3 to put in place appropriate technical and organisational measures including those set out in the Schedule 1 (Data Protection) and in accordance with Article 32 of the GDPR to protect Personal Data against unauthorised or unlawful Processing of the IMPEL Personal Data, and against accidental loss or destruction of, or damage to, the IMPEL Personal Data, in compliance with the Data Protection Legislation, all to the reasonable satisfaction of IMPEL. Technical and organisational measures will be considered appropriate for the purposes of this Clause 15.2.3 if they conform to the provisions of ISO 17799 (or any replacement standard relating to data security) or such other data security measures as are appropriate for the purposes of complying with the Data Protection Legislation;
 - 15.2.4 to permit IMPEL to have access to the Company's premises, personnel and records on at least five (5) Business Days' notice, for the purposes of inspecting, testing and auditing the technical and organisational measures put in place by the Company under Clause 15.2.3;
 - 15.2.5 to promptly take whatever steps are necessary to comply with any requirement made by IMPEL to ensure that the technical and organisational measures put in place by the Company comply with the Data Protection Legislation;
 - 15.2.6 the Company will not transfer any of the IMPEL Personal Data outside the European Economic Area, except with the prior written consent of IMPEL, and in accordance with any additional terms which IMPEL imposes on such transfer;
 - 15.2.7 the Company will not engage a third party to carry out Processing in connection with the Services without prior specific or general written authorisation from IMPEL. In the case of general written authorisation, the Company must inform IMPEL of any intended changes concerning the addition or replacement of any other third party and give IMPEL an opportunity to object to such changes;

- 15.2.8 not to disclose or allow access to IMPEL Personal Data (other than to the Company's Employees and third parties engaged by the Company to perform the obligations imposed on the Company under this Agreement or as otherwise permitted by the terms of this Agreement), and ensure that such Company's Employees and third parties are subject to written contractual obligations concerning the IMPEL Personal Data which are no less onerous than those imposed on the Company under this Agreement. The Company will remain fully liable to IMPEL for the performance of the third party's performance of the obligations;
- 15.2.9 that any of the Company's Employees and third parties who will have access to the IMPEL Personal Data have undergone data protection training and are aware of their obligations under the Data Protection Legislation;
- 15.2.10 The Company must provide IMPEL reasonable assistance including by such technical and organisational measures as maybe appropriate in complying with Articles 12-23 of the GDPR, including any subject access request and/or responding to any enquiry made, or investigation or assessment of processing initiated by the Information Commissioner in respect of the Data as soon as is possible but in any event within 2 business days of receipt of the request or any other period as agreed in writing with the Data Controller from time to time;
- 15.2.11 Taking into account the nature of the Processing and the information available, the Company must assist IMPEL in complying with IMPEL's obligation concerning the security of personal data, reporting requirements for data breaches, data protection impact assessments and prior consultations in accordance with Articles 32 to 36 of the GDPR. These obligations include:
- 15.2.11.1 ensuring the appropriate level of protection through technical and organisational measures that take into account the circumstances and purposes of the processing as well as the projected probability and severity of a possible infringement of the law as a result of security vulnerabilities and that enable as immediate detection of relevant infringement events;
 - 15.2.11.2 notifying a Personal Data breach to IMPEL without undue delay and in any event no later than 12 hours after becoming aware of a Personal Data breach;
 - 15.2.11.3 assisting IMPEL with preparation of a personal data breach to a Data Subject;
 - 15.2.11.4 supporting IMPEL with preparation of a data protection impact assessment;
- 15.2.12 supporting IMPEL with regard to prior consultation of the Supervisory Authority;to assist IMPEL with all requests which may be received from Data Subjects in relation to the IMPEL Personal Data under the Data Protection Legislation and to notify IMPEL of any such request within two (2) Business Days of receipt;
- 15.2.13 to provide IMPEL with such information as IMPEL may require to satisfy itself that the Company is complying with its obligations under the Data Protection Legislation;

- 15.2.14 to notify IMPEL immediately if it receives a complaint, notice or any other communication concerning the Company's Processing of the IMPEL Personal Data;
 - 15.2.15 to restrict any Processing immediately as directed by IMPEL;
 - 15.2.16 to indemnify IMPEL fully on demand against all losses arising from any breach by the Company, or any of the Company's, of this Clause 155 and/or as a result of any claim made or brought by an individual or other legal person in respect of any loss, damage or distress caused to them as a result of the Company's unauthorised Processing, unlawful Processing, destruction of and/or damage to any Personal Data Processed by the Company, the Company's Employees or third parties.
- 15.3 The Company shall notify any of the Company's Employees and third parties who are required to attend the Premises or any other premises of IMPEL in order to comply with the Company's obligations under this Agreement that IMPEL may Process the Personal Data of the Company's Employees and third parties whilst they are in attendance at the Premises or any other premises of IMPEL.
- 15.4 At the end of the provision of the Services relating to processing the Company must, on written instruction from IMPEL, delete or return to IMPEL all Personal Data and delete existing copies unless EU or Member State law requires storage of the Personal Data;
- 15.5 The Company must:
- 15.5.1 Provide such information as is necessary to enable IMPEL to satisfy itself of the Company's compliance with this Clause 15;
 - 15.5.2 Allow IMPEL, its employees, auditors, authorised agents or advisers reasonable access to any relevant premises, during normal business hours, to inspect the procedures, measures and records referred to in this Clause 15;
 - 15.5.3 Inform IMPEL if in its opinion an instruction from IMPEL infringes any obligation under the Data Protection Laws.
- 15.6 Parties acknowledge that the inspecting party will use reasonable endeavours to carry out any audit of inspection under Clause 15.8 with minimum disruption to the Company's day to day business;
- 15.7 The Company must maintain written records including in electronic form, of all Processing activities carried out in performance of the Services or otherwise on behalf of IMPEL containing the information set out in Article 30(2) of the GDPR;
- 15.8 If requested, the Company must make such records referred to in Clause 15.7 available to the Supervisory Authority on request and co-operate with the Supervisory Authority in the performance of its tasks.
- 15.9 The Company shall assist IMPEL at no additional charge in meeting any reasonable requests for information in relation to this Agreement which are made to IMPEL in connection with Environmental Regulations or any statutory modification or re-enactment thereof or any related guidelines or codes of practice. IMPEL

may, from time to time, serve on the Company an information notice requiring the Company within such time and in such form as is specified in the information notice, to furnish to IMPEL such information as IMPEL may reasonably require relating to such requests for information. The Company acknowledges that in responding to such requests for information, IMPEL shall be entitled to provide information relating to this Agreement.

16 Environmental Regulations

16.5 The Company:

16.5.1 acknowledges that IMPEL is subject to the requirements of Environmental Regulations and IMPEL may disclose any information where required by the Environmental Regulations; and

16.5.2 shall assist and co-operate with IMPEL (at IMPEL's expense) to enable IMPEL to comply with IMPEL Environmental Regulations obligations.

16.6 The Company shall (and shall procure that its suppliers and sub-contractors shall):

16.6.1 transfer to IMPEL all requests for information held by or on behalf of IMPEL as soon as practicable after receipt and in any event within three (3) days of receiving the request;

16.6.2 provide IMPEL with a copy of all information held on behalf of IMPEL in its possession or power in the form that IMPEL reasonably requests within five (5) days of IMPEL requesting that information;

16.6.3 provide all necessary assistance as reasonably requested by IMPEL to enable IMPEL to respond to a request made under the Environmental Regulations promptly; and

16.6.4 ensure that no such information held on behalf of IMPEL will include any information that will undermine IMPEL's reputation should it be disclosed in response to a request made under the Environmental Regulations.

16.7 The Company agrees that IMPEL shall be responsible for determining, at IMPEL's absolute discretion, whether any commercially sensitive information and any other information:

16.7.1 is exempt from disclosure in accordance with the provisions of the Environmental Regulations;
or

16.7.2 is to be disclosed in response to a request which is subject to the Environmental Regulations.

17 Employment

17.1 Neither this Agreement nor the provision of the Services by the Company to IMPEL under it is intended to create or imply an employment relationship between IMPEL and the Company or any of the Company's Staff.

17.2 The Company will be responsible for all emoluments and other out-goings in respect of the Company and the Company's Staff (including all wages, bonuses, commissions, PAYE, national insurance contributions, and pensions contributions). The Company will indemnify IMPEL against all liabilities, costs (including IMPEL's legal costs), claims and demands, and any penalty, fine or interest incurred or payable arising from the failure of the Company to comply with any of its obligations under this Clause 17.2, or any other obligations which it may have under any of its contracts with the Company's Staff. IMPEL may satisfy such indemnity (in whole or in part) by way of deduction from any payment due to the Company.

18 Employment Regulations

18.1 The parties do not anticipate that the Employment Regulations shall apply so that the contracts of employment of any employees of the Company automatically transfer to IMPEL as a result of the Company providing the Services.

18.2 The Company will within ten (10) Business Days of receipt of a request (or a request for updated information) by IMPEL (which may be made at any time during the term of this Agreement) supply in writing to IMPEL:

18.2.1 information on which of the Company's staff are and have been involved in providing the Services, whether or not they spend all of their working time on the Services (and, if not, the percentage of their working time generally spent), what role(s) they carry out and any other information relating to the way the Company's staff carry out the Services as may be reasonably be requested;

18.2.2 information as to the basic terms and conditions of employment of the Company's staff at the time of a request for such information, whether contractual or otherwise (including remuneration, benefits, pension benefits, enhanced redundancy benefits and other rewards); and

18.2.3 such other information as may reasonably be required by IMPEL relating to such of the Company's staff which is in the possession of the Company and each subcontractor at the time of the request or which can reasonably be obtained by the Company from any other third party.

18.3 The Company consents to IMPEL using the information obtained under Clause 18.2 for their own costing purposes and also disclosing that information to prospective bidders for the provision of the Services (or services similar to the Services) to IMPEL.

18.4 The information provided under Clause 18.2 will, where reasonably practicable, be anonymised or coded by the Company in such a way so as to prevent the disclosure of Personal Data as defined under the DPA.

18.5 The Company will procure that the information provided under Clause 18.2 is complete and accurate in all material respects and that it is no more than fourteen (14) days old on the date that it is given.

18.6 The Company shall not keep any information retained by it after the cessation of the provision of the Services for longer than is required under the DPA and shall dispose of any such information in accordance with the DPA.

- 18.7 The parties do not anticipate that on the cessation or partial cessation of the provision of the Services or any part of the Services the termination, expiry or variation of this Agreement, the Employment Regulations shall apply so that the contracts of employment of any employees of the Company transfer to IMPEL.
- 18.8 Without prejudice to the provisions of Clause 18.7 the Company will, on demand by IMPEL, indemnify IMPEL against (or, at the option of IMPEL, indemnify IMPEL on its own behalf) and as a separate obligation undertakes to pay to IMPEL the amount of, all losses, fines, penalties, awards, liabilities, costs, damages and expenses (including reasonable legal expenses on an indemnity basis) which IMPEL may incur (directly or indirectly):
- 18.8.1 in connection with the employment or termination of employment of any transferring employee at any time up to the relevant transfer date; or
 - 18.8.2 in connection with the employment or termination of employment of any transferring employee from and including the transfer date provided IMPEL terminates the employment of the transferring employee (in so far as it has not already terminated) within thirty (30) Business Days of becoming aware of such transfer or alleged transfer; and
 - 18.8.3 as a result of any failure to comply with Regulation 13 or Regulation 14 of the Employment Regulations in respect of any transferring employee.

19 Termination

- 19.1 IMPEL may terminate this Agreement at any time by giving the Company not less than one month's written notice.
- 19.2 This Agreement may be terminated by either party (the "**Terminating Party**") immediately by giving written notice to the other party, if the other party commits a material breach of this Agreement. However where a breach is capable of being remedied, this Agreement may only be terminated where the party in breach has failed to remedy the breach within twenty one (21) days of its receipt of a notice from the Terminating Party, describing the breach, and requesting that it be remedied.
- 19.3 To be clear, a breach will be treated as capable of remedy for the purposes of this Agreement if it can be put right in all respects except for time of performance, except where the time of performance is stated to be "of the essence" of this Agreement, in which case the breach will be treated as irremediable. Time of performance will automatically be deemed to be "of the essence" of this Agreement, for any obligation marked in the Contract Award Document. Failure by the Company to meet any such key milestone will therefore automatically entitle IMPEL to terminate this Agreement immediately.
- 19.4 This Agreement may be terminated immediately by the Terminating Party even in the case of a breach capable of remedy, where the breach is persistent. A breach of this Agreement will be persistent where it has recurred not less than three (3) times in any continuous period of twelve (12) months, regardless of whether on each such occasion the party in breach then corrected that breach.

- 19.5 The Terminating Party shall be entitled to terminate this Agreement immediately if the other party is unable to pay its debts or enters into compulsory or voluntary liquidation, or compounds with or convenes a meeting of creditors, or has an administrative receiver, administrator, trustee, judicial factor, manager, or similar officer appointed, or if a receiver (including an administrative receiver) or other similar officer takes possession of the whole or any part (which is material in the context of the performance of the other party's obligations under this Agreement) of the undertaking, property or assets of the other party, or if a petition is presented in respect of the other party and is not dismissed within twenty eight (28) days of such presentation, or if the other party is the subject of a moratorium, or if the other party ceases for any reason to carry on business, or takes or suffers any similar action which in the opinion of the Terminating Party means that the other party may be unable to pay its debts.
- 19.6 IMPEL may terminate this Agreement immediately by giving written notice to the Company if the Company:
- 19.6.1 is unable to provide the Services for a continuous period of ten (10) Business Days; or
- 19.6.2 has been unable to provide the Services for ten (10) Business Days in aggregate in any continuous period of thirty (30) Business Days.
- 19.7 Within ten (10) Business Days of the expiry or other termination of this Agreement, the Company will return to IMPEL any of IMPEL's property, and the Company and IMPEL will each either return to the other party, or (at the other party's option) destroy, all of the other party's Confidential Information in its possession, and certify in writing to the other party that it has done so.
- 19.8 The expiry or termination of this Agreement (however it occurs) will not affect any rights or liabilities of either party that may have accrued before expiry or termination. In addition, expiry or termination will not affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such expiry or termination. Without limiting this Clause 19.8, the provisions of Clauses 8, 11, 12.3, 13, 14, 15, 16, 17, 18,19, 21, 22 and 26 will survive expiry or termination of this Agreement.

20 Assignment and sub-contracting

- 20.1 The Company may not assign, subcontract or otherwise transfer this Agreement or any of its rights and obligations under it whether in whole or in part without the prior written consent of IMPEL. IMPEL will not unreasonably withhold its consent to any such assignment or subcontracting, but the Company acknowledges that if IMPEL consents to the Company sub-contracting any of its obligations under this Agreement, the Company will remain wholly responsible to IMPEL for the actions and omissions of its sub-contractors, so that any failure by such a sub-contractor to comply with this Agreement will be treated as a breach of this Agreement by the Company.
- 20.2 In the event that the Company subcontracts any or all of its rights and obligations under this Agreement, the Company shall include in any subcontract provisions which:
- 20.2.1 specify a contact to whom issues regarding non-payment can be addressed; and

20.2.2 require the Company to pay all sums due by the Company to the subcontractor within, calculating from the date of receipt by the Company of IMPEL's payment, a number of days equivalent to the number of days between IMPEL's receipt and IMPEL's payment of the Company's invoice. The Company will make payment within such time and, in any event, within thirty (30) days of receiving a valid invoice.

20.3 The Company acknowledges and agrees that IMPEL may at any time assign, subcontract or otherwise transfer any or all of its rights and obligations under this Agreement to any third party of its choice.

21 Disputes

Should any dispute arise between the Company and IMPEL, the parties will attempt to resolve the dispute in good faith. Where both parties agree that it may be beneficial they will seek to resolve the dispute through mediation, but this shall not prejudice a party's right to raise court or other proceedings.

22 Publicity

IMPEL reserves the right to disclose to any third party, and through any medium, and at any time, the appointment by IMPEL of the Company in connection with this Agreement. The Company consents and shall procure that each Consultant consents to such disclosure and waives and shall procure that each Consultant waives any right it may have to prevent or restrict disclosure on grounds of commercial confidentiality or otherwise. Any press release or other public intimation proposed by the Company in respect of the Services shall be agreed with IMPEL in advance. The Company agrees to IMPEL making reference in publicity literature that the Services have been provided for IMPEL.

23 Discrimination

The Company shall not, and shall use its best endeavours to procure that the Consultants shall not, unlawfully discriminate against any person on grounds of age, sex or sexual orientation, gender reassignment, race, disability, sexual orientation, religion or belief, marital or civil partner status, pregnancy or maternity, colour, nationality, ethnic or national origin. The Company shall take all reasonable steps to secure the observance of these provisions by all servants, employees or agents of the Company and all sub-contractors employed in the execution of this Agreement.

24 Blacklisting

The Company must not commit any breach of the relevant Employment Relations Acts by unlawfully processing personal data in connection with any blacklisting activities. Breach of this clause is a material default which shall entitle IMPEL to terminate this Agreement.

25 Force Majeure

25.1 If the performance of any obligations under this Agreement is prevented or delayed by a Force Majeure Event then the performance of that obligation will be excused for the duration of the Force Majeure Event

provide that notification is given to IMPEL as soon as reasonably practicable giving a description of the Force Majeure Event and, where possible, an estimate of its likely duration.

- 25.2 If the Force Majeure Event in question continues or is likely to continue of a continuous period in excess of 30 (thirty) calendar days discussions will be held with regard to alternative arrangements in respect of this Agreement which may include but are not limited to termination of it pursuant to Clause 19.
- 25.3 Where a Force Majeure Event has extended or is reasonably anticipated to extend for a period of more the 60 (sixty) calendar days or for periods in aggregate of more than 60 (sixty) calendar days in any 12 (twelve) month period then this Agreement or the continued participation in it of the Company subject to the Force Majeure Event may be terminated with immediate effect.

26 General

- 26.1 If any Clause (or part of a Clause) of this Agreement should be found not to be valid, lawful or enforceable by a court having proper authority, or if the law changes so that it becomes invalid, unlawful or not enforceable to any extent, then this Clause will apply. The Clause (or part affected) will be treated as having been deleted from the remaining terms of this Agreement which will continue to be valid. In addition, the parties will use reasonable efforts to replace the deleted Clause (or part) with a valid replacement provision which is as close as possible in meaning to the one that has been deleted.
- 26.2 This Agreement does not create a partnership, agency relationship or joint venture between the parties to it and except as expressly provided in this Agreement neither party will enter into or have authority to enter into any engagement or make any representations or warranties on the other party's behalf, nor will they seek to otherwise bind or oblige the other party in any way.
- 26.3 This Agreement contains all of the terms of the agreement between the parties relating to the matters covered in this Agreement. Additions or changes to this Agreement will only be binding upon the parties where they are written and signed by a duly authorised representative of each party.
- 26.4 This Agreement is made under Scots law and the Scottish courts will have exclusive authority to settle any dispute arising under or connection with it.

SCHEDULE 1 (DATA PROTECTION)

Data Processing provision as required by Article 28(3) GDPR

This Schedule includes certain details of the Processing of Personal Data in connection with the Services

Subject matter and duration of the Processing of Personal Data

The subject matter and duration of the Processing of Personal Data are [insert description here]

The nature and purpose of the Processing of Personal Data

[Include description here]

The type of Personal Data to be Processed

[Include list of data types here]

The categories of Data Subject to whom Personal Data relates

[Include categories of data subjects here]

The obligations and rights of IMPEL

The obligations and rights of IMPEL as the Data Controller are set out in Clause 15 of the Contract