

Request for Applications to Participate

in

Dynamic Purchasing System

dated *26 May 2023*

**For the provision of Natural Gas Supply to Public
Service Bodies in Ireland**

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Part 1: Introduction

- 1.1 The Minister for Public Expenditure, National Development Plan Delivery and Reform (the “Contracting Authority”) is issuing this request for applications to participate (“RFATP”) in a Dynamic Purchasing System (“DPS”) as a central purchasing body (“CPB”). The Office of Government Procurement (the “OGP”) is an office within the Department of Public Expenditure, National Development Plan Delivery and Reform tasked with sourcing goods and services on behalf of the public service. References to the Contracting Authority will be deemed to include the OGP. The DPS will be co-ordinated and managed by the OGP.
- 1.2 This public procurement competition (“Competition”) is being conducted in accordance with the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) (‘the Regulations’).
- 1.3 The Contracting Authority invites requests to participate (“Applications”) from economic operators (“Candidates”) for appointment to a DPS for the provision of the goods and related services described in Appendix 1 to this RFATP (“the Goods”).
- 1.4 In summary the Goods comprise:

The provision of Natural Gas supply to the entities listed in paragraph 1.7 of this RFATP. This DPS does not include the supply of Natural Gas on a pre-paid basis.

1.5 Outline description of Stage 1 and 2

Admittance to the DPS and subsequent award of contracts thereunder comprises of the following two stages:

Stage 1 – Admittance to the DPS:

The Contracting Authority invites Applications in response to this RFATP from economic operators. Economic operators may apply for admission to the DPS, or re-apply in the case of Candidates who failed to satisfy the compliance or selection criteria in this RFATP, at any point

throughout the entire Term (as defined in paragraph 1.8 below) of the DPS. Applications will be assessed by the Contracting Authority against the compliance and selection criteria in paragraphs 3.1 and 3.2 of this RFATP. While Applicants are required to submit a response to and fulfil the Compliance and Selection Criteria, Candidates are **not** required to submit a tender proposal nor pricing at this Stage 1 of the Competition (which will instead be required in response to future Stage 2 mini-competitions conducted under the DPS). All Candidates that meet the compliance and selection criteria in this RFATP will be admitted to the DPS provided they enter into the DPS Agreement with the Contracting Authority set out at Appendix 5 to this RFATP.

Stage 2 – Award of Goods Contracts:

All Candidates that entered into a DPS Agreement with the Contracting Authority in Stage 1 (each a “DPS Member”) will be invited to stage 2 competition(s) (“Mini-Competition”) to submit a tender based on the requirements set out in the stage 2 request for tenders (“RFT”). Mini-Competition(s) will be conducted in accordance with the procedures set out at clauses 5 and 6 of the DPS Agreement. After the assessment of the tenders received in response to the RFT the Contracting Authority / DPS Client(s) may decide to award the contract(s) to the DPS Member or DPS Members that have submitted the lowest price or most economically advantageous tender based on the award criteria set out in the RFT.

1.6 Overview of the DPS Process

The DPS will be hosted on the eTenders web platform www.etenders.gov.ie (the “Electronic Platform”). All communications arising out of or in connection with the DPS will be by electronic means. No hard copy documents will be issued or accepted by the OGP and all communications with the Contracting Authority must be via the Electronic Platform.

The following is an overview of the electronic process Candidates must follow when submitting an Application for admittance to the DPS:

1. Candidates must register with E-tenders and/or Login to the Electronic Platform;
2. Candidates must review all DPS materials published on the Electronic Platform for this Competition;
3. Candidates must complete and upload the electronic European Single Procurement

Document (“eESPD”) to the Electronic Platform;

4. Candidates must complete the DPS Application Response Document in relation to the selection criteria as detailed in section 3.2 of this RFATP, and upload it to the Electronic Platform by the Application Deadline. Candidates are **not** required to submit a tender proposal or pricing in response to the Appendix 1 requirements. The tender proposal and pricing will instead be required to be submitted in response to future Stage 2 Mini Competitions conducted under the DPS;
5. Candidates that fulfil the compliance and selection criteria in this RFATP will be sent confirmation via the eTenders web platform of its admittance to the DPS and Candidates will be required to sign the DPS Agreement at Appendix 5 to this RFATP;
6. Candidates that do not meet the compliance and selection criteria in this RFATP will not be admitted to the DPS and will be notified accordingly via the eTenders web platform.
7. Unsuccessful Candidates may re-apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS.
8. Economic Operators that did not submit an Application in response to this RFATP by the application deadline specified in paragraph 2.6 of this RFATP may apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS.
9. It is envisaged that all successful DPS Members will be invited to all future Mini-Competitions conducted under the DPS.
10. Future Mini-Competitions will be conducted in accordance with the DPS Agreement at Appendix 5 and contracts will be awarded in accordance with clauses 5 and 6 of the DPS Agreement.

In mini-competitions the highest scoring DPS Member will be awarded the contracts for the relevant group of DPS Clients included in such DPS Mini-Competition in accordance with clause 5 of the DPS Agreement.

For details on procedure for award of contracts please refer to Appendix 5: Dynamic Purchasing System Agreement.

1.7 DPS Clients

The following entities, (each a 'DPS Client') may award (or 'call off') contracts (each a 'Contract') under the DPS Agreement in accordance with the rules set out in the DPS Agreement at Appendix 5. The Contracting Authority is also a DPS Client.

1. Ministers of the Government of Ireland, Central Government Departments, Offices and non-commercial Agencies and Organisations which have a formal reporting and legal relationship to Central Government Departments, including all local authorities in Ireland (themselves including regional assemblies, local enterprise boards and library bodies)
2. Contracting authorities in the Irish health sector including but not limited to the Health Service Executive (HSE) and provided that such entities are contracting authorities within the meaning of Regulation 2 of the Regulations
3. Contracting authorities which are Third Level Educational Institutions (including universities, institutes of technology and members of the Education Procurement Service)
4. Contracting authorities which are primary, post-primary, special and secondary schools as well as Education and Training Boards (ETBs) and ETB schools
5. An Garda Síochána (Police)
6. The Irish Prison Service
7. The Defence Forces

1.8 Term

Any DPS that may result from this competition (the "Competition") will, subject to paragraph 1.9 below, be for a period of validity of 4 years ("the Term").

1.9 Termination of DPS

Candidate's attention is drawn to clause 17 of the DPS Agreement in Appendix five. The Contracting Authority reserves the right to terminate the DPS Agreement at any stage throughout its Term in accordance with the termination provisions set out at clause 17 of the DPS Agreement.

1.10 Estimated Expenditure of contracts to be awarded

The Contracting Authority estimates that the aggregate expenditure on the Goods to be covered by the proposed DPS may amount to some €344,000,000 (excl. VAT) over the Term. Candidates must understand that all figures listed in this section 1.10 are estimates only, based on current and future expected usage.

1.11 SME participation

Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises ("SME"s) in this Application to Participate in the DPS and, if successful, in future DPS Mini-Competitions. SMEs that believe the scope of this Application is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Goods Contracts that may result from this Application and therefore increase their social and economic benefits.

Larger enterprises are also encouraged, subject to paragraph 2.5, to consider the practical ways that SMEs can be included in their proposals to maximise the social and economic benefits of any Goods Contracts that may result from this RFATP.

1.12 Candidate Briefing Session

It is the intention of the Contracting Authority to hold a Candidates briefing and Q&A session for interested Candidates. The purpose of the briefing session will be to provide interested Candidates with an overview of the background of the Competition and to discuss the rules associated with this Competition. All interested Candidates are welcome to attend the briefing session however due to venue capacity attendance will be restricted to 2 representatives of each Candidate. Please note the candidate briefing session may be held online.

The date, time and venue of the briefing session together with the deadline for receipt of requests to attend the briefing session will be communicated to interested Candidates via the eTenders messaging facility. Please note attendance at the Candidates Briefing is highly recommended. For those interested Candidates who are unable to attend, a copy of the slide presentation and any other materials provided to Candidates at the briefing session will be published on eTenders as soon as possible after the Candidate briefing session.

Part 2: Instructions to Candidates

2.1 Important Notices

2.1.1 While every effort has been made to provide comprehensive and accurate information in all notices and documents prepared for the purposes of this competition, the Contracting Authority does not accept any liability or provide any express or implied warranty in respect of any such information. Candidates must form their own conclusions about the solution needed to meet the requirements set out in this RFATP and may wish to consult their legal advisers.

2.1.2 The Contracting Authority does not bind itself to accept any Application.

This RFATP does not constitute an offer or commitment to enter into a DPS Agreement or a Contract.

Admittance of a Candidate to the DPS will not take place unless and until a DPS Agreement has been signed by the Candidate and the Contracting Authority and a formal message confirming the Candidate's DPS admittance has issued by or on behalf of the Contracting Authority ('DPS Admission').

Admittance of a Candidate to the DPS does not guarantee the award of any Goods Contract.

No contractual rights in relation to any DPS Client will exist unless and until a formal Goods Contract has been executed by or on behalf of the DPS Client. Any notification of preferred bidder status by the Contracting Authority / a DPS Client shall not give rise to any enforceable rights by the Candidate.

The Contracting Authority may cancel this DPS at any time prior to a formal DPS Admission or terminate the agreement at any time during the Term in accordance with the termination provisions set out at clause 17 of the DSP Agreement.

Admission to the DPS or award of a Goods Contract under a Mini-Competition does not confer exclusivity on the successful Candidate(s).

Candidates should note that the Contracting Authority or DPS Clients shall be under no obligation to purchase any minimum value of Goods under the DPS Agreement or any Goods Contract.

2.1.3 This RFATP supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and Candidates, and Candidates should place no reliance on such previous documentation and correspondence.

2.1.4 In this clause 2.1.4, “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU) 2016/679 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 (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

The Contracting Authority will be a Data Controller (where Data Controller has the meaning given under the Data Protection Laws) in respect of any Personal Data (where Personal Data has the meaning given under the Data Protection Laws) required to be provided by the Candidate in response to this RFATP.

The Candidate, as Data Controller in respect of any Personal Data provided by it in its Application, is required to confirm in the statement required under paragraph 2.4 below that all Data Subjects (where Data Subject has the meaning given under the Data Protection Laws) whose Personal Data is provided by the Candidate have consented to the processing of such Personal Data by the Candidate, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Candidate in this Competition or that the Candidate otherwise has a legal basis for providing such Personal Data to the Contracting Authority for the purposes of its participation in this Competition.

2.2 Compliant Applications

2.2.1 If a Candidate fails to comply in any respect with the requirements of this paragraph 2.2.1, the Contracting Authority reserves the right to reject the Candidate’s Application as non-compliant or, without prejudice to this right and subject to its obligations at law, to take any other action it considers appropriate including but not limited to:

- seeking written (electronic) clarification from the Candidate;
- seeking further information from the Candidate;

- waiving a requirement, which in Contracting Authority's view, is non-material or procedural.

Candidates are required:

- (a) To complete and submit with their Application the electronic version of the European Single Procurement Document ("eESPD") **available to download separately from www.etenders.gov.ie**. Alternatively, Candidates may submit an eESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that: (i) the information contained in it continues to be correct and (ii) that they satisfy the Selection Criteria for this DPS as set out at part 3.2 below;
- (b) To submit all documentation which this RFATP requires to be submitted
- (c) To follow the format of this RFATP and respond to each element in the order as set out in this RFATP;
- (d) To conform to and comply with all instructions and requirements set out in this RFATP;
- (e) To submit the statement required under paragraph 2.4 below;
- (f) Not to alter or edit this RFATP in any way; and
- (g) To complete and submit with their Application the DPS Application Response Document ("ARD") in line with instructions provided in that document.

2.2.2 Without prejudice to the generality of paragraph 2.2.1, failure to comply with paragraph 2.6 below will render the Application non-compliant and it will be rejected.

2.3 DPS Agreement and Goods Contract

- 2.3.1 Candidates should also note the terms and conditions of the DPS Agreement and the Goods Contract set out at Appendix 5 and Appendix 6 to this RFATP respectively.
- 2.3.2 Candidates are required to confirm their acceptance of the DPS Agreement and the Goods Contract in the Candidate's Statement at Appendix 2. Candidates may not amend the DPS Agreement or the Goods Contract.

2.4 Acceptance of RFATP Requirements

Each Candidate is required to accept the provisions of this RFATP. ALL CANDIDATES MUST RETURN, with their Application, a scanned signed copy of the Candidate's Statement, as set out in Appendix 2,

printed on the Candidate's letterhead. The Contracting Authority must be able to read the scanned signature of the Candidate. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Candidates may be requested to resubmit. Candidates may not amend the Candidate's Statement.

2.5 Consortia and Prime / Subcontractors

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit an application in response to this RFATP the Contracting Authority will deal with all matters relating to this Competition through a single nominated entity authorised to represent all members of the group of undertakings and who will carry overall responsibility for the DPS Agreement and performance of any Goods Contract (the "Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the "Subcontractor"). The Candidate must provide details of all members of the group of undertakings and their role in the Application and clearly and comprehensively set out the name, title, telephone number, postal address, and email address of the nominated contact personnel of the Prime Contractor authorised to represent the Candidate and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person (including from any Subcontractor) will NOT be accepted, acknowledged or responded to.

2.6 Application Submission Requirements

2.6.1 Applications must be submitted via the electronic postbox available on www.etenders.gov.ie (the "Electronic Platform"). Only Applications submitted to the electronic postbox will be accepted. Applications submitted by any other means (including but not limited to by email, fax, post or hand delivery) will NOT be accepted.

Candidates must ensure that they give themselves sufficient time to upload and submit all required Application documentation before the initial Application Deadline (as defined in paragraph 2.6.2) has passed. Candidates should take into account the fact that upload speeds vary. There is a maximum of 4GB for the total (combined) documents sent to the electronic postbox. In order to submit a document to the electronic postbox, please note that you must click "Submit Response". After submitting you can still modify and re-send your response up until response deadline. Candidates should be aware that the "Submit Response" button will be disabled automatically upon the expiration of the response deadline.

2.6.2 Application Deadline

Subject to paragraph 2.8.1 of this RFATP, applications must be received not later than **12:00 noon** on **23rd June 2023** (the “Application Deadline”).

2.6.3 Applications must be submitted in English.

2.6.4 Each Tenderer Candidate is limited to submitting one Application in its own capacity and one Application as part of a consortium/ group of undertakings under this RFATP for admittance to the DPS.

2.6.5 All parts of the Applications must be submitted in soft copy to the Electronic Platform and must be compiled such that they can be read immediately using a PDF Reader. The Contracting Authority is not responsible for corruption in electronic documents. Candidates must ensure electronic documents are not corrupt.

2.7 Queries and Clarifications

2.7.1 All queries relating to any aspect of this Competition or of this RFATP must be directed to the messaging facility on the Electronic Platform www.etenders.gov.ie. Subject to paragraph 2.8.1 of this RFATP, queries must be submitted by no later than **12:00 noon on 16 June 2023**. For the avoidance of doubt, Candidates may not contact potential DPS Clients regarding any aspect of this Competition.

2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on the Electronic Platform www.etenders.gov.ie. Where appropriate, queries may be amalgamated. Candidates should note that the Contracting Authority will not respond to individual Candidates privately.

2.7.3 The Contracting Authority reserves the right to issue or seek written clarifications via the Electronic Platform.

2.7.4 The Contracting Authority reserves the right, at any time before the Application Deadline, to update or amend the information contained in this document and/or to extend the Application Deadline. Participating Candidates will be informed of any such amendment or extension through the Electronic Platform.

2.7.5 Candidates should ensure that they register their interest in this competition, by clicking on the “Accept” button on the Electronic Platform, in order to receive all responses to queries and other updates in relation to this competition.

2.8 Applications for Admittance to DPS and Candidate Costs

2.8.1 Notwithstanding the Application Deadline in paragraph 2.6.2 and deadline for submission of clarification queries in paragraph 2.7.1, both unsuccessful Candidates that submit an Application but fail to fulfil the compliance and selection criteria in this RFATP, and economic operators that did not submit an Application in response to this RFATP by the Application Deadline may raise clarification queries relating to any aspect of this Competition or of this RFATP and apply / re-apply and submit an Application in response to this RFATP at any stage throughout the Term of the DPS. The Contracting Authority shall evaluate any such Application(s) against the compliance and selection criteria set out in this RFATP and shall duly notify the Candidate of the outcome of that Application in accordance with paragraph 3.4.1 of this RFATP.

2.8.2 All costs and expenses incurred by Candidates relating to their participation in this competition shall be borne by and are a matter for discharge by the Candidates exclusively.

2.9 Confidentiality

2.9.1 All documentation, drawings, data, statistics, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Candidates during the course of this Competition:

- (a)** are furnished for the sole purpose of replying to this RFATP only;
- (b)** may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;
- (c)** shall be treated as confidential by the Candidate and by any third parties (including subcontractors) engaged or consulted by the Candidate; and
- (d)** must be returned immediately to the Contracting Authority upon cancellation or completion of this competition if so requested by the Contracting Authority.

2.10 Pricing

2.10.1 Candidates are reminded that they are not required to submit a Pricing Schedule in response to this RFATP. Successful Candidates appointed to a DPS will however be required to submit pricing in response to future Mini-Competitions conducted under the DPS.

2.10.2 All prices quoted in any subsequent DPS Mini-Competitions must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.

2.10.3 *Not Used*

2.10.4 Any currency variations occurring over the term of any Goods Contract shall be borne by the Candidate.

2.10.5 Payments for Goods provided pursuant to this RFATP shall be made subject to and in accordance with the Goods Contract at Appendix 6 to this RFATP and the terms of any subsequent RFT.

2.11 Environmental, Social and Labour Law

2.11.1 In the performance of any Goods Contract awarded, the successful Candidate(s) and their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the goods or related services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.

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

2.11.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the "2012 Act") provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the Goods will involve the provision to the Contracting Authority of Agency Workers (within the meaning of the 2012 Act), Candidates should ensure that they consider their obligations under the

2012 Act when pricing their Application. The Contracting Authority shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the Goods.

2.12 Publicity

No publicity regarding this Competition, the DPS Agreement, a Mini-Competition, or Goods Contract pursuant to a Mini Competition is permitted unless and until the Contracting Authority (or DPS Client as applicable) has given its prior written consent to the relevant communication.

2.13 Registrable Interest

Any Registrable Interest involving any Candidate or Subcontractor and the Contracting Authority, any DPS Client, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority or the DPS Clients and their relatives must be fully disclosed in the Application or, in the event of this information only coming to the notice of the Candidate or Subcontractor after the submission of an Application, must be communicated to the Contracting Authority immediately upon such information becoming known to the Candidate/Subcontractor. The terms “Registrable Interest” and “Relative” shall be interpreted as per Section 2 of the Ethics in Public Office Acts 1995 and 2001, copies of which are available at www.irishstatutebook.ie. The Contracting Authority will, in its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating this Candidate from this competition or a Mini-Competition or terminating any DPS Agreement and / or Goods Contract entered into by such Candidate.

2.14 Anti-Competitive Conduct

Candidates’ attention is drawn to the Competition Act 2002 (as amended, the “2002 Act”). The 2002 Act makes it a criminal offence for Candidates to collude on prices or terms in a public procurement competition.

2.15 Industry Terms Used in this RFATP

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

2.16 Freedom of Information

2.16.1 Candidates should be aware that, under the Freedom of Information Act 2014, information provided by them during this competition may be liable to be disclosed.

2.16.2 Candidates are asked to consider if any of the information supplied by them in their Application should not be disclosed because of its confidentiality or commercial sensitivity. If Candidates consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Candidates must, when providing such information, clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Candidates do not identify information as confidential or commercially sensitive, it is liable to be released in response to a Freedom of Information request without further notice to or consultation with the Candidate. The Contracting Authority will, where possible, consult with Candidates about confidential or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

2.17 Tax Clearance

It will be a condition of admission to the DPS or to enter into any Goods Contract resulting from this mini-competition that the successful Candidate(s) shall, for the term of such contract(s), comply with all EU and domestic tax laws. Candidates are referred to www.revenue.ie for further information. Prior to the award of any DPS Admission or Goods Contract arising out of a mini-competition, the successful Candidate shall be required to supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority. By supplying these numbers the successful Candidate acknowledges and agrees that the Contracting Authority has the permission of the successful Candidate to verify its tax cleared position online.

2.18 Conflicts of Interest

Any conflict of interest or potential conflict of interest on the part of a Candidate, Subcontractor or individual employee(s) or agent(s) of the Candidate or Subcontractor(s) must be fully disclosed to the Contracting Authority as soon as the conflict or potential conflict is or becomes apparent. In the event of any actual or potential conflict of interest, the Contracting Authority may invite Candidates to propose means by which the conflict of interest might be removed. The Contracting Authority will, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating a Candidate from this competition or any Mini-Competition or terminating any DPS Agreement or Goods Contract entered into by a Candidate.

2.19 Withdrawal from participation in this Competition

Candidates are required to notify the Contracting Authority immediately, via the Electronic Platform, if at any stage they decide to withdraw from participation in this competition.

2.20 Site Visit

Not Used

2.21 Insurance

2.21.1 The successful Candidate(s) shall be required to hold, for the term of any Goods Contract awarded pursuant to a Mini- Competition, **insurances of the type and to the level specified in each Mini-Competition**. Candidates should note that they are not obliged to have insurances in place in order to enter into a DPS Agreement with the Contracting Authority. The types of and levels of insurance required are not likely to exceed the following insurances:

Type of Insurance	Indemnity Limit
Employer's Liability	€12.7 million limit for any one claim or series of claims arising out of a single occurrence
Public Liability	€6.5 million limit for any one claim or series of claims arising out of a single occurrence
Product Liability	€6.5 million limit in the aggregate per insurance year.

2.21.2 By signing the Candidate's Statement at Appendix 2, Candidates confirm, that if awarded a Goods Contract arising from a Mini Competition pursuant to the DPS Agreement, they will, from the Effective Date of the Goods Contract (as defined in the Goods Contract), obtain and hold the types and levels of insurance as specified in the relevant RFT. A formal confirmation from the Candidate's insurance company or broker to this effect will be requested from the successful DPS Member(s) prior to the award of (and shall be a condition of) any Goods Contract.

2.21.3 The successful Candidate will, during the term of the Goods Contract, be required to:

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

Part 3: Compliance and Selection Criteria

3.1 Compliant Applications

3.1 Only those Candidates who have:-

- (a) Submitted compliant Applications pursuant to part 2.2 above, and
 - (b) Declared by way of eESPD that either :
 - (i) no grounds for exclusion of the Candidate pursuant to Regulation 57 of the Regulation (the “Exclusion Grounds”) apply to them or that, or
 - (j) where any such Exclusion Grounds apply, and where the Candidate is not precluded from doing so under Article 57(17) of the regulation, it can provide evidence to the effect that measures taken by the Candidate are sufficient to demonstrate its reliability despite the existence of any relevant Exclusion Ground, and
 - (c) Declared by way of eESPD that they satisfy the selection criteria for for this competition as set out in part 3.2 below (the “Selection Criteria”),
- will be admitted to the DPS.

Candidates should note that where a Candidate (Prime Contractor) is relying on the capacity of other entities (Subcontractors) for the purposes of fulfilling any of the Selection Criteria in part 3.2 below it must: (i) complete and submit a separate eESPD in respect of each such Subcontractor and (ii) when requested by the Contracting Authority, submit proof, to the satisfaction of the Contracting Authority, that each such Subcontractor will place the necessary resources at the disposal of the Prime Contractor.

Where a Candidate (Prime Contractor) intends to subcontract any share of any Goods Contract to a Subcontractor, but is not relying on the capacity of such Subcontractor for the purposes of fulfilling any of the Selection Criteria in part 3.2 below, it must submit a separate eESPD in respect of such Subcontractor completing those sections of the eESPD which are specified in section D of the eESPD for this DPS.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Candidates at any moment during the competition to submit any or all of the following for the purposes of verification of the status of the Candidate (including the Prime Contractor and any Subcontractor): (i) a Declaration in the form attached at Appendix 4; (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;

(iii) in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, all or any of the supporting documents specified at paragraph 3.2 below and the Candidate must provide that documentary evidence no later than five (5) calendar days following that request; (iv) information concerning the Candidate, and any proposed subcontractors, for the purposes of Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the legal person is established; and (v) information concerning the origin of goods, if any, for the purposes of assessing compliance with Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same). If, upon request by the Contracting Authority, a Candidate does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFATP and (ii) the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion Ground, it shall not be admitted to the DPS or shall be excluded from this competition.

If, upon request by the Contracting Authority, a Candidate does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies of the Selection Criteria (or any one of them) in accordance with this RFATP and (ii) the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion Ground and (iii) that any proposed Subcontractor on whose capacity the Candidate relies (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576), then, it shall be excluded from participation in this DPS *unless* it replaces the Subcontractor with one which meets all relevant requirements of this RFATP.

3.2 Selection Criteria

Candidates will either pass OR fail each of the Selection Criteria in this part 3.2. A Candidate who fails any one of the following Selection Criteria will be eliminated from this Competition and shall not be admitted to the DPS.

Candidates must declare by way of eESPD that they satisfy the Financial and Economic standing and Technical and Professional ability requirement(s) set out below.

The Contracting Authority may require Candidates to submit supporting documents at any stage of the process via electronic means, no later than 5 calendar days from the time of the request, unless notified otherwise in writing, via the Electronic Platform. However, where the Candidate is unable, for a valid reason, to provide the documentation specified below, the Candidate must inform the Contracting Authority of the reason why the documentation cannot be supplied and, if the Contracting Authority considers the reason given to be valid, provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

Candidates must complete the relevant sections of the DPS Application Response Document (“ARD”) in line with instructions provided in that document.

Candidates are reminded that they may rely on the capacities of other entities in order to meet the Selection Criteria.

Selection Criterion	Minimum Requirement	Pass/Fail
Financial & Economic Standing	RULE: Candidates must confirm that their turnover exceeded €50 million (ex-vat) per annum in any one of the last three financial years. Evidence should be provided by way of; audited accounts, accountant’s letter/certificate or auditor’s letter/certificate.	

Technical and Professional ability	1. RULE: Candidates must demonstrate clearly, through verifiable examples, that they have the level of experience and capacity to provide Natural Gas and related services as sought in this DPS. To demonstrate this, Candidates must submit three reference sites by way of a written narrative of supplies and related services provided either in the public sector and/or the private sector within the last three years. (a) each reference site must cover in excess of 70 supply points and (b) The three reference sites must collectively demonstrate: (i) SBU, MBU, FVT & DM; (ii) effective registration and transfer of supply points from the incumbent supplier to the new supplier (themselves) - registration and transfer report used in the contract example(s) mentioned must be provided. The said reports must show at least the status of each supply point within the transfer process (for example, is the transfer of the supply point complete, date that it will be complete, or is it awaiting a meter read, etc.). Details of time scales applied for the registration and transfer of the supply points under the reference sites must also be provided; (iii) effective billing and invoicing systems - billing sample used in the contract example(s) provided must be submitted in relation to the supply of Natural Gas for each tariff category mentioned in the reference sites. The sample must show prompt billing (monthly/bi-monthly) for the period involved and highlight if the pass through charges are included within the rates applied for example the SBU & MBU and where they are disaggregated in the FVT and DM—Details of Tenderer’s approach to billing multiple supply points and accounts and the effective application	
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Selection Criterion	Minimum Requirement	Pass/Fail
	of pass-through-charges adopted in the provision of the supply of Natural Gas in the reference sites must also be provided. 2. RULE: Candidates must demonstrate effective account management and customer support both by providing sample consumption and cost reports which must be on a rolling year basis and show the monthly kWh usage per supply point, and also a supporting written narrative with examples which demonstrate effective account management and customer support. 3. RULE: Candidates must have a Key Account Manager with at least 3 years' experience in the provision of services related to the supply of Natural Gas. The CV of the Key Account Manager must be provided.	
Regulatory Requirement	RULE: Candidates must hold a valid Natural Gas Supply Licence issued by the Commission for Regulation of Utilities (C.R.U.)	

The information/documentation required above must be provided in the Applicant Response Document.

3.3 Presentation of Proposals

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

3.4 Notification and Admittance to the DPS

- 3.4.1** The Contracting Authority will notify Candidates of its decision in relation to the establishment of the DPS and/or of the outcome of their Application to participate in the DPS.

- 3.4.2 Admittance to the DPS will be conditional upon the successful Candidate(s) (including the Prime Contractor and any Subcontractors) submitting the (to the extent not already provided) within five (5) calendar days of request by the Contracting Authority: (i) a Declaration in the form attached at Appendix 4; (ii) if applicable, evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground; (iii) all or any of the evidence and supporting documents specified at paragraphs 3.1 and 3.2 above.

3.5 DPS Agreement

- 3.5.1 The successful Candidate(s) must sign and return the DPS Agreement(s) to the Contracting Authority no later than **seven** calendar days from the date of request by the Contracting Authority. A signed DPS Agreement returned by the successful Candidate(s) is not binding on the Contracting Authority until the Contracting Authority has signed the DPS Agreement in accordance with paragraph 2.1.2 above.

Appendix 1: Requirements and Specifications

SECTION I

1.1 BACKGROUND TO THIS DYNAMIC PURCHASING SYSTEM

The Contracting Authority is establishing a Dynamic Purchasing System (DPS) for the supply of Natural Gas and related customer support services as set out below that can be utilised by the entities referred to at paragraph 1.4 of this RFATP. This DPS does not include the supply of Natural Gas on a pre-paid basis.

This DPS is intended to maximise volume discounts and provide for reductions in administrative and transaction costs for public service purchasers. It is intended that there will be a robust contract management process which will, in particular, focus on price and may include qualitative criteria to ensure that the DPS is delivering overall value for money.

The OGP is taking a strategic approach to procurement of energy supplies. In addition to securing savings, the OGP will be supporting other Government policies including;

- value for money and price transparency,
- active management, and
- effective management of energy supply.
- achieving transition to a competitive, low carbon, climate-resilient and environmentally sustainable economy.

1.2 THE OFFICE OF GOVERNMENT PROCUREMENT (OGP)

As part of the Public Service Reform Plan, the Government established the OGP in 2014 to drive a new consolidated and integrated approach to public procurement in Ireland. Enhanced procurement capability will improve the value for money from the Irish public sector's considerable procurement spend and will make a significant contribution to enabling the State to deliver much needed services more efficiently and cost effectively.

1.3 OVERVIEW OF HOW THIS TENDER PROCESS WILL OPERATE

The OGP invites licensed suppliers of Natural Gas who wish to participate in the DPS to respond to this RFATP. The OGP will evaluate the Applications in response to this RFATP. Those suppliers included in the DPS will be invited to participate in Mini-Competitions co-ordinated and managed by the Contracting Authority in association with its Energy Advisor over the lifetime of the DPS. Further details of how the DPS will operate is set out at paragraph 1.6 of Part one of the RFATP.

1.4 OVERVIEW OF HOW THE MINI-COMPETITIONS WILL OPERATE

On each occasion that the Contracting Authority / DPS Client(s) proposes to award a Goods Contract by way of a Mini-Competition, it shall issue a Request for Tender ("RFT") on behalf of the DPS Client(s) in accordance with the procedure set out at clauses 5 and 6 of the DPS Agreement.

The RFT issued at Mini-Competition shall provide further particulars of the Goods required by the DPS Clients and the methodology for evaluating bids.

The OGP will establish and administer the DPS Agreement and will co-ordinate and manage any Mini- Competition for the DPS Clients.

1.5 HISTORIC INFORMATION – PREVIOUS FRAMEWORK MEMBERS

For the information of Candidates only, the existing Framework Agreement for Supply of Natural Gas to the Public Sector (which was awarded pursuant to an RFT issued by the OGP in April 2019 provided for the award at RFT stage of supplies in one or more of the following Lots based on Gas Networks Ireland (GNI) tariff groupings:

Small Business User (SBU)

Medium Business User (MBU)

Fuel Variation Tariff (FVT)

Daily Metered (DM)

For the purposes of the DPS to be established pursuant to this RFATP, it is proposed to reconfigure the Lots previously used in the Framework Agreement mini-competitions, for award at DPS Competition stage into the following tariff allocations:

Table 1 – Tariff Groupings

Tariff Grouping	Description
1	Small Business User
2	Medium Business User
3	Fuel Variation Tariff
4	Daily Metered

For the information of Candidates only, Table 2 below sets out the numbers of Natural Gas supply points included in the former Framework Agreement:

Candidates are requested to please note this information is presented in aggregated form, based on historical information, and is not indicative of either the groupings of DPS Clients or the number of supply points for any Contracts under the DPS to be awarded under the DPS Agreement. The applicable DPS Clients and the associated number of supply points will be detailed at DPS Mini-Competition stage, as deemed appropriate by the Contracting Authority in liaison with the Energy Advisor, at RFT stage in each case.

Sector	Expiry Date	SBU	MBU	FVT	DM	Total Supply points	Total KWh
HSE and Health	31/08/2023	428	350	123	26	927	543.3m
Local Authority	30/09/2024	297	239	54	0	590	120.6m
Central Government	30/09/2024	156	190	54	3	403	143m
Security Services	30/09/2024	62	125	53	4	244	127.7m
Education Training Boards	31/08/2024	123	138	52	0	313	65.9m
Institutes of Technology, Colleges & Universities	31/08/2024	102	117	87	10	316	307.1m
Schools (Primary & Secondary)	31/08/2024	153	335	43	0	531	88.5m

The DPS Member must have a flexible approach to potential volume changes in the portfolio (for example, if a Contracting Authority/DPS Client adds or removes supply points).

1.6 SUPPLY SPECIFICATION FOR DPS MINI-COMPETITIONS

1.6.1 Tariff Groupings

DPS Members will be required to supply Natural Gas to the DPS Clients in accordance with this DPS Agreement and any Goods Contract awarded.

As indicated above, at RFT stage, the DPS Members will be requested to submit a response in respect of any combination of the 4 (four) tariff groupings listed in Table 1 above or any other tariff that may be introduced over the lifetime of the DPS. Please note that, where DPS Client(s) require(s) more than one tariff grouping, the DPS Members may be instructed to submit a response in respect of one, a combination, or all tariff groupings, as specified in the tender documents at DPS Mini- Competition.

1.6.2 Pricing and Duration Options

In addition, the pricing mechanism and contract duration required by the DPS Client(s) in respect of each tariff grouping will be set out at each DPS Competition. For example, tariff grouping 1, 24 Month, Fixed; or tariff grouping 4, 36 Month, Fixed/Flex. It is currently anticipated that the most likely options in respect of pricing mechanism / duration will be as outlined in Table 3 below. However, Candidates are requested to note that these are indicative options and the more detailed descriptions given below are provided for the information of Candidates only. These options are subject to any additional or alternative requirements which may be specified at RFT stage including any requirements which may apply in light of market developments.

Table 3 - Pricing and Duration Options

Contract Options		Indicative options							
		Fixed		Flex/Fix		Fully Flex		Flex/ 12-month Fix	
Tariff Grouping	Tariff	12 Month	24 Month	24 Month	36 Month	24 Month	36 Month	24 Month	36 Month
1	SBU								
2	MBU								
3	FVT								
4	DM								

1.6.3 Contract Options

The Contracting Authority in liaison with the Energy Adviser will indicate at mini competition stage which of the following Contract Options will apply to the Goods Contracts awarded under each RFT:

Fixed Price Contract Option Outline

- Fixed contracts will require that all elements related to 'Commodity', 'Rebate/Discount' and 'Other Charges' as outlined in the Pricing Matrices attached to the RFT are fixed for the full contract period. Shrinkage element must be charged as a pass-through element and will be routinely checked based on the provision of supplier specific shrinkage charges provided by Gas Networks Ireland. This charge will be passed through by suppliers exclusive of any uplift or premium.
- Pass Through Charges (pre-populated in Pricing Matrices) which may be affected by the CRU (Commission for Regulation of Utilities; www.CRU.ie) and the UK regulatory transportation reviews will be passed through as per CRU documented decision papers. Throughout the contract lifetime, the Energy Advisor will review any published update to Pass Through Charges, and update the Pricing Matrices to reflect same. Suppliers will be given the opportunity to review the updated Pricing Matrices in advance of it being circulated to DPS Clients.
- Suppliers are required to include all additional charges in the 'Other Charges' element of the Pricing Matrices - no additional fees or costs can be implemented during the contract lifetime, either at the point of hedging (if required) or billing. Suppliers must therefore incorporate any margins or charges which they feel may be required for the management of each contract into this element of the Pricing Matrices.

Fixed/Flex Price Contract Option Outline

- Fixed/Flex contracts will be required to provide a fixed 'Commodity' and 'Other Charges' outline for Year 1.
- Year 2/3 of contracts will retain the fixed 'Other Charges' and 'Rebate/Discount' elements. 'Shrinkage' element must be charged as a Pass-Through Charges element and will be routinely checked based on the provision of supplier specific shrinkage charges provided by Gas Networks Ireland. This charge will be passed through by suppliers exclusive of any uplift or premium. Please note that this refers only to SBU and MBU tariffs.
- 'Commodity' will be an index linked baseline rate which will be adjusted based on hedging transactions undertaken by the Energy Advisor for each DPS Client or as grouped at the Contracting Authority's discretion.

- Pass Through Charges (pre-populated in Pricing Matrices) which may be affected by the CRU and the UK regulatory transportation reviews will be passed through as per CRU documented decision papers. Throughout the contract lifetime, the Energy Advisor will review any published update to Pass Through Charges, and update the Pricing Matrices to reflect same. Suppliers will be given the opportunity to review the updated Pricing Matrices in advance of it being circulated to DPS Clients.
- Suppliers are required to include all additional charges in the 'Other Charges' element of the Pricing Matrices - no additional fees or costs can be implemented during the contract lifetime, either at the point of hedging (if required) or billing. Suppliers must therefore incorporate any margins or charges which they feel may be required for the management of each contract into this element of the Pricing Matrices.
- In instances whereby a Trade Option does not cover a Fixed/Flexible Contract commodity price, the unhedged (floating) volumes are fixed at the ICE Settlement p/th price and the corresponding ECB 3pm Sterling to Euro exchange rate on the second last business day prior to Year 2 or 3 with no fee or uplift being applied.

Fully Flex Contract Option Outline

- Fully Flex contracts will be required to provide any additional fees or costs under 'Other Charges' for each year contracted.
- For each Year, the 'Other Charges' and the 'Rebate/Discount' element will remain fixed. The 'Shrinkage' element must be charged as a Pass-Through Charges element and will be routinely checked based on the provision of supplier specific shrinkage charges provided by Gas Networks Ireland. This charge will be passed through by Suppliers exclusive of any uplift or premium.
- For each Year, the 'Commodity' charge will be an index linked rate based on hedging (buy/sale back) transactions undertaken by the Energy Advisor on behalf of the DPS Client.
- Pass Through Charges (pre-populated in Pricing Matrices) which may be affected by the CRU and the UK regulatory transportation reviews will be passed through as per CRU documented decision papers. Throughout the contract lifetime, the Energy Advisor will review any published update to Pass Through Charges, and update the Pricing Matrices to reflect same. Suppliers will be given the opportunity to review the updated Pricing Matrices in advance of it being circulated to DPS Clients.
- All unhedged volumes shall remain floating on the agreed default Commodity Trade Index and Exchange Rate Index prices until the default date prior to each Month of Consumption with no fee or uplift being applied.
- Suppliers are required to include all additional charges in the 'Other Charges' element of the Pricing Matrices - no additional fees or costs can be implemented during the contract lifetime, either at the point of hedging (if required) or billing. Suppliers must therefore incorporate any margins or charges which they feel may be required for the management of each contract into this element of the Pricing Matrices.

The above mentioned Contract Options, or a combination of same, may be required at Mini-Competition stage and this will be set out in each RFT.

Other Contract Options

During the lifetime of the DPS the OGP may choose, depending on changes in the market, to utilise different approaches to the market other than those set out above. If the OGP do elect to change their approach to the market, full details will be set out at DPS Mini-Competition stage in the relevant RFT.

1.7 Trade Protocol

The DPS Members will be required to comply with the Trade Protocol at Annex II of the DPS Agreement (as it may be amended by the Contracting Authority from time to time) in respect of any Goods Contract awarded pursuant to a DPS Competition. Please note that the Contracting Authority will notify the DPS Members of any changes to the Trade Protocol at DPS Competition stage and the amended Trade Protocol will apply only to any Goods Contracts awarded subsequently.

1.8 Management Provisions

Good management of the DPS Agreement is critical for the successful delivery of the Goods and related services and for the achievement of continuous improvement in performance over the life of the DPS Agreement.

The Successful Candidate/DPS Member will be required to comply with the DPS Agreement Management Provisions contained in Annex I to the DPS Agreement.

The DPS Member must appoint a dedicated Account Manager. Full details (including CVs) of the Key Account Manager must be provided to the Contracting Authority with each Application and updated by the DPS Member from time-to-time if there are any changes thereto. Change in the identity of the Key Account Manager, who will be deemed Key Personnel, may not be made without the prior written consent of the Contracting Authority. In the event that the Contracting Authority, in its sole discretion, is dissatisfied with the performance of Key Account Manager, it may require that a replacement, with appropriate experience, be appointed by the DPS Member within a timeframe to be specified by the Contracting Authority.

1.9. E-Invoicing

Over the Term of the DPS, the provision or use of e-Invoicing that meets the requirements of Directive 2014/55/EU in order to comply with future national legislation implementing Directive 2014/55/EU and government policy may be required by DPS Clients in order to comply with Government policy. If any DPS Client requires e-invoicing it will be clearly indicated at mini-competition stage.

1.10 Contingency Plan

The successful Candidates must have a credible contingency plan (the “Contingency Plan”) that can be activated in case of any emergency or in unforeseen circumstances during the Term of the DPS Agreement and any Goods Contract Awarded. The Successful Candidates or DPS Members shall be required to advise the Contracting Authority of any material change to the Contingency Plan from time to time and comply with any reasonable directions of the Contracting Authority.

Appendix 2: Candidate's Statement

TO: The Minister for Public Expenditure, National Development Plan Delivery and Reform (the "Contracting Authority").

RE: Request to Participate in the DPS for the Provision of Natural Gas Supply to Public Sector Bodies

Having examined this Request to Participate in the DPS (the "RFATP") including the Instructions to Candidates, the selection criteria, and the Requirements and Specifications, and the terms and conditions of the DPS Agreement and the Contract we hereby agree and declare the following:

1. We understand the nature and extent of the Goods required to be delivered as described in the Requirements and Specifications at Appendix 1 to the RFATP.
2. We accept all of the Terms and Conditions of the RFATP, and the DPS Agreement, Contract and Confidentiality Agreement appended to the RFATP, and agree if awarded any contract pursuant to the DPS Agreement to execute the Contract and Confidentiality Agreement appended to the RFATP.
3. We confirm that we have complied with all requirements as set out at Part 2 of this RFATP.
4. We accept all the selection criteria as set out in Part 3 of the RFATP.
5. We agree to provide the Goods in accordance with the RFATP, our Application, the RFT and our response to the RFT if awarded any Contract pursuant to the DPS Agreement.
7. We agree that, if admitted to the DPS, we will be bound by the DPS Agreement at Appendix 5 and that, if awarded any contract pursuant to a Mini-Competition, we shall comply with the terms and conditions of the Goods Contract at Appendix 6.
8. We shall, if awarded any Goods Contract pursuant to this DPS, have in place on the Effective Date of the Goods Contract all insurances (if any) as required by paragraph 2.21.1 of the RFATP or as required by the RFT issued at Mini-Competition.
9. We agree that, if awarded any Goods Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.

10. We confirm that all Data Subjects whose Personal Data is provided in our Application have consented to the processing of such Personal Data by us, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.
11. We do not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
12. The origin of goods connected to our Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
13. The subcontractor(s) on whose capacity we rely as part of our Tender (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

Signed: (Authorised Signatory)	
Print Name in Block Capitals:	Click here and insert name
Position:	Click here and insert details
Company:	Click here and insert details
Registered Office Address:	Click here and insert address
	Click here and insert address
Date:	Click here and insert date

Appendix 3: Electronic European Single Procurement Document (eESPD)

The Electronic European Single Procurement Document is available to download separately from www.etenders.gov.ie and must (in accordance with paragraph 3.1 of the RFATP) be submitted with the Candidate's Application in response to this RFATP.

Appendix 4: Declaration as to Personal Circumstances of Candidate

Re: Request to Participate in a Dynamic Purchasing System for the Provision of Natural Gas Supply to Public Service Bodies in Ireland

NAME: _____

ADDRESS: _____

I, _____ *[insert name of Declarant]* having been duly authorised by _____ *[insert name of entity]*, sincerely declare that _____ *[insert name of entity]* itself or any person who has is a member of the administrative, management or supervisory body of _____ *[insert name of entity]* or has powers of representation, decision or control in _____ *[insert name of entity]* –

- (a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
- (b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or _____ *[insert name of entity]*.
- (c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
- (d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
- (e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.

- (f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.
- (g) Is not in breach of its obligations relating to the payment of taxes or social security contributions.
- (h) Has, in the performance of all public contracts, complied with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the Goods provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016).
- (i) Is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.
- (j) Is not guilty of grave professional misconduct.
- (k) Has not entered into agreements with other economic operators aimed at distorting the DPS.
- (l) Is not aware of any conflict of interest due to its participation in the DPS;
- (m) Has not had any prior involvement in the preparation of the DPS;
- (n) Is not guilty of significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions. The Contracting Authority may exclude from participation in any DPS Mini-Competition, any DPS Member where such Member has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a DPS Client which led to early termination of that prior contract, damages or other comparable sanctions.

- (o) Is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this DPS and did not withhold such information and did not fail to submit supporting documents in respect of this DPS as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016).
- (p) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the DPS, or obtain confidential information that may confer upon it undue advantages in respect of the DPS; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

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

Signature of Declarant
 Declared before me by _____ who is
 personally known to me
 (or who is identified to me by _____ who is
 personally known to me)
 at _____ this _____ day of _____
 20__

 (signed)
 Practising Solicitor/Commissioner for Oaths

Appendix 5: Dynamic Purchasing System Agreement

Dynamic Purchasing Agreement for the provision of provision of Natural Gas Supply to Public Service Bodies in Ireland

THIS DYNAMIC PURCHASING AGREEMENT IS MADE ON THE DAY OF 202

(“the DPS Agreement”)

BETWEEN:

The Minister for Public Expenditure, National Development Plan Delivery and Reform whose offices are located at _____ (“the Contracting Authority”); and

[Insert name of DPS Member] whose principal place of business is at _____ (“the DPS Member”)

(each a “Party” and together the “Parties”)

WHEREAS:

1. By Request to Participate in Dynamic Purchasing System (“DPS”) advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number _____ of _____ and entitled “*Request to Participate in Dynamic Purchasing System dated [] for the provision of []*” (“the RFATP”) the Contracting Authority invited Candidates to participate in a DPS agreement for the provision of the Goods described in Appendix 1 of the RFATP (the “Goods”). References to the RFATP shall include any clarifications in relation to the RFATP issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie (the “Electronic Platform”) between **[insert date]** and **[insert date]** (the “RFATP Clarifications”). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this DPS Agreement.
2. The DPS Member submitted a response to the RFATP dated **[insert date of Application]** (“the Application”). References to the Application shall include any clarifications issued in writing via the Electronic Platform by the DPS Member to the Contracting Authority between **[insert date]** and **[insert date]** (the “Application Clarifications”). The Application (including the Application Clarifications) is hereby incorporated by reference into this DPS Agreement.
3. The DPS Member was appointed to the DPS as a result of the evaluation of its Application in accordance with the RFATP.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

“Commencement Date” means _____;

“Contract” means a contract which is awarded in accordance with this DPS Agreement;

“Goods Contract” means the template contract attached at Appendix 7 to the RFATP;

“DPS Client” means any party identified in Part 1, paragraph 1.4 of the RFATP who may award Contracts pursuant to this DPS Agreement;

“DPS Term” means the period set out in Clause 2.5 of this DPS Agreement;

“Month” means a calendar month;

“Prime Contractor” has the meaning set out in Part 1, paragraph 2.5 of the RFATP;

“Subcontractor” has the meaning set out in Part 1, paragraph 2.5 of the RFATP;

Unless otherwise specified herein, a defined term used in this DPS Agreement shall have the same meaning as assigned to it in the RFATP.

- 1.1 To the extent that any specific provision in a Contract is inconsistent or conflicts with any term or condition of this DPS Agreement, the relevant provision of the Contract shall prevail.
- 1.2 Headings are included for ease of reference only and shall not affect the construction of this DPS Agreement.
- 1.3 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.4 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.

2. APPOINTMENT OF DPS MEMBER, SCOPE AND TERM OF THE DPS AGREEMENT

- 2.1 In consideration of payment by the Contracting Authority of the sum of €2.00, the receipt of which is hereby acknowledged by the DPS Member, the DPS Member

accepts its appointment under the provisions of this DPS Agreement and agrees to comply with the terms of this DPS Agreement.

- 2.2 This DPS Agreement does not entitle the DPS Member to be consulted in respect of, or awarded any Contract during the DPS Term. The DPS Client(s) may at its or their sole discretion choose not to enter into any Contract pursuant to this DPS Agreement.
- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any Goods and/or number of Contracts (if any) which may be procured in connection with this DPS Agreement and the Parties acknowledge that the DPS Client(s) are not bound to enter into any Contract or other arrangement with the DPS Member as a result of entering into this DPS Agreement. Without prejudice to the foregoing the DPS Member hereby acknowledges that the Contracting Authority intends (but shall be under no obligation) to promote the DPS Agreement and to encourage use of the DPS Agreement by the DPS Client(s) and the DPS Member may be required to provide reasonable assistance in this respect.
- 2.4 This DPS Agreement does not confer exclusivity on any DPS Member. The DPS Clients may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within the scope of this DPS Agreement. In this event, the DPS Client(s) shall observe all obligations at law and shall not afford any advantage to the DPS Member.
- 2.5 This DPS Agreement shall take effect on the Commencement Date and expire **[insert term of DPS]** thereafter ("the DPS Term") unless terminated earlier in accordance with this DPS Agreement or extended pursuant to clause 2.6 subject to compliance with regulation 34(27) of the Regulations.
- 2.6 The DPS Member agrees that any information relating to this DPS Agreement and/or the performance of this DPS Agreement may be passed by the DPS Clients to the Contracting Authority and that the Contracting Authority may use this information in relation to the provision of the Goods and in the analysis and reporting of spend data including the preparation and publishing of reports.

3. DPS AGREEMENT MANAGEMENT PROVISIONS AND TRADE PROTOCOL

- 3.1 The DPS Member hereby agrees and undertakes to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement or as may be notified in writing via the Electronic Platform by the Contracting Authority to the DPS Member from time to time.
- 3.2 The DPS Member hereby agrees and undertakes, where applicable to comply with the DPS Agreement Trade Protocol set out in Annex II to this DPS Agreement or as

may be notified in writing via the Electronic Platform by the Contracting Authority to the DPS Member from time to time.

4. GOODS CONTRACT

- 4.1 This DPS Agreement relates to the provision of the Goods.
- 4.2 Where the DPS Member is awarded a Goods Contract further to the procedure set out in accordance with clauses 5 and 6, it shall provide the Goods to the DPS Client(s) in accordance with the Goods Contract. Subject to the provisions of this DPS Agreement and to the satisfaction of any pre-conditions to the award of a Goods Contract, the successful DPS Member shall be required to enter into the Goods Contract with the DPS Client. In so far as any Goods Contract(s) awarded under this DPS Agreement is in place and for the duration of such Goods Contract(s), the provisions of this DPS Agreement shall continue in force in relation to such Goods Contract(s) after the expiry, completion or termination of this DPS Agreement.

5. PROCEDURE FOR AWARD OF CONTRACTS

- 5.1 On each occasion that the Contracting Authority DPS Client or group of DPS Clients propose(s) to award a Goods Contract under this DPS Agreement, the Contracting Authority/DPS Client shall issue (by electronic means) a Request for Tenders ("RFT") to all DPS Members in accordance with the following procedure (a "mini Competition"):
- 5.1.1 The RFT shall set out:
- the scope and term of the Goods Contract to be awarded;
 - the DPS client or specific group of DPS Clients participating in each mini-competition;
 - the relevant Award Criteria;
 - the deadline (date and time) for the receipt of responses to the RFT (each a "Response") taking into account the complexity of the Goods Contract and the time needed to prepare an appropriate Response. Responses received after the deadline will not be considered;
 - the types and levels of insurance required for the Goods Contract;
 - the type of Tariff(s) required by the DPS Client(s) as per the list at Annex III;
 - the Pricing Matrix that will apply to the relevant DPS Mini Competition –Samples of Pricing Matrix for each type of Tariff are attached to this DPS Agreement at Annex IV;
 - any additional conditions (if any) that will apply to the Goods Contract to be awarded in addition to the terms and conditions of the Goods Contract at Appendix 6 of the RFATP.

- 5.1.2 All Responses to the RFATP must be submitted via the Electronic Platform only. Responses received in any other manner including e-mail or hardcopy will not be considered. The Response submitted by the DPS Members will remain confidential until the deadline for submission of the Response.
- 5.1.3 Any clarifications issued by the Contracting Authority or the DPS Client, as applicable, in relation to a RFATP will be communicated via the Electronic Platform only.
- 5.1.4 The Contracting Authority/DPS Client may award a Goods Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.1 below.
- 5.1.5 The Contracting Authority/DPS Client reserve the right to issue or seek written clarifications via the Electronic Platform.

6. AWARD CRITERIA

- 6.1 Proposed award criteria for Mini-Competition for the duration of this DPS :
Criteria which may be used :

Award Criteria	Sub-Criteria	Weighting (range)
Price		80 – 100%
Merits of Proposed site transfer plan		0-20%
Quality of proposed reporting plan.		0-20%
Quality of approach to invoicing.		0-20%
Quality of the technical assistance for account management and Customer Support		0-20%

- 6.2 Where the DPS Member cannot provide up-to-date evidence as required in clause 3.2 of this DPS Agreement to demonstrate that each entity concerned meets the compliance and selection requirements specified at paragraphs 3.1 and 3.2 of the RFATP, then the Contracting Authority may proceed to offer the Contract to the next highest-ranked DPS Member.
- 6.3 No enforceable commitment of any kind, contractual or otherwise will exist unless and until a formal written Goods Contract has been executed by or on behalf of the DPS Client.
- 6.4 The Contracting Authority/DPS Client(s) may cancel a DPS Competition at any time prior to a Contract being executed by the DPS Client. Any notification of preferred bidder status by the Contracting Authority/DPS Client shall not give rise to any enforceable rights by the DPS Member.

7. APPLICABLE LAW AND JURISDICTION

- 7.1 This DPS Agreement and any Contract(s) awarded under it will be subject to the laws of Ireland and to the exclusive jurisdiction of the Irish courts.

8. COMPLIANCE WITH LAWS

- 8.1 The DPS Member shall comply with all applicable laws relating to the discharge of its obligations under this DPS Agreement and any and all Contract(s).

9 TAX CLEARANCE

- 9.1 The DPS Member shall comply with all EU and domestic taxation laws and requirements.
- 9.2 Prior to the award of any Contract, the DPS Member shall promptly supply its Tax Clearance Access Number and Tax Reference Number to facilitate online verification of their tax status by the Contracting Authority or any DPS Client. By supplying these numbers the DPS Member acknowledges and agrees that the Contracting Authority has the permission of the successful Candidate to verify its tax cleared position online. Where relevant, the provisions of this paragraph 9.2 apply equally to Subcontractors.

10. ANTI COMPETITIVE CONDUCT

- 10.1 Without prejudice to the generality of clause 8.1, the DPS Member shall comply with the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a criminal offence for candidates to collude on prices or terms in a public procurement competition.

11. CONFLICTS OF INTEREST

- 11.1 Any actual or potential conflict of interest on the part of a DPS Member (including for the purposes of this clause 11 any employee(s), suppliers agents or Subcontractor) (a "Conflict")

must be fully disclosed to the Contracting Authority and any relevant DPS Client(s) immediately in writing via the Electronic Platform as soon as the Conflict becomes apparent to the DPS Member. In the event of any Conflict, the Contracting Authority and / or the DPS Client(s) may invite the DPS Member to propose means by which the Conflict might be removed. The Contracting Authority and / or the DPS Client(s) will, in their absolute discretion, decide on the appropriate course of action.

12. REGISTERABLE INTEREST

- 12.1 Any registerable interest involving a DPS Member and the Contracting Authority, any DPS Client, member of the Government, member of the Oireachtas (Parliament), or employees of the Contracting Authorities and/or divisions/agencies under the aegis of the relevant Ministers, and their relatives, must be fully disclosed in any Response. In the event of this information only coming to the notice of a DPS Member after the submission of a Response, it must be communicated to the Contracting Authority and / or DPS Client(s) immediately upon such information becoming known. The terms 'registerable interest' and 'relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act 1995.

13. CONFIDENTIALITY

- 13.1 All communications between the Contracting Authority or any DPS Client(s) and the DPS Member must be treated as being strictly confidential. The DPS Member undertakes to comply with all reasonable directions of the Contracting Authority and any DPS Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement(s) executed by the DPS Member pursuant to clause 13.2 below. All of the DPS Member's employees and personnel, including Subcontractors and their employees and personnel, who provide the Goods may be required, at the absolute discretion of the Contracting Authority and/or the DPS Client(s), to sign a confidentiality agreement in a format as determined by the Contracting Authority and/or the DPS Client(s).
- 13.2 The DPS Member shall execute a Confidentiality Agreement in the form set out at Appendix 7 to the RFATP.
- 13.3 No publicity regarding this DPS Agreement or any DPS Mini Competition or Contract pursuant to this DPS Agreement is permitted unless and until the Contracting Authority and any relevant DPS Client(s) has given their prior written consent to the relevant communication.

14 NOTICES

- 14.1 Any notice or other written communication to be given under this DPS Agreement shall be delivered through the Electronic Platform via e-mail or in exceptional circumstances by post. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.
- 14.2 All notices shall be deemed to have been served as follows:

- a. if personally delivered, at the time of delivery;
- b. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
- c. if communicated by email, on the next calendar day following transmission.

15. GIFTS

- 15.1 The DPS Member shall not offer, give or agree to give to any person holding an office in the Contracting Authority or any DPS Client, any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of any Contract. In the event of any breach of this clause 15.1, the Contracting Authority and the DPS Client(s) may terminate this DPS Agreement and any existing Contract(s) respectively and recover from the DPS Member any loss resulting from any such termination.

16. COSTS AND EXPENSES OF DPS AGREEMENT

- 16.1 All costs and expenses incurred by the DPS Member relating to its participation in this DPS Agreement and in any DPS Mini Competition shall be borne solely by the DPS Member. Neither the Contracting Authority nor any DPS Client shall have any responsibility or liability for any costs or expenses of whatsoever nature incurred by the DPS Member in this regard.

17 TERMINATION

- 17.1 Subject to clause 17.2, this DPS Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving three (3) months written notice to the DPS Member through the Electronic Platform.

Subject to clause 17.2 and without prejudice to the generality of this clause 17.1, this DPS Agreement will cease after four years.

- 17.2 The Contracting Authority shall have the right (in addition to any other rights which it has at law) to terminate this DPS Agreement immediately and without liability for compensation or damages on the happening of any of the following events:

- 17.2.1 if the DPS Member commits any serious breach or a series of breaches of any provision of this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority, (if the breach(es) are capable of remedy), within 30 days after receipt of a request in writing via the Electronic Platform from the Contracting Authority. Without prejudice to the generality of the foregoing, a failure to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement shall be deemed to be a serious breach of this DPS Agreement;

- 17.2.2 if the DPS Member commits any serious breach or a series of breaches of any Contract awarded pursuant to this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority and the DPS Client(s), within 30 days after a receipt of a request in writing via the Electronic Platform from the Contracting Authority or any DPS Client.
- 17.2.3 if the DPS Member becomes insolvent, becomes bankrupt, is wound up, enters into examinership, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
- 17.2.4 in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) apply to the DPS Member;
- 17.2.5 In circumstances where the DPS Member fails to provide up-to-date evidence when requested to do so by the Contracting Authority in accordance with clause 3.2 of this DPS Agreement to demonstrate to the satisfaction of the Contracting Authority that they meet the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.6 In circumstances where the DPS Member changes the Subcontractor(s) nominated and relied upon by the DPS Member in their Application for admission to the DPS but fails to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as required in clause 3.2 of this DPS Agreement, that by changing Subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.7 in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the DPS Member which cannot, in the opinion of the Contracting Authority, be removed by other means; and
- 17.2.8 in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the DPS Member.

- 17.3 Subject to clause 17.2.2, the termination of a Contract awarded under this DPS Agreement does not affect the validity of this DPS Agreement.
- 17.4 Termination of this DPS Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this DPS Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

18. FREEDOM OF INFORMATION

- 18.1 The DPS Member acknowledges that the Contracting Authority and or the DPS client is subject to the Freedom of Information Act 2014. Information furnished to the Contracting Authority or the DPS client by the DPS Member may be released pursuant to the Contracting Authority's or the DPS client's statutory obligations. If the DPS Member considers that any of the information supplied by it to the Contracting Authority or the DPS client under this DPS Agreement or any Contract should not be disclosed because of its sensitivity it should, when providing the information, indicate this and specify the reason for its sensitivity. The Contracting Authority or the DPS client will consult the DPS Member about this sensitive information before making a decision on any Freedom of Information request received. The Contracting Authority and or the DPS client accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

19. DISPUTE RESOLUTION

- 19.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- 19.2 The Dispute shall be referred as soon as practicable to [insert DPS Member senior contact] within the DPS Member and to Category Specialist Higher within the Contracting Authority respectively.
- 19.3 If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing via the Electronic Platform by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- 19.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to

either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.

- 19.5 Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- 19.6 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- 19.7 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The DPS Member shall comply fully with the requirements of the Agreement at all times.
- 19.8 If, and to the extent that, any Dispute has not been settled pursuant to the mediation within 30 days of the commencement of the mediation, either party may apply to the Irish courts at any time thereafter.

20. KEY PERSONNEL

The DPS Member undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Application, including but not limited to the Key Account Manager, ("Key Personnel"), assigned by it to provide the services related to the Goods shall be available for the term of this Agreement. The DPS Member acknowledges that the Key Personnel are essential to the proper provision of the Goods to the Contracting Authority and the DPS Clients. In the event that any of the Key Personnel assigned by the Supplier to provide the Services under this Agreement becomes unable to provide the Goods for whatever reason then, the DPS Member acknowledges and undertakes that it shall immediately notify the Contracting Authority in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The DPS Member shall provide to the Contracting Authority such details as the Contracting Authority may reasonably require in writing regarding any Replacement Personnel. The Contracting Authority shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

21. FORCE MAJEURE AND CONTINGENCY PLAN

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

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

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

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

21.3 The DPS Member shall have in place a credible contingency plan (the "Contingency Plan") approved by the Contracting Authority that can be activated in case of an emergency or in unforeseen circumstances that will guarantee continuity of supply to all DPS Clients without exception within a reasonable timeframe. The DPS Member shall advise the Contracting Authority of any material change to the Contingency Plan (as approved by the Contracting Authority prior to the execution of this Agreement) from time to time and comply with any reasonable directions of the Contracting Authority with regard to same.

IN WITNESS WHEREOF this DPS Agreement has been executed by the Parties hereto as of the date first above written.

SIGNED by _____, being an Officer so authorised by the CONTRACTING AUTHORITY	SIGNED by _____, being an Officer so authorised by the DPS MEMBER
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in the presence of: _____ Witness	in the presence of: _____ Witness
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1.0 Key Account Manager

The DPS Member shall nominate a dedicated Key Account Manager (the “Key Account Manager”) with a minimum of three years’ experience in the provision of account management and customer support in respect of the supply of goods and related services of a similar nature to that set out in Appendix 1 of the RFATP to oversee the effective and efficient operation of the DPS and any Goods Contracts awarded thereunder.

The Key Account Manager shall be responsible for, *inter alia*;

- The day-to-day management of the DPS and any Goods Contracts awarded thereunder;
- preparing financial statements and any other reports as required under the DPS and any Goods Contracts awarded thereunder;
- monitoring and reporting to the Contracting Authority and DPS Clients on the DPS and any Goods Contracts awarded thereunder;
- liaising with the Contracting Authority and DPS Clients to ensure the efficient and effective operation of the DPS; and
- fully engaging in resolving any disputes under the DPS and any Contracts awarded thereunder.

The DPS Member’s Key Account Manager and the Contracting Authority shall meet every 3 to 6 months or at any other time as deemed necessary by the Contracting Authority, in its sole discretion from time to time (“Contract Review Meetings”). The Key Account Manager shall attend Contract Review Meetings as required by the Contracting Authority. Other attendees may be invited by the Contracting Authority to attend at Contract Review Meetings depending on the subject matter being proposed for discussion. Specifically but not exclusively, Contract Review Meetings will seek to;

- i. Review performance by the DPS Member;
- ii. Identify operational measures required of the DPS Member or Contracting Authority to improve the actual performance by the DPS Member;

- iii. Review any results, reports or findings of any audits undertaken and confirm that the service delivery complies with the DPS;
- iv. Modify and/or adjust any corrective action previously introduced, as appropriate;
- v. Identify and discuss relevant issues between the parties to the DPS.

The nominated Key Account Manager must be acceptable to the Contracting Authority in its sole discretion having regard to his/her ability to oversee and comply, inter alia, with the Management Provisions of this Annex I. No change shall be made to the identity of the Key Account Manager without the prior written consent of the Contracting Authority. In the event that the Contracting Authority, in its sole discretion, is dissatisfied with the performance of Key Account Manager, it may require that a replacement, with appropriate experience, be appointed by the DPS Member within a timeframe to be specified by the Contracting Authority.

In the event that any DPS Member is successful in respect of more than one DPS Mini-Competition and the nominated Key Account Manager does not have the capacity to manage more than one DPS Group of Clients, an additional Key Account Manager may be required by the Contracting Authority and any additional Key Account Manager proposed by the DPS Member will be subject to the relevant requirements of Appendix 1 of the RFATP and the provisions of Annex I.

2.0 Provision of Management Information

The DPS Member shall provide management information to the Contracting Authority and DPS Clients, as may be requested by them, from time to time. The management information which may be required by the Contracting Authority/DPS Clients includes but is not limited to the following:

1. Pre-Competition Report (Annual Consumption Figures)

Up to nine months before the end of any Goods Contract, the OGP will request annual consumption reports for the next DPS Mini-Competition. Report to include individual GPRNs by;

- month
- Tariff
- Meter Type
- Supply Point Capacity
- Total consumption broken down by month and tariff
- List of invoice addresses

2. Periodic Registration Transfer Update Reports per GPRN
3. Quarterly consumption reports on a rolling year for each GPRN in the contract portfolio
4. Bespoke reports as may be requested by the DPS Clients
5. Agreement 'close-out file' containing closing balances on accounts within six months of the termination or expiration of any Goods Contract.

Management and any other bespoke reports must be provided by DPS Members electronically and presented in Microsoft Excel or an equivalent agreed format.

DPS Members must, if required, work and cooperate with Sustainable Energy of Ireland (SEAI) in compiling DPS Client consumption data.

3.0 Quality Account Management and Customer Support

DPS members must take a proactive and effective approach to account management to meet the requirements of the Irish Public Sector.

DPS Members must have in place a robust Customer Charter which includes a:

- The Billing and Payments Code of Practice which must include (but is not limited to):
 - Procedures for meter reading management;
 - Procedures for prompt and accurate billing;
 - Procedures for closing account and final billing and subsequent notification to DPS Clients within 3 months where an unclaimed closing credit balance remains on a DPS Client account;
 - Disconnection procedures which include advance notification to both the Contracting Authority (OGP) and the DPS Client.
- The Complaints Handling Code of Practice must include but is not limited to:
 - The process by which the DPS Client's complaints are received, acknowledged and managed on a step-by-step basis,
 - The procedure for escalating complaints if the DPS Client remains dissatisfied
 - Timescales for each stage of the complaints handling process not to exceed two weeks from the making of the initial complaint.

- Help desk operational 9:00 to 18:00 Monday to Friday (excluding public and bank holidays in Ireland) capable of logging and tracking queries received.

4.0 Efficient Management of large volumes of Supply Point Transfers

The timely transfer of supply points following award of any Goods Contracts is imperative and underpins the effectiveness of the DPS. The DPS Member is required to take a pro-active approach to registration and to provide all assistance to DPS Clients to ensure that all supply points are registered and are transferred from the incumbent supplier, following award of a Goods Contract to a new supplier, in a timely and efficient manner as set out in paragraph three 'Exit Strategy and Transfer of Supply Points'.

The registering and transfer process must include but is not limited to:

- Timescales for the registration and transfer of supply points in each tariff following the award of a Goods Contract.
- Resource planning to ensure supply points are registered efficiently and effectively.
- Proposals for communicating with DPS Clients for the purpose of supply point registration.
- The process by which the DPS Client's transfer issues are managed on a step-by-step basis,
- The timescales for communicating with DPS Client(s) to resolve transfer issues.
- Process any requests from DPS Clients for reads in a timely fashion, ensuring that confirmation is provided to the Contracting Authority/DPS Client upon execution of the market message
- DPS Clients must be informed in advance of requirement for meter reads and how the meter read is to be provided
- DPS Clients must be informed in instances where a meter read may be rejected by Gas Networks Ireland
- DPS Clients must be alerted to a supply point's inclusion on the Gas Network Ireland's Long Term No Access' list¹, and be informed of the steps required to address the issue.

5.0 Efficient Invoicing and Billing Systems

¹ Supply points are added to the Gas Network Ireland Long Term no Access' list when they have not had a meter read in over 12 months.

Efficient billing systems are critical to the effective functioning of the payment process. Robust billing systems are, therefore, a key requirement in maintaining budgetary and cash flow stability.

Invoices must be issued in a timely manner and sent to the billing address provided by the DPS Clients.

DPS Members must comply with the following:

- Bills must be produced in accordance with contractual rates. (Invoiced rates must reference correctly to rates provided and updated throughout the contract in the Pricing Matrix)
- Bills must be produced in accordance with current applicable Pass-Through Charges
- Inaccurate bills must be corrected in a prompt manner (Adjustment correction must be applied to DPS Client account by second bill issued following notification of error)
- Suppliers must make available, to DPS Clients, acceptable payment plans in the event of any catch up bills arising from a supplier system failure.
- DPS Clients and OGP must have access to online billing systems

6.0 Exit Strategy and Transfer of Supply Points

The DPS Members must co-operate with any incoming Supplier in relation to the transfer of supply points upon termination or expiry of any Goods Contract entered into under the DPS Agreement.

The incumbent DPS Member will be required to permit and facilitate the transfer of supply points upon request by or on behalf of the DPS Client at any time following the date which is 10 days prior to the termination / expiry date of the Goods Contract without the application of any fees/charges/rates for exiting the contract ahead of the expiry date.

The incumbent DPS Member and the new Supplier shall make every effort to facilitate the prompt registration and transfer of supply points to the incoming Supplier. This will include but is not limited to the following actions:

- Registering supply points under the details already associated with a GPRN on the Gas Networks Ireland database and subsequently notifying Gas Networks Ireland of any updates in DPS Client details
- Contacting DPS Clients directly and notifying them of the requirement for a meter read when an Gas Networks Ireland scheduled read is not imminent

- Contacting DPS Clients and explaining when a supply point has not transferred due to having timed out and explaining the necessary actions required in order to complete transfer of the supply in question

In addition, for a period of 30 days after the termination / expiry date of the Goods Contract (together with the 10 days mentioned above referred to as 'the "Transition Period"') the incumbent DPS Member will be required to continue to supply the Goods to the DPS Client in respect of any supply points which have not yet been transferred to the incoming supplier in accordance with the terms and conditions of the Goods Contract (including but not limited to any terms and conditions as to the Charges) for the duration of the Transition Period and no other charges, default rates or fees whatsoever may be applied by the Supplier during this Transition Period.

ANNEX II – TRADE PROTOCOLS

Please note that the terms of the Trade Protocol may be amended by the Contracting Authority from time to time. The Contracting Authority will notify the DPS Members of any changes to the Trade Protocol at DPS Competition stage and the amended Trade Protocol will apply only to any Goods Contracts awarded subsequently.

1. Definitions:

In this Annex II and in the DPS Agreement the following terms shall have the meanings respectively ascribed to them:

Agreement Close Out File – means a file that shall contain but not is limited to consumption data from the previous 12 months of the Goods Contract and closing account balance. Any credits owed after close of account must be paid by EFT within 30 days of close of account.

Bulk Bill Data – Data file containing all the billable elements for each tariff structure across a single, or multiple, supply point(s) for a specified period.

Contract Conversion Factor - this is the standard conversion of pence per therm to kilowatt hour (kWh) which is equal to 29.3071 divided by the FX exchange rate.

Commodity Trade Index – This is a verifiable and published reference NBP UK Wholesale Commodity Trade Index designated by the DPS Member and subject to confirmation and agreement with the DPS Client at RFT for the purpose of purchasing natural gas for a Fixed/Flexible and/or a Fully Flexible Contract.

Default Commodity Trade Index - This is a verifiable and published reference NBP UK Wholesale Commodity Trade Index designated by the DPS Member and subject to confirmation and agreement with the DPS Client at RFT for the purpose of purchasing floating positions of natural gas for a Fully Flexible Contract on or after the Default Date.

Default Date: The last business day prior to month of consumption when a Transaction Process can be exercised designated by the DPS Members and subject to confirmation and agreement with the DPS Client at RFT.

Default Exchange Rate Index - This is a verifiable published reference Exchange Rate Index designated by the DPS Member and subject to confirmation and agreement with the DPS Client at RFT for the purpose of converting Sterling prices to Euro for the Default Commodity Trade Index. (ECB/OANDA/AIB – equivalent or approved by the DPS Client).

Default Index: In instances whereby a Trade Option is not exercised, the unhedged (floating) volumes shall be fixed at the agreed Default Commodity Trade Index and Default Exchange Rate Index prices on the default date with no fee or uplift being applied.

Energy Advisor – means a person appointed by the Minister for Public Expenditure, National Development Plan Delivery and Reform to provide energy advisory services to and to act on behalf of the Office of Government Procurement and DPS Clients.

Exchange Rate Index - This is a verifiable published reference Exchange Rate Index designated by the DPS Member and subject to confirmation and agreement with the DPS Client at RFT for the purpose of converting Sterling prices to Euro. (ECB/OANDA/AIB – equivalent or approved by the DPS Client).

Pass Through Charges - means all charges/rebates that shall be levied as charged/rebated in accordance with the independently regulated charges as set out by the Commission for Regulation of Utilities (CRU) (Irish Transmission and Distribution Charges), the UK National Grid (UK Transportation Charges), Gas Networks Ireland (Moffat Agency Charge) and / or the Irish Government (Carbon Tax and any other charges or taxes which may be prescribed by Irish legislation that must be levied on end-users in relation to the supply of the Goods). Shrinkage element must be charged as a pass-through element and will be routinely checked based on the provision of supplier specific shrinkage charges provided by Gas Networks Ireland. This charge will be passed through by suppliers exclusive of any uplift or premium.

Trade Option – A request by the DPS Client’s Representative made to the DPS Member for a forward market price on the agreed Commodity Trade Index in respect of a volume of natural gas for a specified period for the purpose of purchasing natural gas for a Fully Flexible Contract.

Forward Market Price

Forward Curve noting a monthly price of gas for a specified or requested period.

Trade Log File – A file containing the details of an exercised Trade Option. This will include;

- a) the RFT reference number,
- b) Tariff reference,
- c) Trade Period
- d) Tranche size (%)
- e) Commodity Index Price agreed
- f) Exchange Rate Index Price applicable
- g) Default Trade price, where applicable based on the agreed Default Mechanism at RFT submission

Trade Protocol - means the Trade Protocol to be applied to all trade requests as set out at Annex II to this Agreement

Transaction Process – The procedure by which the DPS Member will fix or unfix the natural gas commodity price for a Fully Flexible Contract where ‘Fix’ means an exercised Trade Option and ‘Unfix’ means a request to unfix an exercised Trade Option

2. Trade Protocol for Fixed/Flexible, Flexible/Fixed and Fully Flexible, Flex/12 Month Term Fix Contracts

DPS Members shall comply with this Trade Protocol and adhere to the Transaction Process outlined below. The ability to comply with this Trade Protocol shall be a condition to participation by a DPS Member in any DPS Mini-Competition conducted in accordance with Clause 5 of the DPS Agreement. DPS Members who fail to comply with this Trade Protocol, for Fixed/Flexible and Fully Flexible and Flex /12 Month Term Contracts, may be excluded from participation in these type of DPS Mini-Competitions.

The following requirements shall apply to all Trade Options:

Trade Protocol for Fixed/Flexible and Fully Flexible Contracts

DPS Members shall comply with this Trade Protocol and adhere to the Transaction Process outlined below in relation to all trade requests (‘Trade Protocol’). The ability to comply with this Trade Protocol shall be a condition of participation by a DPS Member in any RFT conducted by way of RFT under Clause 5 of this DPS Agreement.

The following Trade Protocol shall apply to all trade requests:

- DPS Members will provide to each DPS Client the option to fix and unfix the commodity and associated exchange rate price for any Transaction Process volume for any Transaction Process period on the forward market (Months, Quarters, Seasons) without restriction until the contracted supply-end-date following a request from the Energy Advisor (a “Trade Option”). This Trade Option may or may not be exercised by the Energy Advisor on behalf of the DPS Client(s) following a trade request.
- The DPS Member shall nominate a person to liaise on the Trade Options Protocol, and provide details of the members of the Trade Desk Team.
- DPS Members shall provide direct access to their Trade Desk Team during business hours between 9 am to 5 pm Monday to Friday (excluding public and bank holidays in Ireland), and respond to requests for trade prices within a maximum of 30 minutes from time of request.
- DPS Members shall provide in response to an RFT details of their:
 - i. Commodity Trade Index for the purpose of trading and;

ii. Exchange Rate Index for the purpose of trading

- DPS Members shall adhere to the Commodity Trade Index and the Exchange Rate Index confirmed in a RFT submission for the duration of any Goods Contract.
- DPS Members shall adhere to the Supplier Product Specification set out in the RFT submission for the duration of any Goods Contract.
- DPS Members shall not apply any trading or transaction fees to a Trade Option quotation or price either at point of trading or at point of billing or at all.
- DPS Members shall provide identification in billing/trading systems of the relevant RFT and tariff allocation under which a Trade Option is exercised.
- There will be no minimum trade volume
- Should a Trade Option not be exercised for a particular month/quarter/season, the contract price will remain floating with reference to the agreed Default Commodity Trade Index and Default Exchange Rate Index as clarified in the relevant RFT and as provided by the DPS Member in response to the relevant RFT.
- Should DPS Clients' Representatives deem the Trade Option quotation provided not to be a market reflective price of the selected Commodity Trade Index, the DPS Member will be required to provide a price at the ICE settlement for the period of the requested Trade Option on the same business day. For the avoidance of doubt, ICE settlement shall mean the price as per the ICE UK Natural Gas Futures during a fifteen minute settlement period from 16:00, London time, as published by ICE after each UK Working Day.
- The DPS Member shall notify in writing the DPS Clients Representatives of any changes in the nominated liaison persons or Trade Desk Team.
- The DPS Member shall make available the following products in respect of any Trade Option with no period limitations:
Years, Seasons, Quarters and Monthly tranches on the forward curve
- The DPS Member shall provide a screenshot of any Trade Option quotation from their nominated Commodity Trade Index and Exchange Rate Index to the DPS Clients Representatives following a Trade Option Request.
- The exchange rate applicable to any confirmed commodity trade price shall be the Sterling to Euro exchange rate as published on the DPS Members confirmed Exchange Rate Index foreign exchange reference rates on the day the Trade is exercised. The Exchange Rate Index applied shall be a published reference platform only. (ECB/OANDA/AIB – equivalent or approved by the DPS Client).
- The DPS Member shall provide the ability to 'fix' and 'unfix' volumes of gas (and if required, exchange rate) in line with the below detailed Transaction Process, when so required following a Trade Option request, without any limitation or restriction with regards to the number of trades or the trading horizon (until the supply end date).
- DPS Members shall provide Trade Log Files within 24 hours of exercising a Trade Option. A Trade Log File shall include hedged prices, default prices, the final weighted average p/th as well as outcome commodity rate (c/kwh) using the applicable conversion factors and commodity adjustment calculation formula.

Transaction Process for Fixing/Unfixing Trade Options:-

- The DPS Client's Representatives shall email the DPS Member's Trade Desk Team to request a quotation price. This Trade Option request will incorporate the following:
 - a) the RFT reference number,
 - b) Tariff reference,
 - c) Tradable Period
 - d) Tranche size
- The DPS Member's Trade Desk Team shall respond with a Trade Option quotation within 30 minutes of request with accompanying screenshot from the Commodity Trade Index and Exchange Rate Index to support the price quoted.
- If the DPS Client's Representatives wish to accept and proceed with a Trade Option quotation or exercise the Trade Option, they will instruct the DPS Member to exercise and complete the Trade Option.
- The DPS Member shall respond with confirmation of the exercised Trade Option quoting the Trade Option agreed price and Trade Log File entry.
- The DPS Member shall provide, within 24 hours of exercising a Trade Option, a Trade Log File providing a transparent calculation of the outcome of the hedge taken, as well as the unit rate using the agreed contract conversion factor.

3. Market Changes

In the event of changes to the market, the OGP reserve the right to avail of any new platform that might become available, this will be detailed in the DPS Trade Protocol as / or when the changes/opportunities become available.

TYPES OF TARIFFS

Tariff Grouping	Description
1	Small Business User
2	Medium Business User
3	Fuel Variation Tariff
4	Daily Metered

And any other Natural Gas tariffs that may emerge during the term of the DPS.

ANNEX IV

See attached sample pricing matrices.

Appendix 6: Goods Framework Contract

[Insert name of Contracting Authority]

and

[Insert successful Tenderer's full legal name - to be completed on signing.]

SINGLE SUPPLIER FRAMEWORK CONTRACT

Relating to the Supply of Goods pursuant to

Request for Applications to participate in a Dynamic Purchasing System for the provision of supply of Natural Gas to Public Service Bodies in Ireland

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

[Insert name of Contracting Authority], of [Address] ("the Client");
and
[Contractor's full legal name], of [Address:] ("the Contractor")
(each a "Party" and together "the Parties").

WHEREAS:

- A. By Request for applications to Participate in a Dynamic Purchasing System entitled "*Request to Participate in Dynamic Purchasing System dated [] for the provision of supply of natural gas to public sector bodies in Ireland*" advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number [] of [] (the "RFATP") the Contracting Authority invited economic operators to participate in a Dynamic Purchasing System Agreement for the provision of the Goods described in Appendix 1 of the Request to Participate (the "Goods"). References to the Request to Participate ("RFATP") shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie (the "Electronic Platform") between [insert date] and [insert date] (the "RFATP Clarifications"). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFATP dated [insert date of Application] ("the Application"). References to the Application shall include any clarifications issued by the Contractor in writing via the Electronic Platform to the Contracting Authority between [insert date] and [insert date] (the "Application Clarifications"). The Application (including the Application Clarifications) is hereby incorporated by reference into this Agreement.
- C. The Contracting Authority and the Contractor entered into a Dynamic Purchasing System agreement on [insert date of DPS Agreement] (the "DPS Agreement"). The DPS Agreement is incorporated by reference into this Agreement.
- D. In accordance with the DPS Agreement, by way of Request for Tenders dated [insert date of RFT] ("the RFT"), the Contracting Authority invited responses from all DPS Members for the provision of Goods. References to the RFT shall include any clarifications issued by the Contracting Authority via the messaging facility on the Electronic Platform between [insert date] and [insert date] (the "RFT Clarifications"). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- E. The Contractor submitted a response to the RFT dated the [Date of Response] (the "Response"). References to the Response shall include any clarifications issued by the Contractor in writing via the Electronic Platform to the Contracting Authority

between [insert date] and [insert date] (the “Response Clarifications”). The Response (including the Response Clarifications) is hereby incorporated by reference into this Agreement.

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Agreement and Schedules A to D attached hereto;
 - ii. The RFT;
 - iii. The Application.
2. The Contractor shall sell and the Client shall purchase in accordance with this Agreement (“Agreement”) the Goods described in Schedule B (“Goods”). Schedule B details the nature, quantity, quality, time of delivery and functional specifications of the Goods in accordance with the RFT and the submission (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
4. For the purposes of this Agreement, the Client’s Contact is [insert contact name] of [insert contact address]; the Contractor’s Contact is [Contractor contact name] of [Contractor contact address].
5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [Insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”). Without prejudice to the application of the terms and conditions of this Agreement to the provision of the Goods from the Effective Date, the supply of Natural Gas will be required from the Effective Date unless a later date for the commencement of the supply of Natural Gas has been indicated in the RFT (the ‘Commencement Date’). The payment obligations set out in clause 5 of this Agreement shall only take effect at the time the supply of Natural Gas by the Contractor has commenced.
6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFATP.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by

the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

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

Schedule A: Terms and Conditions

1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the supply of Goods and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the supply of the Goods and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 5 the Contractor shall:
1. supply the Goods in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
 4. supply the Goods in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law. that apply at the place where the Goods provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to clause 15, the Contractor shall notify the Client

as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.

Subcontractors may not be changed without the prior consent in writing of the Client. The Contractor must provide the Client with the rationale for the proposed change in Subcontractor in writing. The responsibility will be on the Contractor to demonstrate to the satisfaction of the Client, including by way of submitting updated documentary evidence as set out in clause 3.2 of the DPS Agreement, that by changing Subcontractor the Contractor continues to fulfil the compliance and selection requirements specified at part 3 of the RFATP.

- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor 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 the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 11.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement ("OGP") and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.

2. The Goods

- A. The Contractor shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties.
- B. The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- C. Any Contractor pre-printed terms and conditions produced, signed or stamped by either Party and for whatever purpose during the Term are hereby disallowed.

3. Risk and Title

- A. The Goods ordered under this Agreement shall be delivered to any location specified by the Client, in Ireland, without limit to the number of locations, in the quantities and by the dates specified in the orders, unless otherwise stated. Any extension of the delivery time shall not constitute a general waiver or acquiescence on the part of the Client. All such Goods shall be delivered free of encumbrances or retention of title clauses or similar provision. The Charges quoted shall be based on the understanding that the Goods are to be delivered carriage paid to the various locations as specified in the order, along with the necessary delivery documentation. Pending such delivery, the Goods shall remain at the risk of the Contractor.

4. Intellectual Property

- a) Intellectual Property Rights (“IPR”) means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.
- b) Pre-existing IPR means all IPR existing prior to the date of this Agreement and all IPR in any materials, acquired or developed by or for Contractor or Client independently of this Agreement, and any IPR in Contractor’s standard hardware and software products or modifications or updates to such products.

- c) All IPR title and interest in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of this Agreement (collectively “the Materials”) (or any part or parts thereof) shall vest in the Client and the Contractor so acknowledges and confirms. For the avoidance of doubt the Contractor hereby assigns all Intellectual Property Rights, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such Intellectual Property Rights title or interest may be deemed by law to reside in it in the Materials to the Client absolutely.
- d) The Client grants to the Contractor a royalty-free non-exclusive licence to use the Client’s Pre-existing IPR for the Term to the extent necessary to enable the Contractor to fulfil its obligations under this Agreement. Save as expressly set out in this clause 6 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.
- e) The Contractor shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of this Agreement.
- f) Nothing in this Agreement shall prohibit or be deemed to prohibit the Contractor from providing services similar to the Services to any party other than the Parties hereto. In no event shall the Contractor be precluded from independently developing for itself, or for others, materials which are competitive with, or similar to, the Services and to use its general knowledge, skills and experience, and any ideas, concepts, know-how, formats, templates, methodologies and techniques that are acquired or used in the course of providing the Services.
- g) The Contractor shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of this Agreement (to include but not be limited to ensuring that the Client shall be vested with all necessary rights so as to enable the Client to enjoy the benefit of the Services for its business purposes). The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any losses (whether direct, indirect or consequential) liability, damages, claims, costs or expenses which arise by reason of any breach of third party Intellectual Property Rights in so far as any such rights are used for the purposes of this Agreement.

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

- (i) procure the necessary rights for the Client to continue use;
 - (ii) replace the relevant deliverable with a non-infringing equivalent;
 - (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
 - (iv) if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect or consequential) thereby accruing to the Client as a result of the breach.
- h) Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 3 will survive the expiration or termination of this Agreement for any reason.

5. Payment

- A. Subject to the provisions of this clause 5 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 11A from time to time;
 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 3. The furnishing by the Supplier to the Client of bulk bill data in the format required by the Contracting Authority (the "Bulk Bill Data") within 30 days from the date of request by the Client. In the event the Client wishes to set up multiple accounts or one single group account for the purposes of billing, this should be provided as close as possible to the Clients requirements.
 4. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Goods for any billing period (including whether or not Goods have been accepted, rejected, satisfactorily

repaired or replaced as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted by the Client subject to any correction or reconciliation which may be required by the Contracting Authority or the Client (whether before or after payment) upon review of the Bulk Bill Data provided by the Contractor to the Client. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and

5. The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all EU and domestic taxation law and requirements.
- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. Where indicated in the Specification, the Charges shall include the cost of instruction of the Client's personnel in the use and maintenance of the Goods and such instructions shall be in accordance with the requirements detailed in the Specification.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the supply of the Goods will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

6. Warranties, Representations and Undertakings

- A. The Contractor acknowledges, warrants, represents and undertakes that:
1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply the Goods hereunder;
 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the supply of the Goods (to include manufacture and distribution process) as they apply to the Contractor;
 5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 6. **'Not used'**
 7. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated [Insert Date] which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged; and
 8. the Client shall be under no obligation to purchase any minimum number or value of Goods.
- B. The Contractor shall be and undertakes to be responsible for and to take due precautions for the safe custody of any Goods on his premises which are the property of the Contractor and shall insure the same against any form of loss or damage and the Contractor so acknowledges and confirms.
- C. The Contractor confirms and undertakes that the Goods supplied will, at the time of delivery (and for the Guarantee Period), correspond to the description given by the Contractor in accordance with the submission (to include any samples furnished thereunder) and the Specification (Schedule B) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in the Submission. None of the provisions of the Sale of Goods Acts 1893 and 1980 shall be excluded or limited under this Agreement.
- D. The Contractor undertakes to ensure that all and any necessary consents and/or licences are obtained and in place for the purposes of this Agreement. The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any losses (whether direct, indirect or consequential), liability,

damages, claims, costs or expenses which arise by reason of any breach of third party intellectual property rights in so far as any such rights are used for the purposes of this Agreement.

- E. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out in clause 6A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

7. Remedies

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 7A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6(D), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver the Goods or to deliver goods of approved quality, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E.
 - 1. If for any reason the Client is dissatisfied with the performance of the Supplier, the Client may withhold 5 per cent of the total amount of any unpaid invoice and from each subsequent invoice submitted by the Supplier to the Client (all sums withheld together referred to as the "Retention Amount") until such time

as the performance of the Supplier is remedied to the satisfaction of the Client. In such event, the Client shall identify the particulars of the Supplier's performance with which it is dissatisfied together with the reasons for such dissatisfaction. Subject to paragraph E.2 below, payment of the Retention Amount will be made upon confirmation by the Client that the performance of the Supplier has been remedied to its satisfaction.

Without prejudice to the generality of this clause E.1, the following shall be deemed to be unsatisfactory performance by the Supplier:

- (a) Failure by the Supplier to provide written confirmation to the Client of Pass Through Charges within 10 calendar days from the date of request by the Client; or
- (b) Failure by the Supplier to comply with the Trade Protocol attached at Annex II to the DPS Agreement; or
- (c) Failure by the Supplier to provide the Bulk Bill Data within 30 days from the date of request by the Client.

Without prejudice to the foregoing, the Client shall be entitled to request the Contracting Authority to exclude the DPS Member from participation in any further Mini-Competition(s) conducted under the DPS Agreement until such time as the performance of the Supplier is remedied to the satisfaction of the Client.

Subject to the provisions at paragraph E.2 below, the Client shall hold the Retention Amount on behalf of the Supplier but without any obligation to invest.

2. Where the performance of the Supplier is not remedied to the satisfaction of the Client within a period of 2 months, the Client may, at his discretion, retain the Retention Amount and shall be entitled to:
 - (1) claim any other remedy available to it (whether under this Agreement or otherwise) for any loss or damage incurred or suffered by it; and
 - (2) without prejudice to sub-clause (1) of this clause E.2, the Client shall be entitled to terminate the Agreement by serving 2 months' notice in writing to the Supplier.
3. In the event that the Agreement Close Out File is not provided to the Client within the period specified in clause 10E, the Client shall be entitled to request

the Contracting Authority to exclude the Supplier DPS Agreement until such time as the Agreement Close Out File has been completed and provided to the Client, to the Client's satisfaction.

4. In the event that the Supplier does not comply with any aspect of the Trade Protocol attached at Annex II to the DPS Agreement, the Client shall be entitled to terminate this Agreement by serving 2 months written notice to the Supplier. No liability will accrue to the Client for any booked capacity relating to or arising by reason of the provisions of this Agreement (including but not limited to the Trade Protocol) and the Supplier shall not be entitled to any additional amounts or compensation by reason of the operation of this Clause E.4.
5. For the avoidance of doubt, where either Party to this Agreement exercises any right to terminate this Agreement on notice (whether under Clause 10 or this Clause 7 E), the Supplier shall continue to supply the Goods to the Client in accordance with the terms and conditions of this Agreement (including but not limited to any terms and conditions as to the Charges) for the duration of the notice period.
6. Where the Client exercises any right to terminate this Agreement under Clause 10(A)(1), 10(B), 7.E.2 and 7.E.4 of this Agreement, the Supplier shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising (whether directly or indirectly) as a result of the termination of this Agreement prior to the expiry of the Term including, but not limited to, any loss arising from the inability of the Client to exercise Trade Options with the Supplier under paragraphs of Appendix 1 of the RFT or the Trade Protocol attached at Annex II of Appendix 6 and / or any excess price which may be paid by the Client to the any new supplier. Clause 7B of this Agreement shall not apply to this clause 7.E.6
7. The terms of this clause E shall be without prejudice to and not be in substitution for any other remedy of the Client whether under this Agreement or otherwise. For the avoidance of doubt, all remedies available to the Client under this Clause E are cumulative and may be exercised concurrently or separately and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies under this Clause E or under any other provision of this Agreement or otherwise.

8. Confidentiality

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

The obligations in this clause 8 will not apply to any Confidential Information:

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
 2. which is or becomes public knowledge other than by breach of this clause; or
 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- D. The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

9. Force Majeure

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
1. the nature of the Force Majeure Event;
 2. the anticipated delay in the performance of obligations;
 3. the action proposed to minimise the impact of the Force Majeure Event;
- and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other Party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.
- C. If the Force Majeure Event continues for ten [10] calendar day(s) either Party may terminate at fourteen [14] days' notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

10. Termination

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving 30 days written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving 90 days written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 10(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the

breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;

2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.

C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that :

1. any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
2. the Contractor (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

11. Contract Management

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
 - 1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
 - 2. maintain such records and comply with such reporting arrangements and protocols required by the Client from time to time;
 - 3. comply with all reasonable directions of the Client; and
 - 4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.
- D. The Contractor shall be required to hold for the Term insurances of the nature and amount as set out in the RFT and shall immediately advise the Client of any material change to its insured status. The Contractor shall produce proof of current premiums paid upon request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 11D.

12. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an

independent mediator, the identity of whom shall be agreed in advance by the Parties.

- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

13. Governing Law, Choice of Jurisdiction and Execution

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

14. Notices

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.
- B. All notices shall be deemed to have been served as follows:
 - 1. if personally delivered, at the time of delivery;

2. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
3. if communicated by email, on the next calendar day following transmission.

15. Assignment and Subcontract

- A. Subject to a Party's obligations at law, any assignment to a third party, subcontract or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.
- B. Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Client may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

16. Entire Agreement

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

17. Severability

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

18. Waiver

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

19. Non-exclusivity

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

20. Media

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

21. Conflicts, Registrable Interests and Corrupt Gifts

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Goods and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 21C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

22. Access to Premises

- A. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

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

23. Non Solicitation

- A. For the Term and for a period of 12 months thereafter (and save in respect of publicly advertised posts) neither the Client nor the Contractor shall employ or offer employment to any of the other Party's employees without that other Party's prior written consent.

24. Not Used

25. Data Protection and Security

- A. In this Agreement the following terms shall have the meanings respectively ascribed to them:

“Data” means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Client (including but not limited to his employees, agents, independent contractors and/or Sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Client provided under this Agreement and includes any Personal Data;

“Data Controller” has the meaning given under the Data Protection Laws;

“Data Processor” has the meaning given under the Data Protection Laws;

“Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 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 (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland.

“Data Subject” has the meaning given under the Data Protection Laws;

“Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-

(1) process that Personal Data only on the written instructions of the Client;

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:

(i) appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

(ii) the data subject has enforceable rights and effective legal remedies;

(iii) The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

(iv) The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
 - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - (2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - (3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

Or

The Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating

terms which are substantially similar to those set out in this clause 25 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

- N. Save for clauses 25B, 25C, 25D(4) and 25E, all the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.
- O. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

26. Additional Condition(s)

A. Management Provisions

Non-compliance by the Contractor with any of the Management Provisions set out at Annex I of the DPS Agreement shall be deemed a serious breach within the meaning of clause 10.B(1) of this Agreement.

B. Trade Protocols

The Contractor hereby acknowledges the appointment by the Client of the Energy Advisor to trade on behalf of the Client for the duration of the Agreement and shall comply with all instructions received from the Energy Advisor in this regard.

Non-compliance by the Contractor with any of the provisions set out at Annex II of the DPS Agreement shall be deemed a serious breach within the meaning of clause 10.B(1) of this Agreement.

No liability will accrue to the Client for any booked capacity relating to or arising by reason of the provisions of this Agreement (including, but not limited to, the Trade Protocol) and the Contractor shall not be entitled to any additional amounts or compensation in the event of termination of this Agreement pursuant to clause 10B(1).

In the event that the Contractor ceases to provide the Goods for any reason whatsoever for the duration of the Term of the Contract, the Contractor shall be liable and shall indemnify the Client for any losses, claims, demands, damages or expenses which the Client may suffer (including direct and indirect losses) as a result of the inability of the Client to exercise the Trade Options with the Contractor under paragraphs of Annex II of the DPS Agreement and/or any excess price which may be paid by the Client to any new supplier.

C. Local Security

All personnel of the Contractor or any Sub-Contractor attending the offices or facilities of the Client will be required to comply with local security arrangements and protocols required by the Client.

The Contractor shall comply with the Contingency Plan [approved by the Contracting Authority under the DPS Agreement/approved by the Client].

D. Reporting

Without prejudice to the obligations of the Contractor pursuant to the Management Provisions set out in Annex I of the DPS Agreement, the Contractor shall provide the following reports to the Client and such other reports as the Client may request from time to time:

- quarterly report of the Client's values and volumes invoiced;
- half yearly report of the Client's values and volumes invoiced; and
- copies of any specific invoices issued in respect of orders placed as may be required by the Client from time to time.

E. Exit Strategy and Transfer of Supply Points.

The Supplier shall co-operate with any incoming supplier in relation to the transfer of supply points upon termination or expiry of this Agreement.

The Supplier shall permit and facilitate the transfer of supply points, upon request by or on behalf of the Client, at any time following the date which is 10 days prior to the termination / expiry date of this Agreement.

For a period of 30 days after the termination / expiry date of this Agreement, (the "Transition Period") the Supplier shall continue to supply the Goods to the Client in respect of any supply points which have not yet been transferred to the incoming supplier in accordance with the terms and conditions of this Agreement (including but not limited to any terms and conditions as to the Charges) for the duration of the Transition Period and no other charges or fees whatsoever may be applied by the Supplier during the Transition Period.

For the avoidance of doubt, the terms of this clause 26.F shall survive termination of this Agreement.

The terms of this clause 26 shall be without prejudice to and not in substitution for any other remedy of the Client whether under this Agreement or otherwise. For the avoidance of doubt, all remedies available to the Client under this clause 26 are cumulative and may be exercised concurrently or separately and the exercise of one remedy shall not be deemed an election of such remedy to the exclusion of other remedies under this clause or under any other provisions of this Agreement or otherwise.

F. Contract Continuity

The occurrence of an event associated with membership of the European Union or economic or monetary union in the European Union shall not have the effect of:

- i) terminating; or
 - ii) altering or invalidating any term of or discharging or excusing performance under; or
 - iii) giving any party a unilateral right to alter or terminate,
- this Goods Contract.

For the purposes of this clause, an “event associated with membership of the European Union or economic or monetary union in the European Union” includes, without limitation, each (and any combination) of the following events:

- i) the withdrawal from the European Union by any one or more members of the European Union (Member States); or
- ii) the withdrawal from legal tender of the Euro; or
- iii) the withdrawal from the Euro by one or more Member State(s); or
- iv) the replacement of the Euro by any alternative single or unified currency by two or more Member States (whether or not they remain members of the European Union) or the introduction of a new currency by a Member State (whether or not it remains a member of the European Union).

27. Activation by Client of Goods Contract

- A. The following shall be Framework Clients for the purposes of this Clause 26:
1. Ministers of the Government of Ireland, Central Government Departments, Offices and non-commercial Agencies and Organisations which have a formal reporting and legal relationship to Central Government Departments, including all local authorities in Ireland (themselves including regional assemblies, local enterprise boards and library bodies);
 2. Contracting authorities in the Irish health sector including but not limited to the Health Service Executive (HSE); the Health Information and Quality Authority (HIQA) and HSE funded Agencies delivering health & personal social services funded by more than 50% from Exchequer funds;
 3. Contracting authorities which are Third Level Educational Institutions (including universities, institutes of technology and members of the Education Procurement Service);
 4. Contracting authorities which are Education and Training Boards (ETBs) and ETB schools, and primary, post-primary, special and secondary schools as well as ETBs acting on behalf of schools;
 5. An Garda Síochána (Police);
 6. The Irish Prison Service;
 7. The Defence Forces; and
 8. For the avoidance of doubt, the Minister for Public Expenditure and Reform, National Development Plan Delivery and Reform.
- B. The Contractor acknowledges and agrees that the supply of Goods shall be activated at the discretion of the Framework Client as notified to the Contractor in accordance with this Clause 26. The Contractor further acknowledges that neither the Client nor any other Framework Client shall be under any obligation to activate any minimum number or value of Goods.
- C. A notification by the Framework Client to the Contractor to activate the supply of Goods for the purposes of this Clause 26 shall be in the form set out at Schedule F to this Agreement (the “Notification to Activate Goods Form” or “NAGF”) signed by the Framework Client and served on the Contractor.

- D. Unless and until a NAGF is executed and served in accordance with this Clause 26 by a Framework Client, discussions, submissions and negotiations between a Framework Client and the Contractor regarding the supply of the Goods by the Contractor shall be treated as non-contractual and shall not create binding obligations on the parties. Upon execution by the Contractor of the NAGF, the Contractor shall comply with all obligations under the Goods Contract and the Confidentiality Agreement for the benefit of the Framework Client as if references to the Client in the Goods Contract and the Confidentiality Agreement were references to the Framework Client and, for these purposes, the NAGF, the Dynamic Purchasing Agreement, the Goods Contract and the Confidentiality Agreement shall together constitute the “Client Contract”.
- E. The Contractor will notify the Client of the activation of the purchase of Goods by a Framework Client and agrees to make such returns in relation to a Client Contract as may be reasonably requested by the Client from time to time.
- F. The Contractor acknowledges that, upon activation of the supply of Goods in accordance with the NAGF, the obligations of the Framework Client under the Contract are a matter for the Framework Client and that the Client shall have no liability or obligation for or in respect of any default by a Framework Client. However, the Contractor shall notify the Client of any event of default and the Client may, but without obligation, seek to assist in seeking compliance with the Client Contract by the Framework Client concerned provided always that nothing in this Clause 26F shall imply or import any financial obligations on or any commitment by the Client of resources or materials.
- G. Any of the Client or Framework Client’s premises made available from time to time to the Contractor by the Client or Framework Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

Schedule B: Goods: The Specification

[Insert when completing contract]

Schedule C: Charges

[Insert when completing contract]

Schedule D: Service Levels

[Insert at RFT stage, if applicable, or when completing contract]

Schedule E: Data Protection

[Complete when completing the Contract]

Processing, Personal Data and Data Subjects

- 1. Processing by the Contractor**
 - 1.1 Subject matter of processing**
 - 1.2 Nature of processing**
 - 1.3 Purpose of processing**
 - 1.4 Duration of the processing**
- 2. Types of personal data**
- 3. Categories of data subject**

Schedule F: Notification to Activate Goods Form (NAGF)

NOTIFICATION TO ACTIVATE GOODS FORM

This is a notice for the purposes of Clause 26 of the DPS Contract for the supply of [Natural Gas to Public Service Bodies in Ireland] (OGP Ref: UGF010F) made between the Minister for Public Expenditure, National Development Plan Delivery and Reform (“the Client”) and _____ (“the Contractor”) dated [insert date].

The [INSERT DPS CLIENT DETAILS] is a Client as set out at clause 26A of the Contract and in accordance with clause 26 **HEREBY NOTIFIES** the Contractor that it wishes to activate the purchase of Goods with effect from [insert date] (the “Effective Date”).

The Framework Client hereby acknowledges, agrees and confirms that the Contract and the Confidentiality Agreement are hereby adopted by the Framework Client to govern the supply of the Goods and references to the Client in the Contract and the Confidentiality Agreement shall be deemed to be references to the Framework Client and the Framework Client hereby undertakes to comply with and observe all the terms and conditions of the Contract and the Confidentiality Agreement applicable to it as if a party thereto.

Dated: _____

Signed for and on behalf of the Framework Client: _____

Signed for and on behalf of the Contractor: _____

Dated: _____

Appendix 7 Confidentiality Agreement

THIS AGREEMENT is made on the [date] day of [month] 20[year] BETWEEN:

The [Abstract], of [insert Address] (hereinafter “the Contracting Authority”) of the one part;
and

[DPS Member's legal name], of [DPS Member's address] (hereinafter called “the Contractor”) of the other part.

WHEREAS

- A. By Request for Applications to Participate in a Dynamic Purchasing System dated [insert date] entitled [insert title] (the “RFATP”) the Contracting Authority invited applications (“Applications”) to participate in a DPS for the supply of the goods described in Appendix 1 to the RFATP (the “Goods”). The Contractor submitted an Application to the RFATP dated the [insert date of Tender].

The Contractor and the Client have entered into a DPS Agreement dated [insert date] (“the DPS Agreement”).

- B. For the purposes of the tender process referred to in the RFATP (the “Competition”), the DPS Agreement and any subsequent contract or contracts awarded thereunder (if any) (the “Contract(s)”) certain confidential information as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to the Contracting Authority and the DPS Clients (as defined in the RFATP).

NOW IT IS HEREBY AGREED in consideration of the sum of €2.00 (the receipt of which is hereby acknowledged by the Contractor) as follows:

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and/or the DPS Clients and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
 - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, any DPS Client, the provision of Goods under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the DPS Agreement and/or the Contract(s) including personal data within the meaning of the Data Protection Laws; and
 - 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.

3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 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 (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time.

4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:

4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;

4.2 not, without the prior written consent of the Contracting Authority and any relevant DPS Client, to communicate or disclose any part of such Confidential Information to any person except:

i to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or

ii to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority and the DPS Clients; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.

5. The obligations in this Agreement will not apply to any Confidential Information:

i in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority or the DPS Client, as applicable; or

ii which is or becomes public knowledge other than by breach of this clause; or

iii is independently developed by the Contractor without access to or use of the Confidential Information; or

iv is lawfully received from a third party (with full right to disclose).

6. The Contractor undertakes:

6.1 to comply with all directions of the Contracting Authority and the DPS Clients with regard to the use and application of all and any Confidential Information (including personal data as defined in the Data Protection Law);

- 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority and / or any DPS Client including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority and / or any DPS Client including by police authorities;
- 6.3 upon termination of the Competition (or the DPS Agreement or the Contract) for whatever reason to furnish to the Contracting Authority and / or the DPS Client, as applicable, all Confidential Information or at the written direction of the Contracting Authority and / or the DPS Client to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority and / or the DPS Client) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority and / or the DPS Client so request in writing. For the avoidance of doubt "document" includes documents stored on a computer storage medium and data in digital form whether legible or not
7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority or any DPS Client and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the DPS Agreement and any Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority or any DPS Client as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and/or the DPS Client, as applicable, and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the DPS Agreement or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:
"Data Controller" has the meaning given under the Data Protection Laws;
"Data Processor" has the meaning given under the Data Protection Laws;
"Data Subject" has the meaning given under the Data Protection Laws;
"Data Subject Access Request" means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
- D. Without prejudice to the generality of clause 10(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
 - (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
 - ii. the data subject has enforceable rights and effective legal remedies;

- iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data.
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for

inspections and contribute to any audits by the Client or the Client's designated auditor.

L. The Contractor shall:-

1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
2. ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.

M. The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement.

OR

The Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 11 as between the Client and the Contractor, the Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

N. Save for clauses 11B, 11C, 11D(4) and 11E, all the obligations on the Contractor in this clause 11 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

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

