

**Request for Applications to Participate
in a
Dynamic Purchasing System**

**for the Provision of Planned Maintenance and
Refurbishment Works**

Publication Date: 21st February, 2022

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Part 1: Introduction

- 1.1 Saint John of God Community Services clg (the “Contracting Authority”) is issuing this request for applications to participate (“RFATP”) in a Dynamic Purchasing System (“DPS”) for the provision of Planned Maintenance and Refurbishment Works. Saint John of God Community Services clg (the “SJOG CS”) is a Section 38 agency funded by The Health Service Executive (the “HSE”).
- 1.2 This public procurement competition (“Competition”) is being conducted in accordance with the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. 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 services and related goods described in Appendix 1 to this DPS (the “Services or Works”).
- 1.4 In summary, the Services comprise:

The provision of Planned Maintenance and Refurbishment Works. These may include, but not limited to the service and/or works described in Appendix 1: Requirements & Specifications and it is dependent on the operational needs and/or the profile of each DPS Client.

This RFATP relates to the establishment of DPS Agreements for the provision Planned Maintenance and Refurbishment Works to DPS Clients whose requirements in respect of such services or works will be valued up to €150,000 per project.

Note: the Candidate applying for this DPS is not required to cover the full scope of works to join this DPS i.e. if the Candidate applying can only provide painting and decorating services they can apply and only respond to the DPS Tenders under this category.

Please see Appendix 1 of this RFATP for further information on the Services.

1.5 Overview of Admittance to the DPS and Award of Contracts

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 from economic operators (Candidates) in response to the Compliance and Selection Criteria in paragraphs 3.1 and 3.2 of Part 3 of this RFATP. While Candidates 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 will be admitted to the DPS provided they enter into the DPS Agreement (at Appendix 5 to this RFATP) with the Contracting Authority.

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, at any point throughout the entire Term (as defined in paragraph 1.9 below) of the DPS.

Stage 2 – Award of Contracts:

All Candidates that entered into a DPS Agreement with the Contracting Authority in Stage 1 (each a “DPS Member”) will be invited to future Stage 2 competition(s) (“Mini-Competitions”) to submit a tender based on the requirements set out in the Stage 2 request for tenders (“RFT”). Mini Competitions may be conducted by (i) the Contracting Authority on behalf of one or more DPS Clients, or (ii) may be conducted by one or more of the relevant DPS Clients in co-operation with the Contracting Authority. 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 that has submitted the most economically advantageous tender based on the award criteria set out in the RFT.

Mini-competitions may be conducted for National, Regional, Local or Site Specific requirements. Please note that areas may be divided into lots at Mini Competition stage. The Contracting Authority reserves the right to award contracts for the supply of services and limit the number of lots awarded to a Tenderer. Full conditions will be specified in the Mini-Competition Tender Documents.

DPS Clients may choose to bundle their requirements into one Mini Competition,

which may contain one or more Lots, each Lot may consist of one or more locations service type requirement etc.

1.6 Overview of Application 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 Contracting Authority 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 in full and comply with all requirements for this Competition set out in the RFATP and any published DPS documents 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 Candidate Response Document (“CRD”), at Attachment 1 to the RFATP and available to download from the Electronic Platform, in response to the Selection Criteria as detailed in sections 3.2 of Part 3 of this RFATP for each Category they apply for, and upload it to the Electronic Platform by the Application Deadline. Candidates are **not** required to submit a tender proposal nor pricing in response to the Appendix 1 requirements at this Stage 1, 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 their admittance to the DPS and 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.

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. Saint John of God Community Services clg, Headquarters
2. Saint John of God Community Services clg, Dublin South East Services
3. Saint John of God Community Services clg, Liffey Services
4. Saint John of God Community Services clg, Community Mental Health Services
5. Saint John of God Community Services clg, North East Services
6. Saint John of God Community Services clg, Kerry Services

1.8 Term

Any DPS that may result from this Competition will, subject to paragraph 1.10 below, be for a period of validity of up to 5 years ("the Term").

The Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the DPS Term for a period or periods of up to twelve (12) months with a maximum of three (3) of such extensions on the same terms and conditions.

1.9 Termination of DPS

Candidate's attention is drawn to clause 17 of the DPS Agreement in Appendix 5. 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 Value of Contracts to be Awarded

The Contracting Authority estimates that the aggregate expenditure on the Services to be covered by the proposed DPS Agreement may amount to some €8 million (excl. VAT) over the Term. Candidates must understand that the figure is an estimate 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 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 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 Contracts that may result from this Application

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 DPS, 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 establish a DPS and/or to enter into a DPS Agreement

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.

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

No contractual rights in relation to any DPS Client will exist unless and until a formal 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 Competition at any time prior to a formal DPS Admission or terminate the DPS Agreement at any time during the Term in accordance with the termination provisions set out at clause 17 of the DPS Agreement.

Admission to the DPS or award of a 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 Services or Works under the DPS Agreement or any 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 the 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 Candidate Response Document (“CRD”), at Attachment 1 to this RFATP and available to download from www.etenders.gov.ie, 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 Contract

2.3.1 Candidates should note the terms and conditions of the DPS Agreement set out at Appendix 5 and the Contracts set out at Appendix 6 and 7 to this RFATP respectively. The Service Contract at Appendix 6 and the Works Contract at Appendix 7 are templates which may be revised or amended at the sole discretion of the Contracting Authority at any stage throughout the Term of the DPS. Any such updated amended contract shall be appended to the RFT at Mini- Competition stage and by tendering for a Mini-Competition a DPS Member agrees to enter into any such amended Contract.

- 2.3.2** Candidates are required to confirm their acceptance of the DPS Agreement and the Contracts in the Candidate's Statement at Appendix 2. Candidates may not amend the DPS Agreement or the Service or Works 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 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 post-box available on www.etenders.gov.ie (the "Electronic Platform"). Only Applications submitted to the electronic post-box 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 post-box. In order to submit a document to the electronic post-box, 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 15:00hs, **30th March 2022** (the “Application Deadline”).

2.6.3 Applications must be submitted in English.

2.6.4 Each 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 Microsoft Office applications e.g. MS Word, MS Excel, etc or 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 **15:00hs, 7th March 2022** 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 Applicant 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 Applicant 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 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** DPS Clients may require at the mini-competition stage to have an Index as part of the pricing.
- 2.10.4** Any currency variations occurring over the term of any Contract shall be borne by the Candidate.
- 2.10.5** Payments for Services provided pursuant to this RFATP shall be made subject to and in accordance with the Contract at Appendix 6 to this RFATP and the terms of any subsequent RFT.
- 2.10.6** Payments for Works provided pursuant to this RFATP shall be made subject to and in accordance with the Contract at Appendix 7 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 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 Services 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 Services.

2.12 Publicity

No publicity regarding this DPS or any DPS Admission, Mini Competition, or Contract pursuant to this DPS is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

2.13 Registrable Interest

Any Registrable Interest involving 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 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 Contract resulting from this a 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 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 Contract entered into by a Candidate.

2.19 Withdrawal from participation in this DPS

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 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 for any one claim or series of claims arising out of a single occurrence (where required. If self-employed this is not necessary)

Public Liability	€6.5 million million for any one claim or series of claims arising out of a single occurrence
Product Liability	€6.5 million million for any one claim or series of claims arising out of a single occurrence
Professional Indemnity	€1.5 million million for any one claim or series of claims arising out of a single occurrence
Third Part Motor Vehicle Insurance	€1.3 million million for any one claim or series of claims arising out of a single occurrence

2.21.2 By signing the Candidate's Statement at Appendix 2, Candidates confirm, that if awarded a Contract arising from a Mini-Competition pursuant to the DPS Agreement, they will, from the Effective Date of the Contract (as defined in the 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 Contract.

2.21.3 The successful Candidate will, during the term of the 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: 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 Regulations (the “Exclusion Grounds”) apply to them or that, or
 - (ii) where any such Exclusion Grounds apply, and where the Candidate is not precluded from doing so under Regulation 57(17) of the Regulations, 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 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.

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.

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, it shall be excluded from participation in this Competition unless it replaces the Subcontractor with one which meets all relevant requirements of this RFATP.

3.2 Selection Criteria for Admittance to DPS

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 for the relevant Category.

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 for each Category applied for.

The Contracting Authority may require Candidates to submit supporting documents at any stage of the process 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.

Any Candidate who is unable to make a declaration / provide satisfactory evidence in respect of any Category they are applying for shall not be eligible for the award of a DPS Agreement for that Category and shall be eliminated from the Competition for that Category.

Candidates must complete the relevant sections of the DPS Candidate Response Document ("CRD"), at Attachment 1 to this RFATP and available to download from the Electronic Platform, in line with instructions provided in that document, and upload it to the Electronic Platform by the Application Deadline.

Candidates are reminded that they may (1) rely on the capacities of other entities in order to meet any of the Selection Criteria, and (2) re-apply for admittance onto the DPS at any stage throughout the Term of the DPS.

3.2.1 - Financial & Economic Standing

Economic and Financial Standing Requirements (All Categories)		
	Requirements	Qualifying Threshold
Minimum Turnover Requirement	Candidates must declare by way of eESPD that they satisfy the financial and economic standing requirement(s) set out below, and that they are able, upon request and without delay, to provide the supporting documentation specified below to the Contracting Authority in each case. Tenderers must demonstrate that they have an average annual turnover of not less than €300,000 over the last three financial years immediately preceding the date of publication of this RFATP. Candidates are required to provide a copy of any <u>one</u> of the following with their application to demonstrate that they meet the required turnover level; ✓ Financial Accountants or where the Candidates' accounts are audited then audited financial accounts, ✓ Accountant's letter/certificate; ✓ Auditor's letter/certificate. ✓ A sole trader or partnership must provide	Pass / Fail

	evidence of turnover as submitted to the Revenue Commissioners as part of their tax declaration. Where a Tenderer is relying on the financial capacity of other entities Company Accounts as provided to the Companies Registration Office (or equivalent where publication is required under the law of the country in which the Tenderer is established if not the Republic of Ireland) of those entities and an undertaking addressed to the Contracting Authority, duly evidenced from those entities that they will place the necessary resources at the disposal of the Tenderer. Where a Tenderer's accounts are audited in a currency other than Euro a statement from the Tenderer's auditors with the relevant Euro amount for each accounting period, and the method of conversion used, must be supplied in addition to the documents identified above. The documentation required under this paragraph 3.2.1 will be requested by the Contracting Authority prior to (and shall be a condition of) the award of any contract.	
Tax Clearance	Candidates are required to Provide details of current Tax Clearance certification on the DPS Candidate Response Document. (Where a Tenderer is not established in the Republic of Ireland they must provide evidence that they have completed a form TC1 and applied to the Irish Revenue Commissioners for a Tax Clearance Certificate).	Pass / Fail
Insurances	Candidates must declare with their eESPD a letter from their broker or insurance company confirming that they will be able to obtain the types and levels of insurance specified in paragraph 2.21.1 if they are awarded a Services Contract or Works Contract under a DPS Agreement.	Pass / Fail

3.2.2 – Technical and Professional Ability

Sub-Criteria	Minimum Requirement	Qualifying Threshold
Experience of Previous Contracts	Candidates must declare by way of eESPD that they have successfully delivered three (3) Services or works contracts of a similar nature to the Services or works required in Appendix 1 within the last 3 years. Candidates must provide the following supporting information by responding to the DPS Applicant Response Form in their Application. Summary details of three (3) contracts in which they have successfully delivered Services of a similar nature to the Services or Works required in Appendix 1, within the last three years. Candidates must provide the contact names and details for each referee who shall be able to verify the information provided by Candidates in relation to the three contracts with their Application. <u>Note:</u> The Contracting Authority may contact any or all referees without prior notice being given to the Candidate.	Pass / Fail

Sub-Criteria	Minimum Requirement	Qualifying Threshold
Quality Assurance	<u>Internal Quality Assurance Procedures</u> Candidates must have an internal quality assurance process in place (either third party certified or in house) and Candidates must provide the following supporting documentation with their Application Candidates must confirm by way of a self-declaration that it has an internal quality assurance procedure in place and a copy of same provided with their application.	Pass / Fail

Sub-Criteria	Minimum Requirement	Qualifying Threshold
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Health & Safety	Candidates must have policies and procedures in place in relation to Health & Safety. Candidates must declare by way of eESPD their compliance with the Safety, Health and Welfare at Work Act 2005 and all regulations made under the 2005 Act. Candidates must declare by way of eESPD that they have a system / policy in place that ensures that it's personnel have a good standard of health appropriate to the demands of work and the environment in which its personnel are working, in particular. A copy of the Health & Safety policy must be provided as part of the Candidate's application.	Pass / Fail
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Sub-Criteria	Minimum Requirement	Qualifying Threshold
Staff Vetting & Garda Vetting.	Candidates must declare by way of eESPD that adequate procedures in respect of staff vetting are in place to ensure the suitability of all Candidate's staff that may be involved in the delivery of Services or Works under this DPS Agreement and any subsequent Mini Competitions. The Contracting Authority may require to also complete Garda Vetting for third party personnel working on site so Candidates must confirm with their application agreement with this procedure and confirm understanding that if personnel not fully vetted to enter the premises another personnel must be assigned to complete the required service and/or work.	Pass / Fail

The information required above must be provided in the Candidate Response Document ("CRD") at Attachment 1 to this RFATP and available to download from www.etenders.gov.ie.

3.3 Presentation of Proposals

Candidates may be required to make 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 (7) 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 1 – OVERVIEW OF DYNAMIC PURCHASING SYSTEM AND PROCESS FOR AWARD OF CONTRACTS

A1.1 Background to the Dynamic Purchasing System

The Contracting Authority is establishing a Dynamic Purchasing System (DPS) for the provision of Planned Maintenance and Refurbishment Works.

A1.2 Saint John of God Community Services clg

Saint John of God Community Services clg provides services and supports to over 8,000 children, adolescents and adults with intellectual disability or mental ill health throughout Ireland. The organisation is configured into five Regions with a Regional Management Team responsible for the delivery of services and support in each Region.

Saint John of God Community Services employs over 2,400 staff to provide services to the people we support and their families.

A1.3 Overview of how the Tender Process will operate

Saint John of God Community services clg invites suppliers of Planned Maintenance and Refurbishment Works who wish to participate in the DPS to respond to this RFATP. The Contracting Authority 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 and/or the DPS Clients 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.

This Appendix 1 provides a general overview of potential requirements under the DPS. Full specifications and requirements for DPS Clients will be set out in future Mini Competitions conducted under the DPS at Stage 2. Candidates are reminded that while they are required to submit a response to and fulfil the Compliance and Selection Criteria in Part 3 of the RFATP, Candidates are **not** required to submit a tender proposal nor pricing in response to the RFATP at this Stage 1 of the Competition, which will instead be required in response to future Mini-Competitions conducted under the DPS.

A1.4 DPS Clients

Paragraph 1.7 of Part 1 of the RFATP lists the entities that are DPS Clients. The Contracting Authority reserves the right at any time during the Term of the DPS to increase or decrease the list of eligible DPS Clients subject to its obligations at law.

A1.5 Overview of how the Mini-Competitions will operate

On each occasion that the Contracting Authority or the DPS Client(s) proposes to award a Contract by way of a Mini-Competition, it shall issue a Request for Tender ("RFT") in accordance with the procedure set out at clauses 5 and 6 of the DPS Agreement at Appendix 5. The RFT issued at Mini-Competition shall provide further particulars of the Services required by the DPS Clients and the methodology for evaluating bids.

A1.6 Subcontractors

Where a Candidate is relying on the capacity of Subcontractors for the purposes of fulfilling any of the Selection Criteria in part 3.2 above: (i) each such Subcontractor must complete and submit a separate eESPD 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.

Subcontractors nominated and relied upon by the DPS Member in their Application for admission to the DPS may not be changed throughout the Term of the DPS without the prior consent in writing of the Contracting Authority. The DPS Member must set out the rationale for the proposed change in Subcontractor. The responsibility will be on the DPS Member to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as set out in clause 3.2 of the DPS Agreement, that by changing Subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at part 3 of the RFATP.

Where a Candidate is **not** relying on the capacity of a Subcontractor to fulfil the Selection Criteria in paragraph 3.2 of part 3 of the RFATP, but intends relying on Subcontractors to deliver a share of the Contract, the Candidate must **in so far as known** identify such Subcontractor(s) in their eESPD in their Application for admittance to the DPS. Only where such Subcontractors are unknown at the time of submission of their Application and will instead be known or determined at a later stage such as at Mini-Competition stage, the DPS Member must instead identify such Subcontractors when they become known, for example, upon submission of a tender response at Mini-Competition stage.

Subcontractors nominated and relied upon by the DPS Member to fulfil any Contract may not be changed during the Term of the Contract without the prior consent in writing of the Contracting Authority. The DPS Member must set out the rationale for the proposed change in Subcontractor.

The Contractor and Subcontractors shall have the use of sufficient appropriate resources to satisfy the delivery of Services to meet the requirements of all DPS Clients for the duration of any Contract awarded under the DPS.

SECTION 2 – REQUIREMENTS AND SPECIFICATIONS

The specifications provided in this Appendix are general minimum specifications only which represent the typical nature and requirements which may arise for the provision of Planned Maintenance and Refurbishment Works under the DPS Agreement. The term, precise scope and requirements of any individual Services or Works Contract will be set out at Mini Competition stage in the RFT, in accordance with section 5 of the DPS Agreement.

The services or works specification listed below reflect general requirements. The DPS Client(s) reserve the right to amend any aspect of these specifications during the life time of the contract to suit their on-going requirements.

The Planned Maintenance and Refurbishment Works must at a minimum meet and / or exceed the specifications of the DPS Clients requirements.

A2.1. Context:

Providers of Planned Maintenance and Refurbishment Works must have the capability and capacity to provide their Services to the Public Sector, in the Republic of Ireland, in an efficient, flexible, consistent, reliable and sustainable manner.

Saint John of God Community Services clg has a wide range of building assets. These are located across the Republic of Ireland currently in the following counties:

- Dublin
- Kildare
- Wicklow
- Meath
- Louth
- Kerry

The size and nature of these assets vary widely across the organisation. They include:

- Residential properties for service users
- Office and commercial facilities
- Catering and leisure facilities
- Day Services locations
- Storage facilities
- Open spaces and public realm

This list is indicative and the number of assets may increase or decrease in accordance to service needs over the lifetime of the contract.

A2.2. Scope of the Service:

The definition of the services and/or works to be procured under this DPS is dependent on the operational needs and / or the profile of each DPS Client, and they may include, but are not limited to;

- Works to deal with the general improvement/enhancement of properties and spaces.
- Mandatory improvements, replacements and upgrades (including HIQA compliance).
- Planned upgrades and refurbishment of properties including but not limited to:
Demolitions and strip out, excavation and ground works, concrete work, brick and block work, replacement of external doors, windows and glazing, woodwork, internal doors and kitchen units replacement, finishes to floor, wall and ceilings, etc.
- Painting and decorating
- Roofing
- Construction work for individual projects falling within the values indicated e.g. installation of a wheelchair accessible bathroom, refurbishment of a small dwelling, on a partially occupied site).
- Structural improvement works
- Building maintenance services which are out of scope of the Reactive / Responsive Maintenance contracts in place.

Note: the Candidate applying for this DPS is not required to cover the full scope of works to join this DPS i.e. if the Candidate applying can only provide painting and decorating services they can apply and only respond to the DPS Tenders under this category.

The value of each individual project will be up to €150,000.

A2.3. Outside of the Scope of the Services:

1. Responsive / Reactive Maintenance
2. Building works exceeding €150,000 (excl. VAT)
3. Maintenance services covered by a separate contract or central government contract which the DPS Client or DPS Clients have adhered to.

A2.4. Environmental Considerations:

As part of the All of Government Plan on Climate Action 2019 and giving regard to Circular 20-2019, all Government Departments are seeking to reduce the environmental impact of the goods and services that they procure.

In an effort to promote Environmental Considerations and promote Client awareness of any Environmental Initiatives the Contractor may have, the Contractor shall inform the Contracting Authority of any current and new initiatives it has in place which aim to improve efficiency and lessen the environmental impacts.

In addition the Contractor shall make available to the Contracting Authority / DPS Client any necessary Management Information which may assist in the development of green initiatives within DPS Client organisations.

Governing Standards and Legislation:

Candidates must comply with all legislative requirements in order to ensure the safety of the service or works being provided. This includes, but may not be limited to:

Under the Safety, Health and Welfare at Work (Construction) Regulations 2013, all construction workers in Ireland - including apprentices and trainees - are legally bound to hold a valid Safe Pass Registration Card.

- Safety, Health & Welfare at Work (Chemical Agents) Regulations (S.I No. 619 of 2001);
- Safety, Health & Welfare at Work 2005 (S.I. No. 10 of 2005);
- Safety, Health and Welfare at Work (General Applications) Regulations, (S.I. No.299 and 732 of 2007);
- Safety, Health and Welfare at Work 2007 (General Applications) Regulations Part 2, Chapter 2 Use of Work Equipment;
- Safety, Health and Welfare at Work (Construction) Regulations 2013 (S.I. No. 291 of 2013);
- Safety, Health and Welfare at Work (Exposure to Asbestos) Regulations, 2010 (S.I. 589 of 2010);
- Safety, Health and Welfare at Work (General Applications) Regulations 2007, Part 2 Workplace and Work Equipment, Chapter 4 – Manual Handling of Loads and Amendments Regulations 2007;
- Safety, Health and Welfare at Work (General Applications) Regulations 2007, Part 3 Electricity and Amendment Regulations 2007;

- Safety, Health and Welfare at Work (General Applications) Regulations 2007, Part 4 Work at Height and Amendment Regulations 2007;
- Safety, Health and Welfare at Work (General Applications) Regulations 2007, Part 5 Physical Agents, Chapter 1 – Control of Noise at Work and Amendment Regulations 2007;
- Safety, Health and Welfare at Work (General Application) (Amendment) Regulations 2012, Part 10 Pressure Systems;
- Safety, Health and Welfare at Work (General Applications) (Amendment)(No.3) Regulations 2016, Part 14 (Reporting of Accidents and Dangerous Occurrences); ² Safety, Health and Welfare at Work (Confined Spaces) Regulations 2001;
- European Union (EU) Energy Performance of Buildings Directive 2002/91/EC amended by Directive 2010/31/EU;
- Energy (Miscellaneous Provisions) Act 2006;
- Electricity Regulation Act 1999 (Gas Works) Regulations 2009 (and subsequent regulations set out in S.I. No. 225 of 2009 and S.I. No. 299 of 2011);
- National Rules for Electrical Installations in Ireland, 5th Edition, I.S. 10101:2020;
- IS 813:2014 - Domestic Gas Installations, or equivalent in every respect;
- IS 820:2010 - Non-Domestic Gas Installations, or equivalent in every respect;
- IS 3216:2010 – Code of Practice – Bulk Storage of Liquefied Petroleum Gas (LPG) (2nd Edition), or equivalent in every respect;
- Building Regulations
- Environmental Protection Agency Act, 1992;
- Protection of the Environment Act 2003;
- All other health, safety and environmental legislation which specifically applies to any of the categories of services listed on this specification.

The above governing standards and legislation includes all of the updates, amendments and revisions thereof.

Personnel:

Candidates and the personnel in their employment shall regard as confidential and shall not disclose to any person other than a person authorised by the DPS Client, any information acquired by the Candidates and their personnel in their employment in connection with the provision of Services to each DPS Client.

All personnel so engaged shall also be suitably trained in and apply in the performance of all Service or Works Contracts the relevant public health requirements and guidelines or advice especially in relation to public health disease outbreaks / pandemics, for example, Covid 19 and shall comply with all DPS Client rules, and / or other rules and recommendations as may be announced by Government.

Data Processing:

If the successful Tenderer will be required to process DPS Client's data based on the nature of the service or works to be provided for a DPS Tender, the Data Processing Agreement on Appendix 9 will be applicable and attached to the DPS Tender documents.

Customer Service:

Candidates must have a procedure for dealing with customer complaints and for managing and reporting incidents as they may occur on Clients' sites. This procedure should include a clear-path communication process, an escalation process, containment action plans (with special regards to "major" complaints), and a system for reporting root cause, corrective and preventative actions. This procedure must take into account that Candidates personnel must be able to handle as far as possible immediately solve any query or complaint made by a DPS Client, and then relay it to their Supervisor for investigation.

"Major" complaints are those of such severity that immediate investigation is required, and where a high level of engagement is expected from Candidates with the DPS Client(s) concerned and until full satisfactory resolution.

All "major" complaints must be immediately reported to Saint John of God Community Services Headquarters, and given regular updates until resolution.

All incidents happening on a DPS Client site must be immediately reported to the Client site concerned. Candidates must be aware that at this point the DPS Client's facilities risk management register or equivalent will be informed and the Contractor must co-operate fully with the DPS Client. Furthermore, a summary of all complaints and all incidents, their investigation, conclusion, resolution and subsequent corrective and / or preventative actions must be forwarded to the DPS Client(s) concerned and then to Saint John of God Community Services Headquarters to form part of the contract review process.

All Candidates must have a designated number of staff responsible for the complaints and incidents management process, and this person must be a member of the company's Senior Management Team and be ultimately responsible for the effective resolution of all customer complaints.

Candidates must have in place a process for auditing and measuring their company's overall performance in delivery of the contract. This must include a set of business indicators that are internally reviewed on a regular basis. Candidates shall carry out regular management reviews with each Client to ensure the successful and continual performance of the contract over its

lifetime.

As and when requested by Saint John of God Community Services Headquarters during the life time of the contract, Candidates must communicate data on all business indicators. They must also submit a sales history report in respect of sales for each Client. This data will be supplied on a pre-defined excel spreadsheet. Where there is a significant gap between actual volumes provided and expected volumes, Candidates shall provide reasons to identify causes. These documents must be forwarded to Saint John of God Community Services Headquarters by email and they will serve as the base of contract reviews.

Throughout the life time of the contract, the Senior Management Team must be available to meet upon request with Saint John of God Community Services Headquarters and DPS Clients it is contracted to, to review the overall performance of the Contractor, and any issue that may have arisen. At these meetings, Candidates will be expected to update of any upcoming changes in legislation, and changes and trends in their industry, or any changes in technology, that may affect the delivery of the service.

Invoicing:

All billing documentation must be accurate i.e. correct description of Services provided, correct contract prices etc. It must be of pre-printed type and contain at a minimum the DPS Client site, reference number, service/work descriptions, corresponding volumes and / or work hours and corresponding applicable rates, as well as full totals and VAT totals.

Invoices should be issued as per timeframe agreed with each participating DPS Client sites at the start of the contract, and only after any issue and / or dispute relating to the deliveries has been resolved.

Candidates must have a process for satisfactorily dealing with invoice errors, as notified by the client, and these must be resolved within a reasonable period of time, but a maximum 5 working days.

Electronic submission and payment of invoices should be available as an option.

Appendix 2: Candidate's Statement

TO: Saint John of God Community Services clg (the "Contracting Authority").

RE: Request for Applications to Participate in the DPS for the provision of Planned Maintenance and Refurbishment Works.

Having examined the Request for Application to Participate in the DPS (the "RFATP") including the Instructions to Candidates, the Selection Criteria, 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 Services 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, Contracts 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 the RFATP.
4. We accept all the Selection Criteria as set out in Part 3 of the RFATP.
5. We agree to provide the Services in accordance with the RFATP, our Application, the RFT and our response to the RFT if awarded any Contract pursuant to the DPS Agreement.
6. 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 Services Contract at Appendix 6 and Works Contract at Appendix 7.
7. We shall, if awarded any Contract pursuant to the DPS, have in place on the Effective Date of the 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.
8. We agree that, if awarded any Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
9. 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.

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 for Applications to Participate in a Dynamic Purchasing System for the Provision of Planned Maintenance and Refurbishment Works.

NAME: *[Click here and insert name]*

ADDRESS: *[Click here and insert name]*

I, *[click here and insert name of Declarant]* having been duly authorised by *[click here and insert name of entity]*, sincerely declare that *[click here and insert name of entity]* itself or any person who has is a member of the administrative, management or supervisory body of *[click here and insert name of entity]* or has powers of representation, decision or control in *[click here and 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 *[click here and 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 Services 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.
- (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	Name of Declarant in print or block capitals

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

(signed)
Practising Solicitor/Commissioner for Oaths

Appendix 5: Dynamic Purchasing System Agreement

Dynamic Purchasing Agreement for the provision of Planned Maintenance and Refurbishment Works

THIS DYNAMIC PURCHASING AGREEMENT IS MADE ON THE ____ DAY OF _____ 20__

("the DPS Agreement")

BETWEEN:

Saint John of God Community Services clg whose offices are located at Hospitaller House, Stillorgan, Co. Dublin ("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 for Applications to Participate in a Dynamic Purchasing System for the provision Planned Minor Building Works, Maintenance and Improvements*" ("the RFATP") the Contracting Authority invited Candidates to participate in a DPS agreement for the provision of the Services described in Appendix 1 of the RFATP (the "Services"). 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 _____ and _____ (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 ("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 _____ and _____ (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;

“DPS Client” means any party identified in Part 1, paragraph 1.7 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 Services 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 five (5) years 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 Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the DPS Term for a period or periods of up to twelve (12) months with a maximum of three (3) of such extensions on the same terms and conditions.
- 2.7 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 Services and in the analysis and reporting of spend data including the preparation and publishing of reports.

3. DPS AGREEMENT MANAGEMENT

- 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 shall provide up-to-date documentary evidence that each entity

concerned fulfils the compliance and selection requirements as set out in Part 3 of the RFATP no later than five (5) calendar days following receipt of a request from the Contracting Authority.

- 3.3 Subcontractors nominated and relied upon by the DPS Member in their Application for admission to the DPS may not be changed throughout the Term of this DPS Agreement without the prior consent in writing of the Contracting Authority. The DPS Member must set out the rationale for the proposed change in Subcontractor. The responsibility will be on the DPS Member to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as set out 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.

4. CONTRACT

- 4.1 This DPS Agreement relates to the provision of the Services.
- 4.2 Where the DPS Member is awarded a Contract further to the procedure set out in accordance with clauses 5 and 6, it shall provide the Services to the DPS Client(s) in accordance with the Contract. Subject to the provisions of this DPS Agreement and to the satisfaction of any pre-conditions to the award of a Contract, the successful DPS Member shall be required to enter into the Contract with the DPS Client. In so far as any Contract(s) awarded under this DPS Agreement is in place and for the duration of such Contract(s), the provisions of this DPS Agreement shall continue in force in relation to such 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, a DPS Client or group of DPS Clients propose(s) to award a 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 Contract to be awarded;
 - the specific DPS Client(s) 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 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 Contract if greater than requested as part of the DPS Qualification;
- the type of service(s) required by the DPS Client(s);
- the Pricing Matrix that will apply to the relevant Mini-Competition;
- any additional conditions (if any) that will apply to the Contract to be awarded in addition to the terms and conditions of the Services Contract at Appendix 6 or Works Contract at Appendix 7 of the RFATP.

5.1.2 All Responses to the RFT must be submitted via the etenders 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 RFT will be communicated via the Electronic Platform only.

5.1.4 The Contracting Authority/DPS Client may award a 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. MANDATORY REQUIREMENT AND AWARD CRITERIA

6.1 Award Criteria for Mini-Competitions

The award criteria for Mini-Competition shall be Price and Qualitative.

The Award Criteria shall be:

Price (50% - 75%)

Qualitative (25% - 50%), which shall include all, or a number of, the following criteria:

1. Approach to Provision of the Services;
2. Timeframe to complete the service and/or works;
3. Professional experience & certification;
4. Material Quality Control / Assurance;
5. Warranty of works;
6. Environmental and/or Social Considerations;
7. Administrative Support.

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 Contract has been executed by or on behalf of the DPS Client.

6.4 The Contracting Authority/DPS Client(s) may cancel a Mini-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 Services 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 8 to the RFATP.
- 13.3 No publicity regarding this DPS Agreement or any 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 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 This DPS Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving one (1) month written notice to the DPS Member through the Electronic Platform.

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;

- 1722 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.
- 1723 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;
- 1724 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;
- 1725 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;
- 1726 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;
- 1727 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
- 1728 in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the DPS Member.
- 173 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.
- 174 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 the relevant Category Manager 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 Services 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 Services to the Contracting Authority and the DPS Clients. In the event that any of the Key Personnel assigned by the Contractor to deliver the Services and related services under this Agreement becomes unable to provide the Services 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 14 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 in the presence of: _____ Witness	SIGNED by _____, being an Officer so authorised by the DPS MEMBER in the presence of: _____ Witness
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ANNEX I - MANAGEMENT PROVISIONS

DPS Members will be required to deliver copies of DPS Client management information quarterly reports for each contract awarded pursuant to Mini-Competitions to Saint John of God Community Services clg Headquarters, on request. The minimum information required in management information reports is:

- Name of the DPS Client
- DPS Client Main Contact
- Total Service / Works value (excl. VAT)
- Day of award
- Estimated time of completion

Appendix 6 - Services Contract

[Insert name of Contracting Authority]

and

[Insert successful Tenderer's full legal name]

AGREEMENT

Relating to the provision of Services pursuant to
Request for Tenders for the provision of Planned Maintenance and Refurbishment Works

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

[Insert name of Client] 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 Tender entitled “Request for Applications to Participate in a Dynamic Purchasing System for the provision of Planned Maintenance and Refurbishment Works” advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number _____ of _____ (“the RFT”) the Contracting Authority invited economic operators to participate in a Dynamic Purchasing System Agreement for the provision of the Services described in Appendix 1 of the RFATP (the “Services”). References to the RFATP shall include any clarifications issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie (the “Electronic Platform”) [insert date] and [insert date] (the “RFATP Clarifications”). The RFATP (including the RRFATP 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 the Services set out in the RFT. 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 E attached hereto;
 - ii. The Dynamic Purchasing Agreement;
 - iii. The RFATP;
 - iv. The RFT;
 - v. The Application;
 - vi. The Tender Response.
2. The Contractor agrees to provide the Services described in Schedule B (the “Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quantity, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT, the RFT, the Submission and the Response (“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: to be completed on signing] of [Contractor contact address: to be completed on signing].
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”).

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

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

1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
1. provide the Services 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. provide the Services 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 Services are 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), to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as possible of any changes to the name, contact, details and legal representatives of its Subcontractors.

- 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 10.
- 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 Saint John of God Community Services Headquarters and that it may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "TUPE Regulations") and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

2. Key Personnel

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission ("Key Personnel"), assigned by it to provide the Services shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. In the event that any of the Key Personnel assigned by the Contractor to provide the Services under this Agreement becomes unable to provide the Services for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of

equivalent experience and expertise ("Replacement Personnel"). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

3. Payment

- A. Subject to the provisions of this clause 3 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 10A 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 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 Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 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. 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
 - 4 The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all applicable 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 otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- 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 provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

4. Warranties, Representations and Undertakings

- A.
 - 1. The Contractor acknowledges, warrants, represents and undertakes that: it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
 - 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 - 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, 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 provision of the Services as they apply to the Contractor;
 - 5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
 - 6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” dated [date], which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
 - 7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
 - 8. *Delete and replace with “Not Used” if not applicable:* it has inspected the Client’s premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;
 - 9. the Client shall be under no obligation to purchase any minimum number or value of Services; and

- 10 it retains and shall maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.10.
- B. 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 at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

5. 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 5A 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(G), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E. Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6(G) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 100 per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement regardless of the number of claims.

- F. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows:

20% of the monthly value of the invoice for the number of months that the Client is unsatisfied with the service.

("the Retention Amount") which Retention Amount shall not at any given time exceed 20 per cent of the Charges. In such event the Client shall identify the particular Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5F shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

- G. *You must select one or the other of either G or H. Delete and replace with "Not Used" if not applicable:*

Time of delivery shall be of the essence and if the Contractor fails to deliver the Services within the time period promised or specified in the Specification, the Client may by notice in writing to the Contractor's Contact release itself from any obligation to accept and pay for the Services and terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.
[will be set out in the mini-competitions]

- H. *You must select one or the other of either G or H. Delete and replace with "Not Used" if not applicable:*

Without prejudice to any general right to damages under this Agreement where the Contractor does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Client may, at his discretion, deduct [amount] per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of [amount] (the "Liquidated Damages Threshold").
[will be set out in the mini-competitions]

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

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

6. 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 6 will survive the expiration or termination of this Agreement for any reason.

7. 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 7; 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 7; 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 between the Contractor and the Client dated [insert date] and entered into pursuant to clause 13.2 of the DPS Agreement (“the Confidentiality Agreement”).
- The obligations in this clause 7 will not apply to any Confidential Information:
- in the receiving Party’s possession (with full right to disclose) before receiving it from the other Party; or
 - which is or becomes public knowledge other than by breach of this clause; or
 - is independently developed by the disclosing Party without access to or use of the Confidential Information.
- is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.
- D. In circumstances where the Client is subject to the provisions of the Freedom of Information 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.
- E. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

8. 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 8B 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 14 calendar days either Party may terminate at 14 days' notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

9. Termination

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving 1 months written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving 2 months written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 9(a) and any her 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 any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
- D.** Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E** If requested by the Client, the Contractor shall, promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client (“Employment Information”). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

10. 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 as 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.

11. 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.

12. 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.

13. 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 13.
- 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.

14. Assignment and Subcontract

- A. Subject to a Party's obligations at law, any assignment to a third party 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.

15. 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.

16. 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.

17. 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.

18. Non-exclusivity

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

19. 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.

20. 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 Services 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 20C 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.

21. 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 Services are being performed for the Client under this Agreement.

22. Equipment

- A. The Contractor shall provide all equipment and materials necessary for the provision of the Services ("Equipment").
- B. All Equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of, caused by or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.
- C. The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.
- D. The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:
- i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
 - ii. replace such item with a suitable substitute item of Equipment.

- E. On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or Subcontractors.

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. Change Control Procedure

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

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 Commission 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 Commission 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.

(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

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

(OR IF USING A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

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 provision in this schedule shall apply ONLY IF marked as 'applies'.

SPECIAL CONDITION 1 – EQUIPMENT

SC 3 Supplier to provide Equipment.

SC3(A) The Contractor shall provide all equipment and materials ("Equipment") necessary for the provision of the Services.

SC3(B) All Equipment brought onto the Client's premises shall be at the Contractor's own risk and the Client shall have no liability for any loss of or damage to any Equipment. The Contractor shall provide for the haulage or carriage thereof to the Client's premises and the removal of Equipment when no longer required at its sole cost. Unless otherwise agreed, Equipment brought onto the premises will remain the property of the Contractor.

SC3(C) The Contractor shall maintain and store all items of Equipment within the Client's premises in a safe, serviceable and clean condition.

SC3(D) The Contractor shall, at the Client's written request, at its own expense and as soon as reasonably practicable:

- i. remove from the Client's premises any Equipment which in the reasonable opinion of the Client is either hazardous, noxious or not in accordance with this Agreement; and
- ii. replace such item with a suitable substitute item of Equipment.

SC3(E) On completion of the Services the Contractor shall remove the Equipment used by the Contractor to provide the Services and shall leave the Client's premises in a clean, safe and tidy condition. The Contractor is solely responsible for making good any damage to the Client's premises or any objects contained thereon, other than fair wear and tear, which is caused by the Contractor or any of its employees or subcontractors.

Schedule B: Services: 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]

[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

Appendix 7 Term Maintenance and Refurbishment Works Contract

Public Works

Term Maintenance and Refurbishment Works Contract

CONDITIONS

Contents

1.	This Contract
2.	Duration of Term
3.	Task Orders
4.	Completing Tasks
5.	Quotations for Tasks
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7.	Site Operations and Works
8.	Contractor's Personnel
9.	Pay and condition of employment of workers
10.	Loss and damage
11.	Insurances
12.	Property
13.	Ethics in Public Office
14.	Law and disputes
15.	Contractor's risk of loss and damage to the Works and Employer's existing facility

CONDITION

S

1. This Contract

- 1.1 This contract is for the Contractor to execute work according to Task Orders issued from time to time by the Employer. The Employer may procure that work in other ways, and does not guarantee the Contractor that any particular work will be procured under this contract.
- 1.2 In this contract
- 🏡 The **Building Control Regulations** are the Building Control Regulations 1997-2014 and any amendments thereto.
 - 🏡 The **Contractor** is as named in the accepted Tender.
 - 🏡 The **Contractor's Personnel** are the Contractor's:
 - representative and supervisor
 - subcontractors and suppliers of any tier and
 - employees and other persons working for the Contractor, subcontractors or suppliers of any tier or otherwise assisting the Contractor for the Works.
 - 🏡 **Data Protection Law** is all applicable data protection Law, including the General Data Protection Regulation (Regulation (EU) 2016/679).
 - 🏡 The **Employer** is as named in the accepted Tender.
 - 🏡 The **Employer's Representative** an engineer, architect, surveyor, or other person notified by the Employer, or if none, the Employer.
 - 🏡 The **Maximum Payment** is the amount stated as such in the Schedule.
 - 🏡 **Personal Data** shall have the meaning set out in the General Data Protection Regulation in respect of any such personal data processed on behalf of the Employer.
 - 🏡 The **Pricing Document** is the document identified as such in the Schedules.
 - 🏡 A **Site** is a place where the Contractor is to carry out a Task according to a Task Order and anywhere else a Task Order says is part of a Site.
 - 🏡 The **Schedule** is the schedule attached to the Contractor's Tender, and "**Scheduled**" refers to the Schedule.
 - 🏡 A **Task** is work described in a Task Order.
 - 🏡 A **Task Order** is a written order given to the Contractor under clause 3.1 in the form included in this contract.
 - 🏡 The **Term** is the period delimited in clause 2.1
 - 🏡 The **Works** are what the Contractor is to complete and hand over to the Employer as described in Task Orders.
 - 🏡 The **Works Requirements** are the documents identified as such in the Schedule, as may be amended by instruction of the Employer's Representative according to this contract.
 - 🏡 **Covid-19** means Covid-19 or such variant thereof as each is listed in the schedule to the Infectious Diseases Regulations 1981.
 - 🏡 **Covid-19 Mandatory Closure** means the closure of the Site due to Covid-19 mandated by law and/or mandated by order of a public authority exercising authority under law, that did not arise as a result of or in connection with an act, omission or breach of law of the Contractor or the Contractor's Personnel or a breach of the Contract by the Contractor.
 - 🏡 **Site Closure Costs** has the meaning set out in the Site Closure Costs Supplement.
 - 🏡 **Site Closure Costs Supplement** means the document of the same name listed in part 1.4 of the Schedule or, if there is none, the version of the document of the same name published on the Office of Government Procurement website most recently before the day 10 days before the final date for submission of tenders for this contract.
- 1.3 Unless the context indicates otherwise

- References to clause numbers are to the clauses of these Conditions.
- Words in the singular also mean the plural and the other way around.
- Words in a gender also mean other genders.
- Person** includes incorporated and unincorporated organisations.
- References to a **month** are to a calendar month and to a **day** are to a calendar day.
- References to the parties are to the Employer and the Contractor.
- References to a law include amendments and replacements.

- 1.4 This contract is the entire agreement between the parties about the Works and consists of:
- these conditions and the appended forms and
 - the appended executed agreement (referred to in clause 1.11) and
 - the completed tender, acceptance, and Schedule and
 - the Works Requirements and
 - the Pricing Document.
- 1.5 If there is a discrepancy between these conditions and other documents in this contract, these conditions prevail. If there is a discrepancy between the Works Requirements and the Pricing Document, the Works Requirements prevail. If there is a discrepancy between the Works Requirements and a Task Order, or the Pricing Document and a Task Order, the Task Order prevails. If a party discovers a discrepancy within the Works Requirements, it must notify the other as soon as practicable, and the Employer's Representative may resolve the discrepancy by an instruction.
- 1.6 Any quantities in the Pricing Document are notional quantities only, included only for tender assessment purposes. They do not describe the extent of the Works to be executed under this contract.
- 1.7 This contract comes into effect when the Employer sends the Contractor written acceptance of the Contractor's tender for this contract.
- 1.8 The Contractor must perform this contract at its own expense, complying with this contract, each Task Order, the Employer's Representative's written instructions, and the law.
- 1.9 The Contractor may not assign this contract or any part of it without the Employer's consent.
- 1.10 The Contractor should have given the Employer the documents listed below before the Employer sends the Contractor written acceptance of the Contractor's tender for this contract, failing which the Contractor must do so within 7 days after the Employer has sent the Contractor written acceptance of the Contractor's tender:
- The appointment of project supervisor for the construction stage in the form included in this contract, executed by the Contractor (if the tender provides for the Contractor to be so appointed)
 - Evidence of insurance as required under clause 11.5
 - Confirmation that the Contractor has entered subcontracts with any Specialists named in the Schedule for the work referred to
 - The Contractor's tax clearance certificate and C2 certificate.
- 1.11 Within 14 days after the Employer sends the Contractor written acceptance of the Contractor's tender for this contract, the parties must execute the agreement in the form appended to these conditions.
- 1.12 Neither the Employer nor the Contractor has relied on any agreement, understanding, or statement that is not written or referred to in this contract.
- 1.13 This contract can only be changed in writing, signed by authorised representatives of the Employer and the Contractor.
- 1.14 The Contractor must inform the Employer if there is any material change in any information provided by the Contractor to the Employer in connection with the award procedure for this contract. The Contractor must provide any updates to such information requested by the Employer.
- 1.15 The Contractor agrees that:

- (a) the Contractor shall process Personal Data only in accordance with the Contract and Data Protection Law;
- (b) the Contractor shall ensure persons authorised by the Contractor to process Personal Data are subject to confidentiality obligations as provided under Data Protection Law;
- (c) the Contractor must take appropriate technical and organisational security measures as are required to comply with Data Protection Law;
- (d) the Contractor may engage sub-processors to perform processing on its behalf, provided it gives prior written notice and informs the Employer of any changes concerning the status of such sub-processors and allows the Employer reasonable opportunity to object to such changes;
- (e) where any sub-processor of the Contractor will be processing Personal Data on behalf of the Employer, the Contractor shall ensure that a written contract exists between the Contractor and the sub-processor containing clauses equivalent to those imposed on the Contractor by the Contract;
- (f) the Contractor shall delete or return all Personal Data as directed by the Employer's Representative and not later than when the Contractor completes its contractual duties relating to such data processing;
- (g) the Contractor shall: (i) make available to the Employer all information necessary to demonstrate compliance with this Clause; and (ii) allow for and assist with audits, including inspections, conducted by or on behalf of the Employer, in order to ensure such compliance, provided however that the Employer shall be entitled, at its discretion, to accept adherence by the Contractor to an approved code of conduct or an approved certification mechanism to aid demonstration by the Contractor that it is compliant;
- (h) the Contractor shall inform the Employer's Representative immediately if, in its opinion, it receives an direction which infringes Data Protection Law;
- (i) the Contractor shall notify the Employer's Representative within 24 hours of becoming aware of any act or omission [including breach of security] leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of or access to Personal Data transmitted, stored or otherwise processed and shall provide co-operation and assistance to the Employer as is required to mitigate the effects of, and comply with applicable reporting obligations in respect of, such act or omission; and
- (j) no Personal Data shall be transferred outside the European Economic Area by the Contractor or any of its agents or sub-processors without the prior written consent of the Employer, and the Contractor shall comply with Data Protection Law in respect of Personal Data transfers outside the European Economic Area which the Employer has consented to.

2 Duration of Term

- 2.1 The Term starts on the date the Employer accepts the Contractor's Tender and ends on the earliest of
 -  the end of the period stated in the Schedule
 -  the date of termination under clause 2.3
 -  the date on which the cumulative amount claimed by the Contractor under clause 6 reaches the Scheduled percentage of the Maximum Sum.
- 2.2 When the Term ends the Contractor must complete any outstanding Task Orders given during the Term unless otherwise instructed by the Employer's Representative.
- 2.3 The Employer may terminate the Term at any time, without cause, by written notice to the Contractor. The Term will end on the date stated in the notice. The Employer's only liability on termination of the Term will be to pay amounts due under clause 6.

3 Task Orders and Instructions

- 3.1 If, during the Term, the Employer's Representative gives the Contractor a Task Order, the Contractor must execute the Task as soon as practicable. If the Works Requirements or a Task Order states a time for starting or completing the Task or both, the Contractor must start and, as far as practicable, complete the Task within the time stated.
- 3.2 If the Employer's Representative gives the Contractor an instruction in relation to a Task the Contractor must implement the instruction. This can include an instruction changing a Task Order.
- 3.3 The Employer's Representative must give the Contractor any further instructions that are necessary for the Contractor to do the Works, if the Contractor asks for them in writing. The instruction must be given within a reasonable time, taking into account when the Contractor asked for it and when the Contractor needs it to avoid delay.
- 3.4 Instructions are normally given in writing (which can include email). In an emergency, the Employer's Representative may give the Contractor an oral instruction, in which case the Employer's Representative must confirm it in writing within 48 hours after it was given, failing which the Contractor must confirm the instruction in writing to the Employer's Representative within 72 hours after the oral instruction was given.
- 3.5 Except as this contract says otherwise, all communications provided for in this contract must be in English and in writing.
- 3.6 Task Orders and instructions given according to order management procedures in the Works Requirements are considered to be given by the Employer's Representative. The Contractor must comply with those procedures.

4 Completing Tasks

- 4.1 Promptly after completing a Task the Contractor must return the Task Order to the Employer's Representative with the certificate of completion of the Task completed.
- 4.2 Within 7 days after receiving the Task Order back from the Contractor with the certificate of completion of the Task completed, the Employer's Representative must send it back to the Contractor with either
 - ✉ acknowledgement of receipt of the certificate of completion or
 - ✉ notification that the Employer's Representative does not consider the Task complete or disagrees with the stated completion date, with reasons.Neither acknowledgement of receipt of the certificate nor notification that the Employer's Representative does not consider the Task complete (or reasons given) relieves the Contractor of any responsibility or liability.
- 4.3 If completion of a Task is or will be delayed, the Contractor must notify the Employer's Representative of the delay within 24 hours after becoming aware of the delay and keep the Employer's Representative informed of progress.
- 4.4 If the Contractor fails to comply with a Task Order or with this contract in relation to a Task, or if the Contractor ceases to meet the minimum requirements for selection for tender for this contract, or if an **insolvency event** occurs, the Employer may terminate any uncompleted Task Order and have the Task completed by others. In this event no further payment for the Task will be due to the Contractor until the Task has been completed, and the Contractor will be liable for the Employer's additional costs of completing the Task. **Insolvency event** means any of the following: a petition being presented to wind up the Contractor; a meeting of the Contractor's creditors or members being held for the purpose of considering a petition to wind it up; the Contractor entering or proposing to enter an arrangement for the benefit of its creditors; a petition being presented to appoint an examiner of the Contractor; a liquidator, examiner, supervisor, receiver, administrative receiver, trustee, encumbrancer, or similar being appointed for the Contractor or any of its assets; the Contractor ceasing or threatening to cease its business or becoming insolvent or unable to pay its debts as due or becoming bankrupt or incapable of performing this contract.
- 4.5 Communications under this clause must comply with any order management procedures in the Works Requirements, including as to the timing and format.

- 4.6 The Employer's Representative will extend the time stated for completion of a Task by an amount corresponding to any delay to the completion of the Task caused by a Covid-19 Mandatory Closure. The Employer's Representative will assess the amount of any adjustment to the value of the completed Works stated in the Task Order in accordance with the Site Closure Costs Supplement and this sub-clause 4.6.

5 Quotations for Tasks

- 5 The Employer's Representative may give the Contractor details of a proposed Task Order (or a proposed instruction changing a Task Order) with a request for a quotation.
- 5 If so requested, the Contractor must give the Employer a lump sum fixed price quotation for the proposed Task described by the Employer, using Contract rates and prices if they apply, together with a detailed programme and any other information requested by the Employer's Representative. The Contractor must give this quotation to the Employer's Representative within the time specified by the Employer's Representative and, if no time is specified, within 10 days after the Employer's Representative sends the request.
- 5 After receiving the quotation the Employer's Representative may do one or more of the following:
-  issue a Task Order including the Contractor's quotation
 -  request the Contractor to revise the quotation, following which Employer's Representative may take any of the other steps in this Clause 5.3
 -  issue a Task Order as though there had been no quotation
 -  abandon the process and issue no Task Order.
- 5 After the cumulative amount claimed by the Contractor under clause 6 has reached the Scheduled percentage of the Maximum Sum, the Employer's Representative may only give Task Orders that include an accepted quotation, and the accepted quotation may not exceed the Scheduled percentage of the Maximum Sum.

6 Payment

- 6.1 Subject to this contract the Employer must pay the Contractor the value of completed Works according to this contract, up to the Maximum Sum.
- 6.2 For Task Orders including a price quoted by the Contractor, the value of the Works is that price as stated in the Task Order. Works done by a specialist named in the Task Order are valued at rates in the Task Order. For other Task Orders the Works are valued using the rates and prices in the Pricing Document and if there is no rate or price in the Pricing Document, by making a fair valuation or, if the Employer's Representative so instructs, on the basis of the labour rates tendered in the Pricing Document and the time properly spent by workers executing the Works, the reasonable cost of materials properly used plus the markup tendered in the Pricing Document, and the reasonable cost of plant properly used, all as documented to the Employer's satisfaction.
- 6.3 Each month and not later than 5 days after the date agreed between the parties to be the payment claim date the Contractor shall give the Employer's Representative a payment claim notice, in the form of a detailed statement of the contract value of the Works in those Tasks for which the Contractor has received in the previous month an acknowledgement of receipt of the certificate of completion of the Task under clause 4.2 (less any interim payment for these Works). It must comply with any procedures in the Works Requirements. The statement must be broken down by Task, and show details of how the value is calculated.
- 6.4 The Employer has no liability whatsoever in connection with any Task for any amount not detailed in statements given to the Employer's Representative within 2 months after work on the Task ceased.
- 6.5 The Employer's Representative may state in a Task Order that the Employer will make interim monthly payments. In that case the Contractor may include in its monthly statements the Scheduled percentage of the contract value of completed Works in the Task, less previous payments for those Works.

- 6.6 Within 14 days after receiving the payment claim notice the Employer's Representative shall issue a response to the payment claim notice, to the Contractor and the Employer in the form of a certificate stating the amount that the Employer's Representative considers due for the Works covered by the statement. If the certificate states that an amount is due to the Contractor, the Contractor shall send an invoice to the Employer for that sum. The Employer must pay the Contractor the amount due on the invoice within the Scheduled period after receiving the invoice.
- 6.7 Within 28 days after receiving the Employer's Representative's response under clause 6.6 (or within 28 days after the Employer's Representative's time to respond expired with no response given, in which case the response will be taken to be that no payment is due) the Contractor or the Employer may notify the other that it disputes the response and refer the disputed issue for resolution under clause 14. If neither party does so within the time allowed the Employer's Representative's response is final and binding on the parties.
- 6.8 If a payment is not made within the time allowed in this contract, it carries interest at the rate in the European Communities (Late Payment in Commercial Transactions) Regulations 2012.
The Maximum Sum and the rates and prices in the Pricing Document exclude VAT. The Employer must pay the Contractor (or the Revenue Commissioners when required by law or their practice) any VAT applicable to the Works.
- 6.10 The Employer may withhold and deduct any amount on account of tax required by law or the practice of the Revenue Commissioners
- 6.11 The Employer may deduct from amounts due to the Contractor any amount that the Employer considers is due, or likely to become due, to the Employer from the Contractor under this contract or another contract.

7 Site operations and Works

- 7.1 The Employer must allow the Contractor access to the relevant parts of the Site as necessary for the Contractor to execute a Task
- 7.2 The Contractor is responsible for the safety and stability of the Works, and of all operations on the Site connected with the Works, including temporary works.
- 7.3 The Contractor (including Contractor's Personnel) must carry out the Works according to good practice in conformance with the Building Regulations, and must only use goods and materials that are of good quality and (unless this contract or a Task Order says otherwise) new. Where requested by the Employer's Representative, the Contractor shall provide the certification necessary to comply with the Building Control Regulations.
- 7.4 From when the Employer allows the Contractor access to any part of the Site, the Contractor must (in relation to parts to which access is allowed):
 as far as practicable, secure the Site and keep off the Site persons not entitled to be there and
 keep the Site in good order and free from unnecessary obstructions and
 as far as practicable, secure the safety of persons on the Site and protect them and users, owners and nearby areas from hazards and interference resulting from the Works.
- 7.5 As far as practicable, the Contractor must not, and must ensure that Contractor's Personnel and the Works do not unnecessarily or improperly
 cause a nuisance or inconvenience to the public or users, owners, occupiers of land, roads, or footpaths on or near the Site, or
 interfere with the use of land, roads, or footpaths.
- 7.6 The Contractor must not, and must ensure that Contractor's Personnel do not, damage the Site or property on or near the Site, unless that is the unavoidable consequence of executing a Task.
- 7.7 The Contractor must set out the Works by reference to any points, lines, and levels in a Task Order or instructions of the Employer's Representative. Before setting out the Works, the Contractor must make all reasonable efforts to verify the accuracy of these points, lines, and levels. The Contractor is responsible for the correct positioning of all parts of the Works.

- 7.8 The Contractor must ensure that the Employer, and persons authorised by the Employer, are able to have access to the Site and other places where the Works are being done or goods or materials for or from the Works are produced, stored, extracted, or prepared, and there to inspect, test, and observe the Works, goods, materials, and activities. The Contractor must give the Employer the information the Employer's Representative requires or requests to do this.
- 7.9 The Contractor must inform the Employer's Representative in good time before any part of the Works is covered or goods or materials for the Works that are to be inspected are packed or made difficult or impossible to inspect, and in each case give the Employer's Representative a proper opportunity to inspect them.
- 7.10 The Employer may arrange for work to be done on the Site by the Employer's personnel or other contractors.
- 7.11 At any time during the Term the Employer's Representative may instruct the Contractor to uncover, dismantle, re-cover, or re-erect work, test, inspect, or provide facilities for testing and inspection, or any combination of these. If it is found that the Works complied with this contract and the instruction was not required because of the Contractor's breach of this contract the instruction will be considered an instruction changing the Task Order, otherwise the Contractor must bear the cost of complying with the instruction.
- 7.12 At any time during the Term the Employer's Representative may instruct the Contractor to remove from the Site and replace any Works, or goods or materials for the Works, that do not comply with this contract, or otherwise to put right (in a manner instructed by the Employer's Representative) any part of the Works that do not comply with this contract. The Contractor must bear the cost of complying with such an instruction. If the Contractor fails to comply with the instruction promptly, the Employer may do the work itself, or have it done by others, and the Contractor must pay or allow the Employer's cost of the work.
- 7.13 If the Contractor discovers a national monument or archaeological object (each as defined in the National Monuments Act 1930 as amended) or human remains on the Site, the Contractor must not disturb them, and must take all necessary steps to preserve them, and promptly notify the Employer's Representative and comply with the Employer's Representative's instructions. As between the parties, these items are the Employer's property.
- 7.14 If the Contractor encounters physical conditions (including contamination) on the Site that could not reasonably have been foreseen by an experienced contractor, taking into account the information about the Site in this contract, the Contractor must notify the Employer's Representative as soon as practicable, and give the Employer's Representative details of any anticipated effects of the condition, and how the Contractor proposes to deal with them.
- 7.15 Unless otherwise stated in a Task Order, the Contractor, and not the Employer, is responsible for the suitability and availability of access routes to and through the Site, and any required maintenance and upgrading of them, and charges for their use. The Contractor is also responsible for obtaining and providing all facilities, power, water, and other services it requires to complete the Works, other than those a Task Order states the Employer will provide.

8 Contractor's Personnel

- 8.1 The Contractor must ensure that Contractor's Personnel are suitably qualified, trained, and experienced, are competent to carry out their tasks and, when required by the Works Requirements or Task Order, have Garda Síochána clearance. The Contractor must ensure that Contractor's Personnel carry out their tasks in compliance with the Contractor's obligations under this contract. The Contractor is liable for acts and omissions of Contractor's Personnel as if they were acts or omissions of the Contractor.
- 8.2 The Contractor must ensure that the specialists named in the Schedule or a Task Order (or others to whom the Employer's Representative has agreed in advance) perform the work types for which they are named. If so required by the Employer's Representative, the Contractor must ensure that specialists named in the Schedule enter into collateral warranties with the Employer. The collateral warranties must be in the form published in the model forms on www.constructionprocurement.gov.ie or another form required by the Employer. They must require the specialist to have professional indemnity insurance as Scheduled.

- 8.3 The Contractor must remove from the Tasks and the Site any Contractor's Personnel that the Employer's Representative instructs be removed.
- 8.4 The Contractor may not subcontract the whole of the Tasks to one or more subcontractors. The Contractor may not subcontract part of the Works without the Employer's Representative's consent, unless the subcontracting is allowed or required by this contract.
- 8.5 The Contractor must indemnify the Employer against claims, liability, and proceedings resulting from any worker or other person claiming to be an employee or former employee of the Contractor or Contractor's Personnel relating to employment or non-employment or engagement or non-engagement by the Contractor or Contractor's Personnel, including claims for breach of contract, wrongful or unfair dismissal, loss of office, redundancy, or loss of earnings and also including claims, liability, and proceedings of any kind under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. The Employer holds this indemnity for the benefit of itself and any other contractor it appoints to replace the Contractor.
- 8.6 When so required by the Employer, the Contractor must, to the extent allowed by law, give the Employer details of people employed or engaged wholly or mainly for work under this contract, including their job titles, ages, length of service, and terms of employment.

9 Pay and conditions of employment of workers

- 9.1 The Contractor must prominently exhibit copies of this clause 9 for the information of persons at the Site. In this clause **worker** means a person employed by (or otherwise working for) the Contractor or the Contractor's Personnel on or near the Site.
- 9.2 The Contractor must ensure that the rates of pay and the conditions of employment (including in relation to pension contributions) of each worker comply with all applicable law, and that those rates and conditions are no less favourable than those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented in accordance with the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act 2015, which have not otherwise been superseded).
- 9.3 The Contractor must, and must ensure that the employers of all workers, do all of the following:
- 🏠 pay all wages and other money due to each worker
 - 🏠 ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
 - 🏠 pay all pension contributions and other amounts due to be paid on behalf of each worker
 - 🏠 make all deductions from payments to workers required by law, and pay them on as required by law
 - 🏠 keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by persons authorised by the Employer, whenever required by the Employer
 - 🏠 produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Employer, whenever required by the Employer
 - 🏠 employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Employer, whenever required by the Employer
 - 🏠 respect the right under the law of workers to be members of trade unions
 - 🏠 observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act 2005 to 2014, and all employment law including the Employment Equality Act 1998 to 2015, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015 and regulations, codes of practice, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements determined under those laws.

- 9.4 If the Employer so requests, the Contractor must, within 7 days after the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 9.5 The Employer may seek information under the above provisions of this clause only for the purpose of ensuring the obligations described in this clause to workers have been properly discharged. All information provided under the above provisions of this clause will be returned to the person providing it or destroyed if the Employer is satisfied that the person providing the information has complied with legal obligations to workers.
- 9.6 If the Contractor has not complied with this clause, the Employer may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may withhold the estimated amount from any payment due to the Contractor, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time of the final payment, the estimated amount is deducted from the Price.

The Contractor must give the Employer's Representative with each statement under clause 6 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the statement included in this contract, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time of the final payment, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.

- 9.7 The Contractor must give the Employer's Representative with each statement under clause 6 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the statement included in this contract, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time of the final payment, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.
- 9.8 If the Contractor does not comply with this clause, it must pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.

10 Loss and damage

- 10.1 This clause 10.1 applies unless the Schedule states that clause 15 applies, in which case this clause 10.1 does not apply.

The Employer bears the risk of loss of or damage to the Works (and to any Employer's property to be altered or extended by the Works) caused by any of the following perils (as defined, where applicable, in standard fire and specified periods insurance policies available in Ireland): fire, storm, tempest, flood, bursting or overflowing of water mains, apparatus or pipes, explosion, impact, aircraft, riot, civil commotion, malicious damage, war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power, pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds, contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, terrorism, use or occupation of the Works or facilities by the Employer, design of the Works by the Employer or by others for whom the Employer is responsible. But the Contractor bears the risk of and must indemnify the Employer against such loss and damage to the extent caused by the negligence of the Contractor or Contractor's Personnel to the extent (and up to the limit) required to be insured under clause 11.1.

- 10.2 The Contractor must indemnify the Employer against claims, liability, and proceedings, that happen in the course or as a result of the Works. This indemnity does not apply to the Employer's liability under this contract to the Contractor, nor to the extent that the matter is covered by the Employer's indemnity in clause 10.3.

- 10.3 The Employer must indemnify the Contractor against claims, liability, and proceedings that happen in the course of the Works and are for
-  death, injury or illness of any person or loss of or damage to physical property caused solely by the Employer's negligence or
 -  loss of or damage to physical property that is the unavoidable result of executing the Works in accordance with this contract.

11 Insurances

- 11.1 During the entire Term the Contractor must have public liability and employer's liability insurance, with indemnity limits at least as stated in the Schedule. The Contractor's public liability policy must insure the Employer and Contractor as insured, with a cross-liability clause. The Contractor's employer's liability policy must indemnify the Employer against the liability for which it indemnifies the Contractor, including costs. The Contractor must maintain these insurances until it has completed all the Works and after that must have these insurances in place any time the Contractor or Contractor's Personnel return to a Site in connection with the Works.
- 11.2 The Contractor must place the insurances required by this contract with reputable insurers approved by the Employer. The levels of excess must be no higher than stated in the Schedule.
- 11.3 The insurance on which the Employer is to be insured must provide that the term 'insured' applies to each insured person as if a separate policy had been issued to each (without increasing the overall limit of indemnity) and non-compliance by the Contractor or any other insured person does not affect the Employer's rights.
- 11.4 The Contractor must comply with the terms of the insurance policies required under this contract.
- 11.5 Within the time required by clause 1.10, and within 10 days of being requested to do so, the Contractor must give the Employer evidence that the insurances required by this contract are in effect, including copies of policies and receipts for premiums.
- 11.6 The Contractor must not make any material reduction to the insurance policies required by this contract unless approved in advance by the Employer. The Contractor must promptly notify the Employer of any cancellation, renewal, non-renewal, or material reduction by the insurer of the terms of any insurance policy required by this contract.
- 11.7 If the Contractor fails to maintain any of the insurances in the terms required by this contract, the Employer may (without affecting its other rights) take out the insurance and pay the premiums, and the Contractor must pay or allow the amount of the premiums to the Employer.
- 11.8 The Contractor bears the risks allocated to it under this contract regardless of whether the risk is, or is required to be, insured. This includes losses and liability falling below insurance excess levels and exceeding indemnity limits.

12 Property

- 12.1 The Contractor must ensure that goods and materials for the Works become the property of the Employer when they are delivered to the Site, if owned by the Contractor, and, in any event, when they are incorporated in the Works or the Employer pays for them, whichever is first.
- 12.2 The Contractor must ensure that the Employer is entitled to use, copy, modify, adapt, and translate for any purpose the documents that the Contractor is to provide to the Employer under this contract. The Contractor has no liability for the Employer's use of the Contractor's reports or documents for any purposes other than those for which they were provided.
- 12.3 The Contractor must indemnify the Employer against claims, liability, and proceedings resulting from any of the following infringing the property (including intellectual property) rights of any person:
-  anything that the Contractor does for the Works
 -  use by the Employer of the Works (including goods, materials, reports, and documents provided by the Contractor for the Works) for the purposes for which they were provided.
- 12.4 Subject to complying with the law and this contract, the Contractor must not disclose the Employer's confidential information.

13 Ethics in Public Office

The Contractor warrants to the Employer that neither the Contractor nor any person on the Contractor's behalf has committed any offence under the Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 and 2001 in connection with this contract or the Works, and nor will they commit any such offence.

14 Law and disputes

- 14.1 Irish law governs this contract and its interpretation and the parties' rights and duties in connection with it.
- 14.2 The parties agree to observe the following conciliation procedure:
- ✎ If a dispute arises under this contract, either party may, by notice to the other, refer the dispute for conciliation. Within 10 working days of the referral of a dispute to conciliation, the parties must jointly appoint a conciliator, and if they fail to do so, or if a person appointed refuses to act or becomes unable to act, the conciliator will be appointed by the president or vice-president of the body stated in the Schedule. If there is a fee for making the appointment, the parties share it equally. If one party pays the entire fee, it is entitled to reimbursement of the other party's share from the other party on demand.
 - ✎ Each party must, within the period set by the conciliator, send to the conciliator and the other party brief details of the dispute stating its contentions about the facts and the parties' rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance. The parties must promptly make available to the conciliator all information, documents, access to the Site, and appropriate facilities that the conciliator requires to resolve the dispute.
 - ✎ The conciliator will consult with the parties in an attempt to resolve the dispute by agreement.
 - ✎ The conciliator may meet the parties separately from each other or together and consider documents from one party not sent or shown to the other, conduct investigations in the absence of the parties, make use of specialist knowledge, establish the procedures to be followed in the conciliation and make recommendations to the parties.
 - ✎ The conciliator will not be an arbitrator and the Arbitration Act 2010 and the law of arbitration will not apply to the conciliation.
 - ✎ If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, or a longer period proposed by the conciliator and agreed by the parties, the conciliation will be taken to have ended.
 - ✎ The conciliation will be confidential, and the parties must respect its confidentiality. All documents provided by a party in connection with conciliation must be returned when the conciliation ends.
- 14.3 The parties have recourse to adjudication in accordance with the Construction Contracts Act 2013. Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute may not be referred to conciliation under the Contract.
- If a dispute between the Parties is referred to adjudication, any conciliation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the conciliation. In the event that a decision is reached by the adjudicator, the conciliation for that dispute shall be terminated.
- 14.4 The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning the contract.

15 (Optional) Contractor's risk of loss and damage to the Works and Employer's existing facilities

- 15.1 This clause 15 applies only if the Schedule says so.
- 15.2 The Employer bears the risk of loss of or damage to the Works (and any Employer's property to be altered or extended by the Works) caused by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds, contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, terrorism, use or occupation of the Works or facilities by the Employer (except as provided for in this contract or to the extent that the loss or damage is caused by the negligence of the Contractor or Contractor's Personnel), and design of the Works by the Employer or by others for whom the Employer is

responsible.

- 15.3 The Contractor has full responsibility for the care of, and risk of loss of and damage to the Works, goods and materials for the Works, and any existing facilities to be altered or extended by the Works, from the date the Contractor starts work on the Task concerned (or an earlier date stated in its Task Order) until the date of completion stated in the Employer's Representative's acknowledgment of receipt of the certificate of completion of the Task. After that date the Contractor is responsible for loss and damage due to defects, occurrences before that date, and activities of the Contractor or the Contractor's Personnel. The Contractor's responsibility under this clause 15.3 excludes loss and damage at the Employer's risk under clause 15.2.
- 15.4 The Contractor must promptly rectify any loss and damage for which it is responsible under clause 15.3 at its own expense (even if there are insufficient insurance proceeds).
- 15.5 The Employer may issue a Task Order for the Contractor to rectify loss and damage at the Employer's risk under clause 15.2.
- 15.6 The Contractor must indemnify the Employer against loss of and damage to the Employer's property, (including the Site and existing facilities to be altered or extended by the Works) arising from or in the course of the Contractor's performance or non-performance of this contract, unless the loss or damage is at the Employer's risk under clause 15.2.
- 15.7 From the date the Contractor starts work on the Task concerned the Contractor must insure the Works, goods and materials for the Works, and any Employer's facilities to be altered or extended by the Works against loss and damage. The Employer must be named as an insured. The insurance of the Works and goods and materials for the Works must be for the full reinstatement value of the property insured, including cost of demolition, removal of debris, delivery, Employer's professional fees, profit, and inflation during the construction and reinstatement periods. The sum insured for professional fees must be at least 15% of the contract value of the Works. The insurance of the facilities to be altered or extended by the Works must be for the amount stated in the Schedule. The Contractor must maintain this insurance until the date of completion stated in the Employer's Representative acknowledgment of receipt of the certificate of completion of the Task.
- 15.8 The proceeds of the insurances required by this clause 15 (except the portion for the Employer's professional fees, which must be paid directly to the Employer) must be paid into a bank account in the joint names of the Employer and the Contractor, and paid out to the Contractor on completion of the reinstatement or, at the Employer's option, in instalments on the basis of the contract value of the work done and goods and materials delivered to the Site for the reinstatement, and also paid out to the Employer for its costs. Any balance in the account after the work is done will be paid to the Employer.
- 15.9 Clause 11 applies also in regard to the insurance required by this clause 15.

End of Conditions

Appendix 8 Confidentiality Agreement

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

The [insert name of Contracting Authority], 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 “*Request for Applications to Participate in a Dynamic Purchasing System for the Provision of Planned Maintenance and Refurbishment Works*” (the “RFATP”) the Contracting Authority invited applications (“Applications”) to participate in a DPS for the supply of the services described in Appendix 1 to the RFATP (the “services”). 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 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

DATED

[REDACTED]

DATA PROCESSING AGREEMENT

between

Saint John of God Community Services CLG

and

[PARTY 2]

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CLAUSE

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ANNEX

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This agreement is dated [DATE]

PARTIES

- (1) Saint John of God Community Services CLG incorporated and registered in Ireland with company number 430744 whose registered office is at “Granada”, Stillorgan Road, Stillorgan, Co Dublin
(Customer)
- (2) [FULL COMPANY NAME] incorporated and registered in [COUNTRY] with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] **(Provider)**

BACKGROUND

- (A) The Customer and the Provider entered into [SERVICE PROVIDER AGREEMENT] (**Main Agreement**) on [INSERT DATE] that may require the Provider to process Personal Data on behalf of the Customer.
- (B) This Personal Data Processing Agreement (**Agreement**) sets out the additional terms, requirements and conditions on which the Provider will process Personal Data when providing services under the Main Agreement. This Agreement contains the mandatory clauses required by Article 28(3) of the General Data Protection Regulation ((EU) 2016/679) (**GDPR**) for contracts between controllers and processors.

AGREED TERMS

1. Definitions and interpretation

The following definitions and rules of interpretation apply in this Agreement.

1.1 Definitions:

Authorised Persons: the persons or categories of persons that the Customer authorises to give the Provider written personal data processing instructions [as identified in ANNEX A] and from whom the Provider agrees to accept such instructions.

Business Purposes: the services to be provided by the Provider to the Customer as described in the Main Agreement and any other purpose specifically identified in ANNEX A.

Commission: the Data Protection Commission

Controller, Data Subject, Personal Data, Processor, Processing, Personal Data Breach: have the meaning given to them in the GDPR.

Data Protection Legislation: all applicable data protection and privacy legislation in force from time to time in Ireland including without limitation the GDPR; the Data Protection Acts 1988 to 2018 (and regulations made thereunder) (**DPA 2018**); the European Communities (Electronic

Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (SI 336/2011) as amended.

EEA: the European Economic Area.

Records: has the meaning given to it in Clause 12.

Standard Contractual Clauses (SCC): the European Commission's Standard Contractual Clauses for the transfer of Personal Data from the European Union to processors established in third countries (controller-to-processor transfers), as set out in the Annex to Commission Implementing Decision (EU) 2021/914, a completed copy of which comprises ANNEX B_or such alternative clauses as may be approved by the European Commission from time to time.

Term: this Agreement's term as defined in Clause 10.

- 1.2 This Agreement is subject to the terms of the Main Agreement and is incorporated into the Main Agreement. Interpretations and defined terms set forth in the Main Agreement apply to the interpretation of this Agreement.
- 1.3 The Annexes form part of this Agreement and will have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Annexes.
- 1.4 A reference to writing or written includes email.
- 1.5 In the case of conflict or ambiguity between:
 - (a) any provision contained in the body of this Agreement and any provision contained in the Annexes, the provision in the body of this Agreement will prevail;
 - (b) the terms of any accompanying invoice or other documents annexed to this Agreement and any provision contained in the Annexes, the provision contained in the Annexes will prevail;
 - (c) any of the provisions of this Agreement and the provisions of the Main Agreement, the provisions of this Agreement will prevail; and
 - (d) any of the provisions of this Agreement and any executed SCC, the provisions of the executed SCC will prevail.

2. Personal data types and processing purposes

- 2.1 The Customer and the Provider agree and acknowledge that for the purpose of the Data Protection Legislation:
 - (a) the Customer is the controller and the Provider is the processor.
 - (b) the Customer retains control of the Personal Data and remains responsible for its compliance obligations under the applicable Data Protection Legislation, including but not limited to providing any required notices and obtaining any required consents, and for the written processing instructions it gives to the Provider.

- (c) ANNEX A describes the subject matter, duration, nature and purpose of the processing and the Personal Data categories and Data Subject types in respect of which the Provider may process the Personal Data to fulfil the Business Purposes.

3. Provider's obligations

- 3.1 The Provider will only process the Personal Data to the extent, and in such a manner, as is necessary for the Business Purposes in accordance with the Customer's written instructions. The Provider will not process the Personal Data for any other purpose or in a way that does not comply with this Agreement or the Data Protection Legislation. The Provider must promptly notify the Customer if, in its opinion, the Customer's instructions do not comply with the Data Protection Legislation.
- 3.2 The Provider must comply promptly with any Customer written instructions requiring the Provider to amend, transfer, delete or otherwise process the Personal Data, or to stop, mitigate or remedy any unauthorised processing.
- 3.3 The Provider will maintain the confidentiality of the Personal Data and will not disclose the Personal Data to third parties unless the Customer or this Agreement specifically authorises the disclosure, or as required by domestic law, court or regulator (including the Commission). If a domestic law, court or regulator (including the Commission) requires the Provider to process or disclose the Personal Data to a third party, the Provider must first inform the Customer of such legal or regulatory requirement and give the Customer an opportunity to object or challenge the requirement, unless the domestic law prohibits the giving of such notice.
- 3.4 The Provider will reasonably assist the Customer, at no additional cost to the Customer, with meeting the Customer's compliance obligations under the Data Protection Legislation, taking into account the nature of the Provider's processing and the information available to the Provider, including in relation to Data Subject rights, data protection impact assessments and reporting to and consulting with the Commission under the Data Protection Legislation.
- 3.5 The Provider must promptly notify the Customer of any changes to the Data Protection Legislation that may reasonably be interpreted as adversely affecting the Provider's performance of the Main Agreement or this Agreement.
- 3.6 [The Provider will only collect Personal Data for the Customer using a notice or method that the Customer specifically pre-approves in writing, which contains an approved data privacy notice informing the Data Subject of the Customer's identity [and its appointed data protection representative], the purpose or purposes for which their Personal Data will be processed, and any other information that, having regard to the specific circumstances of the collection and expected processing, is required to enable fair processing. The Provider will not modify or alter the notice in any way without the Customer's prior written consent.]

4. Provider's employees

- 4.1 The Provider will ensure that all of its employees:

- (a) are informed of the confidential nature of the Personal Data and are bound by confidentiality obligations and use restrictions in respect of the Personal Data;
- (b) have undertaken training on the Data Protection Legislation relating to handling Personal Data and how it applies to their particular duties; and
- (c) are aware both of the Provider's duties and their personal duties and obligations under the Data Protection Legislation and this Agreement.

4.2 The Provider will take reasonable steps to ensure the reliability, integrity and trustworthiness of all of the Provider's employees with access to the Personal Data.

5. Security

5.1 The Provider must at all times implement appropriate technical and organisational measures against unauthorised or unlawful processing, access, copying, modification, reproduction, display or distribution of the Personal Data, and against accidental or unlawful loss, destruction, alteration, disclosure or damage of Personal Data including, but not limited to, the security measures set out in ANNEX C. The Provider must document those measures in writing and periodically review to ensure they remain current and complete.

5.2 The Provider must implement such measures to ensure a level of security appropriate to the risk involved, including as appropriate:

- (a) the pseudonymisation and encryption of personal data;
- (b) the ability to ensure the ongoing confidentiality, integrity, availability and resilience of processing systems and services;
- (c) the ability to restore the availability and access to personal data in a timely manner in the event of a physical or technical incident; and
- (d) a process for regularly testing, assessing and evaluating the effectiveness of the security measures.

6. Personal Data Breach

6.1 The Provider will immediately, and in any event, within 24 hours notify the Customer if it becomes aware of:

- (a) the loss, unintended destruction or damage, corruption, or unusability of part or all of the Personal Data. The Provider will restore such Personal Data at its own expense as soon as possible.
- (b) any accidental, unauthorised or unlawful processing of the Personal Data; or
- (c) any Personal Data Breach.

6.2 Where the Provider becomes aware of (a), (b) and/or (c) above, it shall, within 24 hours, also provide the Customer with the following information:

- (a) description of the nature of (a), (b) and/or (c), including the categories of in-scope Personal Data and approximate number of both Data Subjects and the Personal Data records concerned;
- (b) the likely consequences; and
- (c) a description of the measures taken or proposed to be taken to address (a), (b) and/or (c), including measures to mitigate its possible adverse effects.

6.3 Immediately following any accidental, unauthorised or unlawful Personal Data processing or Personal Data Breach, the parties will co-ordinate with each other to investigate the matter. Further, the Provider will reasonably co-operate with the Customer at no additional cost to the Customer, in the Customer's handling of the matter, including but not limited to:

- (a) assisting with any investigation;
- (b) providing the Customer with physical access to any facilities and operations affected;
- (c) facilitating interviews with the Provider's employees, former employees and others involved in the matter including, but not limited to, its officers and directors;
- (d) making available all relevant records, logs, files, data reporting and other materials required to comply with all Data Protection Legislation or as otherwise reasonably required by the Customer; and
- (e) taking reasonable and prompt steps to mitigate the effects and to minimise any damage resulting from the Personal Data Breach or accidental, unauthorised or unlawful Personal Data processing.

6.4 The Provider will not inform any third party of any accidental, unauthorised or unlawful processing of all or part of the Personal Data and/or a Personal Data Breach without first obtaining the Customer's written consent, except when required to do so by domestic law.

6.5 The Provider agrees that the Customer has the sole right to determine:

- (a) whether to provide notice of the accidental, unauthorised or unlawful processing and/or the Personal Data Breach to any Data Subjects, the Commission, other in-scope regulators, law enforcement agencies or others, as required by law or regulation or in the Customer's discretion, including the contents and delivery method of the notice; and
- (b) whether to offer any type of remedy to affected Data Subjects, including the nature and extent of such remedy.

6.6 The Provider will cover all reasonable expenses associated with the performance of the obligations under clause 6.1 to clause 6.3 unless the matter arose from the Customer's specific written instructions, negligence, wilful default or breach of this Agreement, in which case the Customer will cover all reasonable expenses.

6.7 The Provider will also reimburse the Customer for actual reasonable expenses that the Customer incurs when responding to an incident of accidental, unauthorised or unlawful processing and/or a Personal Data Breach to the extent that the Provider caused such, including all costs of notice and any remedy as set out in clause 6.5.

7. Cross-border transfers of personal data

- 7.1 The Provider (and any subcontractor) must not transfer or otherwise process the Personal Data outside the **EEA** without obtaining the Customer's prior written consent.
- 7.2 Where such consent is granted, the Provider may only process, or permit the processing, of the Personal Data outside the EEA under the following conditions:
- (a) the Provider is processing the Personal Data in a territory which is subject to adequacy regulations under the Data Protection Legislation that the territory provides adequate protection for the privacy rights of individuals. The Provider must identify in ANNEX A the territory that is subject to such adequacy regulations; or
 - (b) the Provider participates in a valid cross-border transfer mechanism under the Data Protection Legislation, so that the Provider (and, where appropriate, the Customer) can ensure that appropriate safeguards are in place to ensure an adequate level of protection with respect to the privacy rights of individuals as required by Article 46 of the GDPR. The Provider must identify in ANNEX A the transfer mechanism that enables the parties to comply with these cross-border data transfer provisions and the Provider must immediately inform the Customer of any change to that status; or
 - (c) the transfer otherwise complies with the Data Protection Legislation for the reasons set out in ANNEX A.
- 7.3 If any Personal Data transfer between the Customer and the Provider requires execution of SCC in order to comply with the Data Protection Legislation (where the Customer is the entity exporting Personal Data to the Provider outside the EEA), the parties will complete all relevant details in, and execute, the SCC contained in ANNEX B, and take all other actions required to legitimise the transfer.
- 7.4 If the Customer consents to appointment by the Provider of a subcontractor located outside the EEA in compliance with the provisions of clause 8, then the Customer authorises the Provider to enter into SCC contained in Annex B with the subcontractor in the Customer's name and on its behalf. The Provider will make the executed SCC available to the Customer on request.

8. Subcontractors

- 8.1 The Provider may only authorise a third party (subcontractor) to process the Personal Data if:
- (a) the Customer provides written consent prior to the appointment of each subcontractor;
 - (b) the Provider enters into a written contract with the subcontractor that contains terms substantially the same as those set out in this Agreement, in particular, in relation to requiring appropriate technical and organisational data security measures, and, upon the Customer's written request, provides the Customer with copies of the relevant excerpts from such contracts;
 - (c) the Provider maintains control over all of the Personal Data it entrusts to the subcontractor; and

- (d) the subcontractor's contract terminates automatically on termination of this Agreement for any reason.

- 8.2 Those subcontractors approved as at the commencement of this Agreement are as set out in ANNEX A. The Provider must list all approved subcontractors in Annex A and include any subcontractor's name and location and the contact information for the person responsible for privacy and data protection compliance.
- 8.3 Where the subcontractor fails to fulfil its obligations under the written agreement with the Provider which contains terms substantially the same as those set out in this Agreement, the Provider remains fully liable to the Customer for the subcontractor's performance of its agreement obligations.
- 8.4 The Parties agree that the Provider will be deemed to control legally any Personal Data controlled practically by or in the possession of its subcontractors.
- 8.5 On the Customer's written request, the Provider will audit a subcontractor's compliance with its obligations regarding the Personal Data and provide the Customer with the audit results. Where the Customer concludes reasonably that the subcontractor is in material default of its obligations regarding the Personal Data, the Customer may in writing instruct the Provider to instruct the subcontractor to remedy such deficiencies within thirty days.

9. Complaints, data subject requests and third-party rights

- 9.1 The Provider must, at no additional cost to the Customer, take such technical and organisational measures as may be appropriate, and promptly provide such information to the Customer as the Customer may reasonably require, to enable the Customer to comply with:
 - (a) the rights of Data Subjects under the Data Protection Legislation, including subject access rights, the rights to rectify, port and erase personal data, object to the processing and automated processing of personal data, and restrict the processing of personal data; and
 - (b) information or assessment notices served on the Customer by the Commission under the Data Protection Legislation.
- 9.2 The Provider must notify the Customer immediately in writing if it receives any complaint, notice or communication that relates directly or indirectly to the processing of the Personal Data or to either party's compliance with the Data Protection Legislation.
- 9.3 The Provider must notify the Customer within three days if it receives a request from a Data Subject for access to their Personal Data or to exercise any of their other rights under the Data Protection Legislation.
- 9.4 The Provider will give the Customer, at no additional cost to the Customer, its full co-operation and assistance in responding to any complaint, notice, communication or Data Subject request.
- 9.5 The Provider must not disclose the Personal Data to any Data Subject or to a third party other than in accordance with the Customer's written instructions, or as required by domestic law.

10. Term and termination

- 10.1 This Agreement will remain in full force and effect so long as:
- (a) the Main Agreement remains in effect; or
 - (b) the Provider retains any of the Personal Data related to the Main Agreement in its possession or control (**Term**).
- 10.2 Any provision of this Agreement that expressly or by implication should come into or continue in force on or after termination of the Main Agreement in order to protect the Personal Data will remain in full force and effect.
- 10.3 The Provider's failure to comply with the terms of this Agreement is a material breach of the Main Agreement. In such event, the Customer may terminate the Main Agreement effective immediately on written notice to the Provider without further liability or obligation of the Customer.
- 10.4 If a change in any Data Protection Legislation prevents either party from fulfilling all or part of its Main Agreement obligations, the parties may agree to suspend the processing of the Personal Data until that processing complies with the new requirements. If the parties are unable to bring the Personal Data processing into compliance with the Data Protection Legislation within a reasonable timeframe, either party may terminate the Main Agreement with immediate effect on written notice to the other party.

11. Data return and destruction

- 11.1 At the Customer's request, the Provider will give the Customer, or a third party nominated in writing by the Customer, a copy of or access to all or part of the Personal Data in its possession or control in the format and on the media reasonably specified by the Customer.
- 11.2 On termination of the Main Agreement for any reason or expiry of its term, the Provider will securely delete or destroy or, if directed in writing by the Customer, return and not retain, all or any of the Personal Data related to this Agreement in its possession or control.
- 11.3 If any law, regulation, or government or regulatory body requires the Provider to retain any documents or materials or Personal Data that the Provider would otherwise be required to return or destroy, it will notify the Customer in writing of that retention requirement, giving details of the documents, materials or Personal Data that it must retain, the legal basis for retention, and establishing a specific timeline for deletion or destruction once the retention requirement ends.
- 11.4 The Provider will certify in writing to the Customer that it has destroyed the Personal Data within seven days after it completes the deletion or destruction.

12. Records

- 12.1 The Provider will keep detailed, accurate and up-to-date written records regarding any processing of the Personal Data, including but not limited to, the access, control and security of the Personal Data, approved subcontractors, the processing purposes, categories of processing, any transfers of

personal data to a third country and related safeguards, and a general description of the technical and organisational security measures referred to in clause 5.1 (**Records**).

- 12.2 The Provider will ensure that the Records are sufficient to enable the Customer to verify the Provider's compliance with its obligations under this Agreement and the Provider will provide the Customer with copies of the Records upon request.
- 12.3 The Customer and the Provider must review the information listed in the Annexes to this Agreement at least once a year to confirm its current accuracy and update it when required to reflect current practices.

13. Audit

- 13.1 The Provider will permit the Customer and its third-party representatives to audit the Provider's compliance with its Agreement obligations, on at least thirty days' notice, during the Term. The Provider will give the Customer and its third-party representatives all necessary assistance to conduct such audits. The assistance may include, but is not limited to:
 - (a) physical access to, remote electronic access to, and copies of the Records and any other information held at the Provider's premises or on systems storing the Personal Data;
 - (b) access to and meetings with any of the Provider's personnel reasonably necessary to provide all explanations and perform the audit effectively; and
 - (c) inspection of all Records and the infrastructure, electronic data or systems, facilities, equipment or application software used to store, process the Personal Data.
- 13.2 The notice requirements in clause 13.1 will not apply if the Customer reasonably believes that a Personal Data Breach occurred or is occurring, or the Provider is in breach of any of its obligations under this Agreement or any Data Protection Legislation.
- 13.3 If a Personal Data Breach occurs or is occurring, or the Provider becomes aware of a breach of any of its obligations under this Agreement or any Data Protection Legislation, the Provider will:
 - (a) promptly, conduct its own audit to determine the cause;
 - (b) produce a written report that includes detailed plans to remedy any deficiencies identified by the audit;
 - (c) provide the Customer with a copy of the written audit report; and
 - (d) remedy any deficiencies identified by the audit within sixty days.
- 13.4 At least once a year, the Provider may conduct site audits of its Personal Data processing practices and the information technology and information security controls for all facilities and systems used in complying with its obligations under this Agreement, including, but not limited to, obtaining a network-level vulnerability assessment performed by a recognised third-party audit firm based on recognised industry best practices.

- 13.5 On the Customer's written request, the Provider will make all of the relevant audit reports available to the Customer for review, including as applicable. The Customer will treat such audit reports as the Provider's confidential information under the Main Agreement.
- 13.6 The Provider will promptly address any exceptions noted in the audit reports with the development and implementation of a corrective action plan by the Provider's management.

14. Warranties

- 14.1 The Provider warrants and represents that:
- (a) its employees, subcontractors, agents and any other person or persons accessing the Personal Data on its behalf are reliable and trustworthy and have received the required training on the Data Protection Legislation;
 - (b) it and anyone operating on its behalf will process the Personal Data in compliance with the Data Protection Legislation and other laws, enactments, regulations, orders, standards and other similar instruments;
 - (c) it has no reason to believe that the Data Protection Legislation prevents it from providing any of the Main Agreement's contracted services; and
 - (d) considering the current technology environment and implementation costs, it will take appropriate technical and organisational measures to prevent the unauthorised or unlawful processing of Personal Data and the accidental loss or destruction of, or damage to, Personal Data, and ensure a level of security appropriate to:
 - (i) the harm that might result from such unauthorised or unlawful processing or accidental loss, destruction or damage;
 - (ii) the nature of the Personal Data protected; and
 - (iii) comply with all applicable Data Protection Legislation and its information and security policies, including the security measures required in clause 5.1.
- 14.2 The Customer warrants and represents that the Provider's expected use of the Personal Data for the Business Purposes and as specifically instructed by the Customer will comply with the Data Protection Legislation.

15. Indemnification

- 15.1 The Provider agrees to indemnify, keep indemnified and defend at its own expense the Customer against all costs, claims, damages or expenses incurred by the Customer or for which the Customer may become liable due to any failure by the Provider or its employees, subcontractors or agents to comply with any of its obligations under this Agreement or the Data Protection Legislation.
- 15.2 Any limitation of liability set forth in the Main Agreement will not apply to this Agreement's indemnity or reimbursement obligations.

16. Notice

16.1 Any notice given to a party under or in connection with this Agreement must be in writing and delivered to:

For the Customer: Data Protection Officer: dpocs@sjog.ie

For the Provider: [PROVIDER DATA PRIVACY CONTACT]

16.2 clause 16.1 does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.

16.3 A notice given under this agreement is not valid if sent by email.

This agreement has been entered into on the date stated at the beginning of it.

Signed by [NAME OF DIRECTOR]

for and on behalf of **Saint John of God Community Services
CLG**

Director

Signed by [NAME OF DIRECTOR]

for and on behalf of [NAME OF **Provider**]

Director

ANNEX A Personal Data processing purposes and details

Subject matter of processing:

Duration of Processing:

Nature of Processing:

Business Purposes:

Personal Data Categories:

Data Subject Types:

Authorised Persons: Data Protection Officer (DPO) of St John of Gods Community Services Clg. Email dpocs@sjog.ie

Identify the Provider's legal basis for processing Personal Data outside the EEA in order to comply with cross-border transfer restrictions (select one):

- Located in a country with a current determination of adequacy (list country): _____.
- Binding Corporate Rules.
- Standard Contractual Clauses between Customer as "data exporter" and Provider as "data importer".
- Standard Contractual Clauses between Provider as "data exporter" on behalf of Customer and Provider affiliate or subcontractor as "data importer".
- Other (describe in detail): _____.

Approved Subcontractors:

- [List all approved subcontractors.]

Sub-Contractor Name	Purpose of Processing	Type of Data Shared	Location

ANNEX B Standard Contractual Clauses

[Standard Contractual Clauses for the transfer of personal data to processors established in third countries (controller to processor transfers)]

ANNEX C Security measures

Supplier to insert description of its technical and organisational data security measures such as:

- Physical access controls.
 - System access controls.
 - Data access controls.
 - Transmission controls.
 - Input controls.
 - Data backups.
 - Data segregation.
-