



NATIONAL
GALLERY_{of}
IRELAND

**Invitation to Apply for appointment to a DPS for the provision of
Design and Print Services to the National Gallery of Ireland for
temporary exhibitions**

DPS Agreement via Open Procedure

Application Deadline: 31 January 2024

Contents

Part 1: Introduction

Part 2: Instructions to Applicants

Part 3: Selection and Award Criteria

Appendix 1: Requirements and Specifications

Appendix 2: Pricing Schedule (see Application Response Document)

Appendix 3: Applicant's Statement (see Application Response Document)

Appendix 4: European Single Procurement Document (ESPD) (see Application Response Document)

Appendix 5: Declaration as to Personal Circumstances of Tenderer (see Application Response Document)

Appendix 6: DPS Agreement

Appendix 7: Services Contract

Appendix 8: Confidentiality Agreement

Part 1: Introduction

1.1 The National Gallery of Ireland (the “Contracting Authority”) invites applications (“Applications”) to this Request for Applications to Participate (“RFATP”) from economic operators (“Applicants”) for appointment to a Dynamic Purchasing System (the “DPS”) for the provision of the services as described in Appendix 1 to this RFATP (the “Services”).

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 In summary, the Services comprise of the provision of an integrated design and print service to produce exhibition materials, together with promotional signage and other associated promotional material (including digital and online).

1.4 Overview of Admittance to the DPS and Award of Contracts

Admittance to the DPS shall be conducted as follows:

Stage 1 - Admittance to the DPS:

The Contracting Authority invites Applications from Applicants in response to the Compliance and Selection Criteria at paragraphs 3.1 and 3.2 of Part 3 of this RFATP. All Applicants that meet the Compliance and Selection Criteria will be admitted to the DPS after completion (execution) of the DPS Agreement as set out at Appendix 5 to this RFATP (“DPS Agreement”) along with the Contracting Authority.

Economic operators may apply for admission to the DPS, or re -apply in the case of Applicants who failed to satisfy the Compliance or Selection Criteria, at any point throughout the Term of the DPS. Regardless of when they submit their application, in order to be admitted to the DPS, Applicants must fulfil all Compliance and Selection Criteria set out in this RFATP.

Stage 2 – Award of Contracts:

All Applicants that enter into a DPS Agreement (as set out in Appendix 5 in this RFATP) with the Contracting Authority (each a “DPS Member”) will be invited to future competition(s) (“Mini-Competitions”) to submit a application response based on the requirements set out in the relevant Stage 2 Request For Tenders (“RFT”). Mini-Competition(s) will be conducted in accordance with the procedures set out at clauses 5 and 6 of the DPS Agreement. After the assessment of the applications received in response to an SRFT, the Contracting Authority may decide to award a Contract to the DPS Member that has submitted the most economically advantageous tender based on the award criteria set out in the RFT.

1.5 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 NGI and all communications with the Contracting Authority must be via the Electronic Platform.

The following is an overview of the electronic process that Applicants must follow when submitting an Application for admittance to the DPS.

1. Applicants must register with and/or login to the Electronic Platform.
2. Applicants 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. Applicants must complete and upload the electronic European Single Procurement Document (“eESPD”) to the Electronic Platform.
4. Applicants must complete and submit the DPS Applicant Response Document (“ARD”) for each Category applied for. The ARD is available to download from the Electronic Platform. Applicants must respond to the Selection Criteria as detailed at Part 3 of this RFATP, and upload their response to the Electronic Platform by the Application Deadline. Applicants are not required to submit a tender proposal or pricing schedule in response to the Appendix 1 requirements at this Stage 1. The tender proposal and pricing schedule will instead be required to be submitted in response to future Stage 2 Mini Competitions that may be conducted under the DPS.
5. Following the Application Deadline (as specified at Section 2.6 of this RFATP) and the evaluation of the Applications, the Contracting Authority will inform the Applicants who fulfil the Compliance and Selection Criteria in this RFATP that they are the initial applicants identified for admission.
6. The initial applicants identified for admission (that fulfil the Compliance and Selection Criteria in this RFATP) will receive such notification via the eTenders web platform and they will be required to sign the DPS Agreement at Appendix 5 to this RFATP prior to being admitted to the DPS.
7. The Contracting Authority will then proceed to execute (sign) a DPS Agreement(s) with those initial applicants identified for admission. The DPS will be deemed to be established upon the date on which the last DPS Agreement has been executed by both the Contracting Authority and an initial applicant identified for admission (‘the Establishment Date’). The Establishment Date will more specifically be set out in the contract award notice for this Competition published on OJEU and eTenders which shall also include the Establishment Date.
8. Applicants 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.
9. Unsuccessful Applicants may re-apply for admission onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS, following the Establishment Date of the DPS.
10. 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, following the Establishment Date of the DPS.

11. It is envisaged that all successful Applicants will be invited to future Mini- Competitions conducted under the DPS in respect of those categories in which they may have been successfully admitted to the DPS.
12. All future Mini-Competitions will be conducted in accordance with the terms of the DPS Agreement at Appendix 5 and contracts will be awarded in accordance with clauses 5 and 6 of the DPS Agreement.

1.6 DPS Clients

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

1. The Contracting Authority
2. The Contracting Authority's internal departments;

1.8 Term

Any DPS that may result from this Competition will, subject to paragraph 1.9 below, have a period of validity of four (4) years from the Establishment Date of the DPS (the "Term").

1.9 Termination of DPS

The Contracting Authority would refer all Applicants to clause 17 of the DPS Agreement at 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 €425,000 in total (excl. VAT) over the Term. Applicants must understand that the figure is an estimate only based on current and future expected usage.

1.11 SME Participation

The Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises ("SME"s) in this Competition. SMEs that believe the scope of this Competition 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 Services Contract that may result from this Competition 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 Services Contracts that may result from this Competition.

Part 2: Instructions to Applicants

2.1 Important Notices

2.1.1 While every effort has been made to provide comprehensive and accurate information in all notices and documents prepared for the purposes of this Competition, the Contracting Authority does not accept any liability or provide any express or implied warranty in respect of any such information. Applicants 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 or a Contract.

Admittance of an Applicant to the DPS will not take place unless and until a DPS Agreement has been signed by the Applicant and the Contracting Authority.

Admittance of an Applicant to the DPS does not guarantee the award of any Contract.

No contractual rights will exist unless and until a formal Contract has been executed by or on behalf of the Contracting Authority. Any notification of preferred bidder status by the Contracting Authority at Mini Competition shall not give rise to any enforceable rights by the Applicant.

The Contracting Authority reserves the right to cancel this Competition at any time prior to executing a formal DPS Agreement or to terminate a 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 Applicant(s).

Applicants should note that the Contracting Authority shall be under no obligation to purchase any minimum value of Services 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 Applicants, and Applicants 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 Applicant in response to this RFATP.

The Applicant, 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 Applicant have consented to the processing of such Personal Data by the Applicant, the Contracting Authority, the Evaluation Team and the supplier of the etenders.gov.ie website, for the purposes of the participation of the Applicant in this Competition or that the Applicant 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 an Applicant fails to comply in any respect with the requirements of this paragraph 2.2.1, the Contracting Authority reserves the right to reject the Applicant'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 clarification from the Applicant;
- seeking further information from the Applicant; or
- waiving a requirement, which in the Contracting Authority's view, is non-material or procedural.

Applicants are required:

(a) To complete and submit with their Application the electronic version of the European Single Procurement Document ("[eESPD](#)"). Alternatively, Applicants 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 Competition as set out at part 3.2 below.

(b) To submit all documentation which this RFATP requires to be submitted with their Application;

(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; and

(f) Not to alter or edit this RFATP in any way.

2.2.2 Without prejudice to the generality of paragraphs 2.2.1, failure to comply with paragraph 2.6.1, 2.6.2 or 2.6.3 below will render the Application non-compliant and it will be rejected.

2.3 DPS and Services Contract

2.3.1 The award of Services Contracts under a DPS shall be made in accordance with the rules set out in the DPS at Appendix 6 to this RFATP.

2.3.2 Applicants should also note the terms and conditions of the Services Contract set out at Appendix 6 to this RFATP.

2.3.3 Applicants are required to confirm their acceptance of the terms and conditions of the DPS Agreement at Appendix 6 to this RFATP and the Services Contract at Appendix 7 to this RFATP by signing the Applicant's Statement at Appendix 3. Applicants may not amend the DPS Agreement or the Services Contract.

2.4 Acceptance of RFATP Requirements

Each Applicant is required to accept the provisions of this RFATP. ALL APPLICANTS MUST RETURN, with their Application, a scanned signed copy of the Applicant's Statement, as set out in Appendix 3, printed on the Applicant's letterhead. The Contracting Authority must be able to read the scanned signature of the Applicant. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Applicants may be requested to re-submit. Applicants may not amend the Applicant'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 a 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. The Applicant must provide details of all members of the group of undertakings and their role in the Application and clearly set out the contact details including name, title, telephone number, postal address, facsimile number and e-mail address of the nominated entity authorised to represent the Applicant and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person will NOT be accepted, acknowledged or responded to.

Prior to and as a condition of award of any Services Contract, the successful Applicant shall be required to designate a single entity who will carry overall responsibility for the Services Contract (the "Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the "Subcontractor").

2.6 Application Submission Requirements

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

Applicants must ensure that they give themselves sufficient time to upload and submit all required application documentation before the Application Deadline (as defined in paragraph 2.6.2). Applicants

should take into account the fact that upload speeds vary. There may be a maximum size for the total (combined) documents sent to the electronic postbox.

In order to submit a document to the electronic postbox, please note that you must click “Submit Response”. After submitting you can still modify and re-send your response up until response deadline. Applicants should be aware that the ‘Submit Response’ button will be disabled automatically upon the expiration of the response deadline.

2.6.2 Applications must be received not later than 17.00hrs on 31 January 2024 (the “Application Deadline”). Applications that are received late WILL NOT be considered in this Competition.

2.6.3 Applications must be submitted in English.

2.6.4 Subject to paragraph 2.14 and 2.18, each Applicant is limited to submitting one Application in its own capacity and one Application as part of a consortium/group of undertakings under this RFATP.

2.6.5 All Applications submitted in soft copy must be compiled such that they can be read immediately using for example, PDF readers. The Contracting Authority is not responsible for corruption in electronic documents. Applicants 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 www.etenders.gov.ie. Queries will be accepted no later than 17.00hrs on 24 January 2024 unless otherwise published by the Contracting Authority. For the avoidance of doubt, Applicants may not contact the Contracting Authority directly 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 www.etenders.gov.ie. Where appropriate, queries may be amalgamated. Applicants should note that the Contracting Authority will not respond to individual Applicants privately.

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

2.7.4 The Contracting Authority reserves the right 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 Applicants will be informed of any such amendment or extension through the eTenders website.

2.7.5 Applicants should ensure that they register their interest in this Competition, by clicking on the “Accept” button on www.etenders.gov.ie, in order to receive all responses to queries and other updates in relation to this Competition.

2.8 Tendering Costs

2.8.1 All costs and expenses incurred by Applicants relating to their participation in this Competition including, but not being limited to, site visits, field trials, demonstrations and/or presentations shall be borne by and are a matter for discharge by the Applicants exclusively.

2.9 Confidentiality

2.9.1 All documentation, data, statistics, drawings, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Applicants 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 Applicant and by any third parties (including subcontractors) engaged or consulted by the Applicant; 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 All Applicants must complete the Pricing Schedule in the Pricing Response Document.

2.10.2 All prices quoted 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 Applicants must confirm that all prices quoted in the Application will remain valid for the term of the framework commencing from the Application Deadline.

2.10.4 Any currency variations occurring over the term of the Services Contract shall be borne by the Applicant.

2.10.5 Payments for Services provided pursuant to this RFATP shall be subject to and made in accordance with the Services Contract at Appendix 6 to this RFATP.

2.11 Environmental, social and labour law

2.11.1 In the performance of any Services Contract awarded, the successful Applicants 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 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 Applicants 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 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), Applicants 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 Competition or any Services Contract pursuant to this Competition is permitted unless and until the Contracting Authority has given its prior written consent to the relevant communication.

2.13 Registerable interest

Any Registrable Interest involving any Applicant or Subcontractor and the Contracting Authority, members of the Government, members of the Oireachtas, or employees and officers of the Contracting Authority and their relatives must be fully disclosed in the Application or, in the event of this information only coming to the notice of the Applicant or Subcontractor after the submission of an Application, must be communicated to the Contracting Authority immediately upon such information becoming known to the Applicant or 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, at its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating an Applicant from this Competition or terminating any Services Contract entered into by an Applicant.

2.14 Anti-competitive conduct

Applicants' attention is drawn to the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a criminal offence for Applicants 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 Applicants should be aware that, under the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, information provided by them during this Competition may be liable to be disclosed.

2.16.2 Applicants 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 Applicants consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Applicants must, when providing such information, clearly identify the specific sections of their Application containing such information and specify the reasons for its confidentiality or commercial sensitivity. For the avoidance of doubt Applicants may not assert confidentiality or commercial sensitivity over the entire Application but must clearly identify the specific section containing such information. If Applicants do not identify information as confidential or commercially sensitive, it is liable to be released in response to a request under the above legislation without further notice to or consultation with the Applicant. The Contracting Authority will, where possible, consult with Applicants about confidential or commercially sensitive information so identified before making its decision on a request received. 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 any Framework Agreement or Services Contract pursuant to this Competition that the successful Applicant(s) shall, for the term of such contract(s), comply with all applicable EU and domestic tax laws. Applicants are referred to www.revenue.ie for further information. Prior to the award of any Framework Agreement or Services Contract arising out of this Competition, the successful Applicant 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 Applicant acknowledges and agrees that the Contracting Authority has the permission of the successful Applicant 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 an Applicant, Subcontractor or individual employee(s) or agent(s) of an Applicant 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 Applicants 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 an Applicant from this Competition or any Mini-Competition or terminating any Framework Agreement or Services Contract entered into by an Applicant.

2.19 Withdrawal from this competition

Applicants are required to notify the Contracting Authority immediately via the e-tenders website, if at any stage they decide to withdraw from this Competition.

2.20 Site visit

The Contracting Authority will facilitate Applicants by permitting an inspection of typical exhibition spaces and locations where associated promotional matter is displayed at the National Gallery of Ireland.

The site visit to view these facilities will be at the National Gallery of Ireland, Merrion Square W, Dublin 2.

Each Candidate may send two (2) representatives to this site visit. The exact date, time and venue will be communicated to those Candidates who have registered their interest in this Competition via the etenders.gov.ie messaging facility. A notification in this regard will be published on www.etenders.gov.ie by close of business on 05 January 2024. Attendance at the site visit is not mandatory for participation in this Competition. Applicants must confirm their attendance to avail of this opportunity via eTenders indicating the names of all persons intending to visit the centre(s).

Attendance at these premises will be subject to compliance with the gallery's security and health and safety arrangements.

2.21 INSURANCE

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

Type of Insurance Indemnity Limit	
Employer's Liability	€12.7 million limit for any one claim or series of claims arising out of a single occurrence

Public Liability	€6.5 million limit for any one claim or series of claims arising out of a single occurrence
Product Liability	€425,000 limit for any one claim or series of claims arising out of a single occurrence
Professional Indemnity	€425,000 for each and every claim excluding defence costs
Cyber Liability	€1 million limit for any one claim or series of claims arising out of a single occurrence

2.21.2 By signing the Applicant's Statement at Appendix 3, Applicants confirm that, if awarded a Services Contract under this Competition, (i) they will, from the Effective Date of the Services Contract (as defined in the Services Contract), obtain and hold the types and levels of insurance as specified at paragraph 2.21.1, (ii) the territorial limits and jurisdiction of its insurance policies include the Republic of Ireland and (iii) they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the Applicant's insurance company or broker to this effect will be requested from the successful Applicant(s) prior to the award of (and shall be a condition of) any Services Contract.

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

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

Part 3: Selection and Award Criteria

3.1 Compliant Applications

3.1 Only those Applicants who have:-

- (a) Submitted compliant Applications pursuant to paragraph 2.2 above, and
- (b) Declared by way of eESPD that either:
 - (i) no mandatory grounds for exclusion of the Applicant pursuant to Regulation 57 of the Regulations apply to them, or
 - (ii) in circumstances where any mandatory exclusion grounds apply to the Applicant (and where the Applicant is not precluded from doing so under Regulation 57(17) of the Regulations), that it can provide evidence to the effect that measures taken by it are sufficient to demonstrate its reliability despite the existence of any such relevant exclusion ground, and
- (c) Declared by way of eESPD that they satisfy the selection criteria in this Competition as set out in part 3.2 below (the “Selection Criteria”), will be evaluated in accordance with the Award Criteria at part 3.3 below.

However, please note that the Contracting Authority also reserves the right to exclude from evaluation an Applicant to whom a discretionary ground for exclusion pursuant to Regulation 57 of the Regulations applies.

Applicants should note that where an Applicant is relying on the capacity of other entities (for example, Subcontractors) for the purposes of fulfilling any of the Selection Criteria in part 3.2 below it must ensure that each such entity:

- (i) completes and submits a separate eESPD in respect of each such entity; and
- (ii) when requested by the Contracting Authority, submit proof, to the satisfaction of the Contracting Authority, that each such entity will place the necessary resources at the disposal of the Applicant.

Where an Applicant (Prime Contractor) intends to subcontract any share of any Services Contract to a Subcontractor, but is not relying on the capacity of such Subcontractor for the purposes of fulfilling any of the Selection Criteria in part 3.2 below, it must ensure that each such Subcontractor submits a separate eESPD in respect of such Subcontractor completing those sections of the eESPD which are specified in section 2.D of the eESPD for this Competition.

The Contracting Authority may decide to examine Applications before verifying the absence of exclusion grounds in Regulation 57 of the Regulations (the “Exclusion Grounds”) and the fulfilment of the Selection Criteria.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Applicants at any moment during the Competition to submit any or all of the following for the purposes of verification of the status of the Applicant (including the Prime Contractor and any Subcontractor):

- (i) a Declaration in the form attached at Appendix 5
- (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; and

(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.

If an Applicant does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (a) 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 be excluded from further participation in this Competition.

If an Applicant does not, upon request by the Contracting Authority, 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 further 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 the DPS

3.2 Applicants will either pass OR fail each of the Selection Criteria in this part 3.2. A Applicant who fails a selection criterion will be excluded from participating in this Competition.

Applicants will either PASS or FAIL each of the Selection Criteria in this part 3.2. An Applicant who fails any one of the following Selection Criteria will be eliminated from this Competition in respect of each Category for which the Selection Criteria are not met and shall not be admitted to the DPS for the relevant Category, subject to the Applicant's right to re-apply. As stated in Paragraph 1.6 of this RFATP:

- Applicants that fulfil the Compliance and Selection Criteria in this RFATP will be sent confirmation via the eTenders web platform of their identification for admission to the DPS and will be required to sign the DPS Agreement at Appendix 6 to this RFATP.
- Applicants 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.
- Unsuccessful Applicants may re-apply for admission onto the DPS at any stage throughout the Term (as defined in paragraph 1.8) of the DPS, once the DPS has been established.

Applicants 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.

In addition to the eESPD, Applicants must complete and submit the relevant sections of the DPS Applicant Response Document ("ARD"), for each Category for which an application is being made: the ARD is 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.

Applicants 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, once the DPS has been established.

In order to ensure the proper conduct of the procedure, the Contracting Authority requires Applicants to submit all supporting documentation (as set out section 3.2 below) with their Application.

3.2.A Economic and Financial Standing

Applicants and any/all members of a consortium (i.e. a Prime Contractor, and any Subcontractors on whose capacity it relies for the purposes of fulfilling any of the Selection Criteria in this part 3.2) 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.

1. Applicants and any/all members of a consortium have a current Tax Clearance Certificate and will provide evidence to this effect on contract award.
2. Applicants will be compliant with their social security and legal obligations for the duration of any contract awarded.
3. Applicants shall provide evidence of the insurance policies specified in section 2.21.
4. Applicants (on a solo or cumulative basis) meet the minimum turnover requirement of €60,000 over each of the last three financial years and will provide evidence from their accountants / auditors to this effect. Please note that this is a nominal figure that meets procurement requirements. It should not be read as indicative of the budget for this project.
5. Applicants will provide a letter from their bank indicating their account is in good standing.

Applicants must provide the supporting documentation specified above without delay when requested by the Contracting Authority. However, where the Applicant is unable, for a valid reason, to provide the specified documentation, the Applicant must inform the Contracting Authority of the valid reason as to 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.

3.2.B Technical and Professional Ability

Applicants must declare by way of eESPD that they satisfy the technical and professional 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.

Applicants must address each of the selection criteria and sub-criteria below in the Application Response Document

Selection Criteria	Minimum Rule	Qualifying Threshold
Technical Capacity	Applicants must provide an overview of their organisation, its capabilities, and the services it provides. They must demonstrate that they possess the capacity and the capabilities to under the services required as part of this DPS. Applicants must supply an organisation chart as part of their response along with the team structure for the	Pass/Fail

	project resources proposed. The organisation chart should identify reliance on third parties and should clearly outline the respective roles of all parties. (Third parties constitute other entities without whom your organisation cannot fulfil the contract (companies involved directly in the contract, not suppliers of non-material services or goods to your business))	
Understanding of Requirements	With reference to the RFATP document, Applicants must provide an overview of their understanding of what is required and the key issues presented by contracts of this nature. Applicants must describe their knowledge of the NGI and how they understand and can deliver in line with NGI's mission, vision and risk profile.	Pass/Fail
Previous Experience	Applicants must demonstrate the successful delivery of at least three comparable projects (in scale, nature, quality and complexity) delivered during the three previous years. - Describe in detail, the services offered and outline the extent to which each project is comparable to the requirements set out in Appendix 1 as well as details about how the Applicant engaged with the client to determine and deliver their requirements. - Provide at least 3 design samples from each reference project in electronic format with your submission. Samples of previous work are required: Appendix 1 of this RFATP sets out in the section 'Demonstrable Experience' requirements for providing samples of work associated with client references (in electronic format only) to support the client references	Pass/Fail
Approach & Methodology	Applicants are required to describe proposed approach towards delivering the service requirements. Describe: - Ability and adaptability to fulfil the Gallery's detailed business requirements and to work collaboratively with its personnel. - Planning and Work Processes including evidence of ability to deliver work, even at short notice - Capacity to edit and publish in the formats specified in Appendix 1 of this RFATP. - Ability to meet delivery deadlines, including approach to meet production deadlines for designs and subsequent physical and	Pass/Fail

	electronic printed matter, and details of delivery arrangements to match the requirements of this contract . • Details of production capacity for printing, and list the print media and finishes available	
Sustainability	Applicants must demonstrate that adequate measures are in place to ensure the delivery of a sustainable, environmentally friendly service: • Describe the Applicant's policy and procedures for sustainability and environmental management • If third-party certified, provide details.	Pass/Fail

3.3 Presentation of proposals

Applicants may be required to make **an in-person** 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 Applicants 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 Applicant(s) (including the Prime Contractor and any Subcontractors) having submitted the following to the Contracting Authority along with their Application:

- 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 Applicant(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 Applicant(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

Applicants must address each of the issues and requirements in this part of the RFATP and submit a detailed description in each case which demonstrates how these issues and requirements will be dealt with / met and their approach to the proposed delivery of the Services. A mere affirmative statement by the Applicant that it can/will do so or a reiteration of the application requirements is NOT sufficient in this regard.

A1.1 Introduction and Context

The National Gallery of Ireland (the “Gallery”) was established in 1854 by an Act of Parliament and houses the nation’s collection of European and Irish fine art spanning the early Renaissance to the 1950s. Since the Gallery opened to the public in 1864, it has expanded to accommodate a growing collection with the construction of the Milltown Wing (1902), the Beit Wing (1968 and 1996) and the Millennium Wing (2002). Open 361 days of the year, the Gallery is Ireland’s premier cultural attraction with annual attendances attracting an average of 700,000 visitors.

The Gallery’s collection comprises approximately 17,000 works of art and also includes the National Portrait Collection (established 1874). The Gallery’s collections are complemented and supported by its Library and Archives, which includes research facilities such as a Fine Art Library, Yeats Archive and the ESB Centre for the Study of Irish Art.

The Gallery’s mission is to care for, interpret, develop and showcase art in a way that makes it an exciting place to encounter art. The Gallery aims to provide an outstanding experience that inspires an interest in and an appreciation of art for all. The Gallery is a cultural institute of national and international importance and plays a leading role in promoting the profile of the visual arts in Ireland and overseas. We are dedicated to bringing people and their art together.

Exhibitions

The interpretation of the permanent collection is supported by an extensive schedule of temporary exhibitions and education programming, together with events, research projects and outreach activities. While the permanent collection is free to view, the Gallery also programmes special temporary exhibitions which are ticketed and attended by approximately 70,000 paid visitors every year.

These temporary exhibitions play an important part in realising the Gallery’s mission. The Exhibitions & Collection Services team manages a diverse programme of temporary exhibitions to complement the Gallery’s permanent collection display. Working closely with the curatorial team, and external designers, they also develop exhibition identities.

Access to high quality design and print services is fundamental to the department’s preparations for exhibitions: promotional print material and exhibition signage encourage and facilitate patrons’ engagement with each exhibition, and are fundamental to its identity and tone, helping to convey the curator’s concept.

Case Study - Exhibition-

Lavinia Fontana. Trailblazer, Rule Breaker. Curator Dr Aoife Brady, 6 May – 27 August 2023

Led by the Exhibitions & Collection Services team, promotional signage was produced by the exhibition design and print providers for display at Gallery locations, in a number of different formats. These included vinyl banners and foam board panels, pop-up banners, posters and graphics formatted for a range of digital screens on-site. The exhibition required approximately 70 A5 labels and text panels measuring 1m x 1m mounted on Foamex panels with wrapped edges, in addition to room titles (vinyl lettering on a column approximately 50 cm wide), and cut vinyl text consisting of 200 letters.

The exhibition design and print team also provided exhibition themed imagery to its external third-party marketing partners for use in online marketing as well as on physical advertising media. Imagery was also made available for use by the Gallery's own online assets to promote the exhibition.

Scope of this Procurement

Cognisant of the importance of exhibitions in the Gallery's overall programme, this procurement's scope focuses on the design, development, production and installation of exhibition materials, together with promotional signage and other associated promotional material (including digital and online).

Further information:

Details of current and past exhibitions can be found on the Gallery's website:

<https://www.nationalgallery.ie/art-and-artists/exhibitions>

A1.2 Specification For Design and Print For National Gallery of Ireland Exhibitions

The Gallery is seeking to establish a DPS of designer-led suppliers with extensive experience in designing and producing signage and other printed matter and digital associated with the Gallery's temporary exhibitions.

The Gallery understands that design practices may not have in-house print capabilities and may instead sub-contract printing to third parties, often choosing different printers depending on their suitability to meet the requirements of different clients. This is permissible under the terms of the DPS, however it is an important requirement that both designers and print partners are highly reputable, experienced and have demonstrable experience in delivering high-quality publications to comparable institutions. Applicants' attention is drawn to the requirements regarding information and declarations required from sub-contractors and members of consortiums in Sections 2 and 3 of this RFATP. As printing is a key technical capability, Applicants attention is drawn to the requirements regarding information and declarations required from sub-contractors and members of consortiums in Sections 2 and 3 of this RFATP.

We expect that successful Applicants propose to allocate print work to the print partners they have identified in this proposal. If a DPS member proposes to sub-contract any work to an alternative print provider, this print provider must have the necessary experience and capabilities outlined further in this specification, and be approved by the Gallery beforehand.

In all cases, DPS members (i.e. lead designers) will work collaboratively with the Gallery: prior to allocating work to any third parties, suppliers will fully consult with the Gallery on all matters of design and budget, including print prices.

Required Services

Suppliers will be expected to provide the following services to the Gallery:

- **DESIGN:**
 - An overall collaborative approach
 - Initial in person meeting to agree design identity
 - Presentation of design concepts (max 5 and no fewer than two) to gallery within 2 weeks
 - Final concept ready for Gallery sign-off within 4 weeks of initial meeting
 - Constant liaison with the Gallery throughout the design process. E.g. initial project meeting followed up with weekly emails and phone-calls over the course of the project.
- **PRINT:**
 - In addition to the design process, suppliers will manage the printing/manufacture of each item with the designated printer. Timelines will be strict as printed items will be required prior to the start of scheduled exhibitions.
 - It would be advantageous if suppliers could demonstrate a commitment to innovative and sustainable solutions for signage
- **INSTALL/DEINSTALL:**
 - Certain printed items, e.g. banners, will require installation and deinstallation by the supplier prior to the exhibition and removal following the exhibition. These tasks will need to be undertaken strictly according to agreed schedules so as not to negatively impact movement or installation of exhibitions.
- **LIAISON WITH THE NATIONAL GALLERY:**
 - Liaise with us throughout the design process. At a minimum, an initial project meeting followed by phone-calls and emails with Gallery stakeholders over course of project.

Exhibitions Formats and details:

Temporary Exhibitions hosted by the National Gallery have different design and print requirements that are tailored to its scale, subject matter, and purpose. However, the Gallery categorises exhibitions into three categories of scale that are roughly analogous to the rooms they are allocated to. The Sample Specification Document contains a specification for three indicative projects (one for each category) that Applicants are invited to review. However, no costs are required at this stage. Costs will be required as part of mini-competitions for individual /projects exhibitions. Applicants should refer to these projects for a break-down of the typical requirements for each of the categories. Typical requirements include:

- **Exhibition materials:** Foamex-type or equivalent labels and text panels.
- **Promotional signage:** Various banners and posters, some of which are designed for display in specific Gallery locations. Applicants are encouraged to visit this venue as part of a site visit. Please see Section 2.20 of this RFATP for details of site visits.
- **Digital and online imagery:** For use on plasma screens, online (including social media).
- **Other:** Promotional material such as flyers; invitations, booklets.

Exhibition Timelines

Timelines for delivery, installation (and de-installation) are as follows:

- Six weeks before opening: Finalised digital designs and tote bag design, delivery of invites and A4 folders (folders only apply to project 3, Beit Wing)

- Two weeks before opening: Labels and text panels
- One week before opening: delivery of education programme, large print booklets plus installation of all remaining signage
- Day after closing: de-install and remove all signage

Installation of Exhibition Materials.

The safety of visitors, employees and contractors is of paramount importance to the Gallery. Contractors working on the installation and de-installation of signage must provide the following documentation to the Gallery prior to arrival on site for the first installation (and annually thereafter for the lifetime of the framework:

- Risk Assessment
- Method Statement
- Evidence of Public Liability Insurance
- Working at Heights certification (including use of ladders)

The Gallery will issue an annual Permit to Work upon receipt of this paperwork. For each installation/de-installation contractors will be issued with access badges and will be supervised by the NGI Project Manager.

Demonstrable Experience for Admission to the DPS

Demonstrable experience in designing and printing exhibition materials and signage for a cultural organisation. Samples of previous work are required.

Applicants will be required to submit a PDF presentation of signage and promotional material for at least three distinct comparable events to the temporary exhibitions hosted by the National Gallery. These three samples must be associated with at least one client reference (there is not a requirement that all three be associated with any one reference, they may be distributed across all client references i.e. any given client reference may be accompanied by three, two, one or no samples BUT three distinct samples must be submitted and each must be associated with a client reference). It is desirable that these samples were produced for a comparable organisation (i.e. a cultural organisation). The three samples provided should demonstrate a diversity of design in the supplier's work.

Appendix 2: Pricing Schedule

Applicants should note that there is no pricing required for admission to the DPS. Pricing will be requested for each Mini-Competition under the DPS.

Appendix 3: Tenderer's Statement (see Application Response Document)

The Tenderer's Statement is also contained in the Application Response Document. It must be printed on Applicant's company letterhead, completed and signed by the Applicant. The completed Tenderer's Statement must be returned with the completed Application Response Document.

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

TENDERERS' STATEMENT

TO: The National Gallery of Ireland

RE: Invitation to Apply for appointment to a DPS for the provision of Design and Print Services to the National Gallery of Ireland for temporary exhibitions

Having examined your Request for Applications to participate (the "RFATP") including the Instructions to Tenderers, the Selection and Award Criteria, the Requirements and Specifications, and the Terms and Conditions of the DPS Agreement and the Services Contract, we hereby agree and declare the following:

1. We understand the nature and extent of the Services required to be delivered as described in Requirements and Specifications at Appendix 1 to the RFATP.
2. We accept all of the Terms and Conditions of the RFATP, the Services Contract, and the Confidentiality Agreement and agree, if awarded a Services Contract, to execute the Services Contract at Appendix 5 to the RFATP and the Confidentiality Agreement at Appendix 6 to the RFATP.
3. We accept all the Selection and Award Criteria as set out in Part 3 of the RFATP.
4. We agree to supply the Contracting Authority with the Services in accordance with the RFATP and our Tender.
5. We agree that, if awarded any Services Contract we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out at Part 2 of the RFATP.
7. We confirm that all prices quoted in our Application will remain valid for the period of time, commencing from the Application Deadline, specified at paragraph 2.10.3 of the RFATP.
8. We shall, if awarded any Services Contract under the RFATP, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFATP.
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

Company

**Authorised Signatory
(Print Name)**

Registered Address:

Appendix 4: Electronic European Single Procurement Document (eESPD)

Applicants must submit a valid electronic European Single Procurement Document (eESPD). Registered suppliers on etenders.gov.ie (the electronic platform through which Applicants must submit their applications) can complete and submit an eESPD using the tools available on that platform.

Appendix 5: Declaration as to Personal Circumstances of Tenderer (see Application Response Document)

The Declaration as to Personal Circumstances of Tenderer is also contained in the Application Response Document. It must be completed and signed by the Applicant, and witnessed by a Solicitor or a Commissioner for Oaths. The completed The Declaration as to Personal Circumstances of Tenderer must be returned with the completed Application Response Document.

RE: Invitation to Apply for appointment to a DPS for the provision of Design and Print Services to the National Gallery of Ireland for temporary exhibitions

NAME: INSERT

ADDRESS: INSERT

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

- a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
- b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or **[insert name of entity]**.
- c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
- d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
- e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
- f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.
- g) Is not in breach and has not breached 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 (Statutory Instrument 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 competition.
- l) Is not aware of any conflict of interest due to its participation in the Competition;
- m) That the preparation of the Tender was carried out independently;
- n) Has not had any prior involvement in the preparation of the Competition;
- o) Has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
- p) 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

Competition and did not withhold such information and did not fail or is not able to submit supporting documents in respect of this Competition as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).

- q) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the Competition, or obtain confidential information that may confer upon it undue advantages in respect of the Competition; 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 tenders, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1938. This declaration is made for the benefit of the Contracting Authority

Signature of Declarant

Name of Declarant in print or block capitals

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

Signed (Practising Solicitor / Commissioner for Oaths)

Appendix 6: Dynamic Purchasing System Agreement

Dynamic Purchasing System Agreement for the provision of Procurement Consultancy Services to Public Sector Bodies in Ireland

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

("the DPS Agreement")

BETWEEN:

[Insert full legal name] whose offices are located at [Insert address] ("the Contracting Authority"); and [Insert name of DPS Member] whose principal place of business is at [Insert address] ("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 "[Insert title of RFATP]" ("the RFATP") the Contracting Authority invited Applicants 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 [insert date] and [insert date] (the "RFATP Clarifications"). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this DPS Agreement.
2. The DPS Member submitted a response to the RFATP dated [insert date of Application] ("the Application"). References to the Application shall include any clarifications issued in writing via the Electronic Platform by the DPS Member to the Contracting Authority between [insert date] and [insert date] (the "Application Clarifications"). The Application (including the Application Clarifications) is hereby incorporated by reference into this DPS Agreement.
3. The DPS Member was appointed to the DPS as a result of the evaluation of its Application in accordance with the RFATP.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

"Commencement Date" means [Insert Date];

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

"DPS Client" means any party identified in Part 1, paragraph 1.6 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;

“Establishment Date of the DPS” means the date as defined at paragraph 1.5 of the RFATP;

“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. 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 shall expire on the fifth anniversary of the Establishment Date of the DPS as defined at clause 1.6 of the RFATP, unless terminated earlier in accordance with this DPS Agreement.
- 2.6. “Not Used”
- 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 below, 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 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 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;
- 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 Contract at Appendix 6 of the RFATP.

5.1.2. All Responses received in any other manner other than that specified in the RFT will not be considered.

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 means set out in the RFT 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.

6. MANDATORY REQUIREMENT AND AWARD CRITERIA

6.1. Award Criteria for Mini-Competitions

Mini Competition Tenders will be evaluated on the basis of a Qualitative/Cost assessment to determine the Most Economically Advantageous Tender (“MEAT”).

Responses to the RFT must be submitted via the method specified in the RFT only.

The Award Criteria shall include all, or some, of the following criteria:

NO	AWARD CRITERIA	WEIGHTING RANGE
1.	Approach/Methodology & Contract Management May include: Planning and Service Methodology Risk Analysis Proposed Resources Understanding of Client Brief Evidence of collaborative approach	10%- 70%

	Contract Management Methodology Managing Change Performance Management	
2.	Quality, Relevant Experience and Availability of Resources of Proposed Team May include: Curriculum Vitae Portfolio of Previous Work	10%- 70%
3.	Creative/Design Proposal A demonstrated understanding of the specific exhibition concept which should inform the creative proposal	10% - 70%
4.	Price Options May include Fixed Project Price Per Item price Day Rate	10% - 70%
TOTAL		100%

- 6.2. The DPS Client will require the DPS Member to whom it has decided to award a Contract to supply up-to-date evidence as set out in Section 3.1 and Section 3.2 of the RFATP. 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 DPS Client may proceed to offer the Contract to the next highest- ranked DPS Member for that Mini Competition.
- 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 Applicant 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 Applicants 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 7 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:
1. if personally delivered, at the time of delivery;
 2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 3. If communicated by email, on the next calendar day following transmission.

15. 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;

- 17.2.2. if the DPS Member commits any serious breach or a series of breaches of any Contract awarded pursuant to this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority and the DPS Client(s), within 30 days after a receipt of a request in writing via the Electronic Platform from the Contracting Authority or any DPS Client.
- 17.2.3. If the DPS Member becomes insolvent, becomes bankrupt, is wound up, enters into examinership, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
- 17.2.4. in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) apply to the DPS Member;
- 17.2.5. in circumstances where the DPS Member fails to provide up-to-date evidence when requested to do so by the Contracting Authority in accordance with clause 3.2 of this DPS Agreement to demonstrate to the satisfaction of the Contracting Authority that they meet the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.6. in circumstances where the DPS Member changes the Subcontractor(s) nominated and relied upon by the DPS Member in their Application for admission to the DPS but fails to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as required in clause 3.2 of this DPS Agreement, that by changing Subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.7. in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the DPS Member which cannot, in the opinion of the Contracting Authority, be removed by other means; and
- 17.2.8. in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the DPS Member.
- 17.3. Subject to clause 17.2.2, the termination of a Contract awarded under this DPS Agreement does not affect the validity of this DPS Agreement.
- 17.4. Termination of this DPS Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this DPS Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

18. FREEDOM OF INFORMATION

- 18.1. The DPS Member acknowledges that the Contracting Authority and or the DPS client is subject to the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 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 membership of this DPS 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 Professional Services 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 the Mediator's institute of 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.

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
--	---

ANNEX I - MANAGEMENT PROVISIONS

Reporting to the Contracting Authority

It will be a core requirement of this DPS that each DPS Member will provide to the Contracting Authority a bi-annual suite of reports. DPS Members must have the information systems reporting capacity to provide at minimum the following information on a matter by matter basis:

Number of Mini-Competitions applied for during the year	On request
Number of Direct Drawdowns and/or Mini-Competitions won during the year	On request
Reports to also include: • Client's Name • Detail of the Services Awarded • Contract Start and End Dates • Value of Contract (€)	On request

Appendix 7: Services Contract

National Gallery of Ireland

and

[Insert successful Applicant's full legal name]

AGREEMENT

Relating to the provision of Services

THIS AGREEMENT IS MADE ON THE [DATE E.G. 2ND] DAY OF [MONTH] 20[YEAR] BETWEEN:

National Gallery of Ireland, of [address] ("the Client"); and [Contractor's full legal name], of [address] ("the Contractor") (each a "Party" and together "the Parties").

WHEREAS:

1. By Request for Application To Participate entitled "Invitation to Apply for appointment to a DPS for the provision of Design and Print Services to the National Gallery of Ireland for temporary exhibitions" advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number [] of [] dated [insert date of RFATP] ("the RFATP") the Contracting Authority invited applications from economic operators ("Applicants") for the provision of the services described in Appendix 1 to 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 between [insert date] and [insert date] (the "RFATP Clarifications"). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this Agreement.
2. The Contractor submitted a response to the RFATP dated [insert date of Application] ("the Submission"). References to the Submission shall include any clarifications issued by the Contractor in writing to the Contracting Authority between [insert date] and [insert date] (the "Submission Clarifications"). The Submission (including the Submission Clarifications) is hereby incorporated by reference into this Agreement.
3. 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.
4. In accordance with the DPS Agreement, by way of Request for Tenders dated [insert date of RFT] ("the RFT"), the Client 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 Client 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.
5. 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 the Schedules attached hereto;
 - ii. The DPS Agreement;
 - iii. The RFATP;
 - iv. The RFT;
 - v. The Application;
 - vi. The 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 RFATP, the RFT, the Application 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”).

Delete and replace with “Not Used” if not applicable:

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 RFATP.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

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

Schedule A: Terms and Conditions

1. CONTRACTOR'S OBLIGATIONS

- A. The Contractor undertakes to act with due care, skill and diligence in the 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 RFATP, 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) above, 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 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 or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. 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. The Contractor acknowledges, warrants, represents and undertakes that:
 - 1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to 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 Applicant" dated [insert 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. 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.9; and
- 10 the Client shall be under no obligation to purchase any minimum number or value of Services.

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

Prior to publication please ensure to insert amounts/figures where applicable. When finished, delete these instructions.

- 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. *Delete and replace with "Not Used" if not applicable:*

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 [insert amount – e.g.: [number] 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:

[Insert] ("the Retention Amount") which Retention Amount shall not at any given time exceed [number] 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 / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.
- 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 [insert amount] per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of [insert amount] (the "Liquidated Damages Threshold").

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:

1. 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
2. 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:

- 1. (i) procure the necessary rights for the Client to continue use;
 - 2. (ii) replace the relevant deliverable with a non-infringing equivalent;
 - 3. (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
 - 4. (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 as exhibited at Appendix 8 to the RFT (“the Confidentiality Agreement”).

The obligations in this clause 7 will not apply to any Confidential Information:

1. in the receiving Party’s possession (with full right to disclose) before receiving it from the other Party; or
 2. which is or becomes public knowledge other than by breach of this clause; or
 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. 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 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 [insert number] 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 [insert period of time months] written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving [insert period of time months] written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 9(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
 - 1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
 - 2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
 - 3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and

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

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;

- 1. 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);
- 2. the data subject has enforceable rights and effective legal remedies;
- 3. 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
- 4. 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.
- M. **(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)**
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)

[Delete and replace with "Not Used" if not applicable:]

This is a free text area to allow the Client to include any additional conditions to the Contract, for example a price review clause. Such additional conditions can be set out here by the Client]

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]

Schedule E: Data Protection

[complete when completing the contract]

Processing, Personal Data and Data Subjects

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

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

[Contractor’s legal name: to be completed on signing.], of [address: to be completed on signing.]
(hereinafter called “the Contractor”) of the other part.

WHEREAS

- N. By Request for Tenders dated [insert date] entitled [insert title] (the “RFT”) the Contracting Authority invited tenders (“Tenders”) for the provision of the Goods/Services described in Appendix 1 to the RFT (the “Goods” “Services”) (“the Competition”). The Contractor submitted a response to the RFT dated the [insert date of Tender].

The Contractor has been identified as the preferred bidder in the Competition.

- O. For the purposes of the Competition and any subsequent contract awarded thereunder (if any) (“the Contract”), certain confidential information as defined at clause 2 of this Agreement, will be furnished to the Contractor. The Confidential Information is confidential to the Client.

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 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, the supply of Goods/Services 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 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 Commission 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, 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 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

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 with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);

6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;

6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or

parts thereof as may be identified by the Contracting Authority) 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 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 and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority 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 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 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;
- N. 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).
- O. 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.
- P. 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.
- Q. 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.
- R. 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.

- S. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- T. 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.
- U. 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 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 _____ Being a duly authorised officer	Signed for and on behalf of the Contractor _____
Witness	Witness

Schedule A to the Confidentiality Agreement: Data Protection

[complete when completing the confidentiality agreement]

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**

End of Document