

DYNAMIC PURCHASING AGREEMENT

Dynamic Purchasing System Agreement [DPS Agreement] for the provision of
Request to Participate in Dynamic Purchasing System for Professional Development and
Corporate Training Providers

THIS DYNAMIC PURCHASING AGREEMENT IS DATED: _____
("the DPS Agreement")

BETWEEN:

Tourism Ireland CLG (Company Limited by Guarantee- Company Registration
Number 336370) (hereinafter called "Tourism Ireland" which expression shall include
its successors, assigns and authorised representatives) with a registered address of
Bishop's Square, Redmond's Hill, Dublin 2, Ireland ("the Contracting Authority"); and

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

(each a "Party" and together the "Parties")

WHEREAS:

1. By Request to Participate in Dynamic Purchasing System ("DPS") advertised in the
supplement to the Official Journal of the European Union, OJEU Notice Number
_____ of _____ and entitled Request to Participate in Dynamic
Purchasing System for Professional Development and Corporate Training Providers
("the RTP") the Contracting Authority invited Candidates to participate in a DPS
agreement for the provision of the services described in point 3, Scope of Requirements
of the RTP (the "Services"). References to the RTP shall include any clarifications in
relation to the RTP issued by the Contracting Authority via the messaging facility on
www.etenders.gov.ie (the "Electronic Platform") between **[insert date]** and **[insert
date]** (the "RTP Clarifications"). The RTP (including the RTP Clarifications) is hereby
incorporated by reference into this DPS Agreement.
2. The DPS Member submitted a response to the RTP dated **[insert date of Application]**
("the Submission"). References to the Submission 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 "Submission Clarifications"). The
Submission (including the Submission Clarifications) is hereby incorporated by
reference into this DPS Agreement.

The DPS Member was appointed to the DPS as a result of submitting its European Single
Procurement Document in accordance with the RTP.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

"Commencement Date" means the date which the Candidate was admitted to the DPS
by way of a DPS Admission message executed (sent) by the Contracting Authority.

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

“Services Contract” means the template contract at attached at Schedule 4 to the RTP;

“DPS Term” means the Term of this DPS as set out in Section 4 of this RTP;

“Month” means a calendar month;

“Prime Contractor” has the meaning set out in Section 5, paragraph 5.7 of the RTP;

“Subcontractor” has the meaning set out in Section 5, paragraph 5.7 of the RTP;

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

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

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

- 2.1 In consideration of payment by Tourism Ireland 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.
- 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 Contracting Authority 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 Contracting Authority is 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority shall observe all obligations at law and shall not afford any advantage to the DPS Member.
- 2.5 This DPS Agreement shall take effect on the Commencement Date and expire in accordance with the Term set out in Section 4 of this RTP, thereafter ("the DPS Term") unless terminated earlier in accordance with this DPS Agreement.
- 2.6 The Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the DPS Term on the same terms and conditions by notifying the European Commission.

3. SERVICES CONTRACT

- 3.1 This DPS Agreement relates to the provision of Services.
- 3.2 Where the DPS Member is awarded a Contract further to the procedure set out in accordance with clauses 4 and 5, it shall provide the Services to the Contracting Authority in accordance with the Services Contract. Subject to the provisions of this DPS Agreement and to the satisfaction of any pre-conditions to the award of a Services Contract, the successful DPS Member shall be required to enter into the Services Contract with the Contracting Authority.

4. PROCEDURE FOR AWARD OF CONTRACTS

- 4.1 On each occasion that the Contracting Authority proposes to award a Contract under this DPS Agreement, the Contracting Authority shall issue (by electronic means) a Request for Tenders ("RFT") to all DPS Members in accordance with the following procedure (a "DPS Mini-Tender"):
- 4.1.1 The RFT shall set out:
- the scope and term of the Contract to be awarded;
 - 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;
 - any additional conditions (if any) that will apply to the Contract in addition to the terms and conditions of the Services Agreement.
- 4.1.2 All Responses to the RFT must be submitted via the Electronic Platform only. Responses received in any other manner including e-mail or hardcopy will not be considered.
- 4.1.3 Any clarifications issued by the Contracting Authority in relation to an RFT will be communicated via the Electronic Platform only.

4.1.4 The Contracting Authority may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 5 below.

4.1.5 The Contracting Authority reserve the right to issue or seek written clarifications via the Electronic Platform.

5. AWARD CRITERIA

5.1 Each DPS Mini-Tender will be awarded based on the most economically advantageous tenderer, in accordance with the award criteria set out below:

Award Criteria	Weighting Range
Methodology proposed including any innovative approaches/programme timelines	0% - 30%
Capacity to Deliver	0% - 30%
Value Added Dimensions and Innovation	0% - 30%
Suitability of the trainer(s) and capacity to provide the expertise required	0% - 30%
Quality of Tenderer's Approach in relation to Course Content and Delivery	0% - 30%
Impact of Training	0% - 30%
Availability	0% - 30%
Methodology for design and content	0% - 30%
Subject matter expertise	0% - 30%
Trainer's relevant experience	0% - 30%
Experience of delivery of similar programmes	0% - 30%
Ultimate Cost	0% - 50%

5.2 There is a maximum score of 10,000 available across the award criteria.

5.3 Cost - the valid tender with the lowest ultimate cost will receive the maximum score achievable under this criterion. The scores of the other valid tenders will be calculated by using the following formula:

$$\frac{\text{The lowest cost tender} \times \text{maximum score available}}{\text{Cost of tender being evaluated}}$$

- 5.4 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 Contracting Authority
- 5.5 The Contracting Authority may cancel a DPS Mini Competition at any time prior to a Contract being executed. Any notification of preferred bidder status by the Contracting Authority shall not give rise to any enforceable rights by the DPS Member.

6. APPLICABLE LAW AND JURISDICTION

- 6.1 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.

7. COMPLIANCE WITH LAWS

- 7.1 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).

8. TAX CLEARANCE

- 8.1 The DPS Member shall comply with all EU and domestic taxation laws and requirements.
- 8.2 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. By supplying these numbers, the DPS Member acknowledges and agrees that the Contracting Authority has the permission of the successful Candidate to verify its tax cleared position online. Where relevant, the provisions of this paragraph 8.2 apply equally to Subcontractors.

9. ANTI COMPETITIVE CONDUCT

- 9.1 Without prejudice to the generality of clause 7.1, the DPS Member shall comply with the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a criminal offence for candidates to collude on prices or terms in a public procurement competition.

10. CONFLICTS OF INTEREST

- 10.1 Any actual or potential conflict of interest on the part of a DPS Member (including for the purposes of this clause 10 any employee(s), supplier's agents or Subcontractor) (a "Conflict") must be fully disclosed to the Contracting Authority 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 may invite the DPS Member to propose means by which the Conflict might be removed. The Contracting Authority will, in their absolute discretion, decide on the appropriate course of action.

11. REGISTERABLE INTEREST

- 11.1 Any registerable interest involving a DPS Member and the Contracting Authority, 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 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.

12. CONFIDENTIALITY

- 12.1 All communications between the Contracting Authority 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 with regard to the use and application of all and any confidential information. 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, to sign a confidentiality agreement in a format as determined by the Contracting Authority.
- 12.2 No publicity regarding this DPS Agreement or any DPS Mini Competition or Contract pursuant to this DPS Agreement is permitted unless and until the Contracting Authority has given their prior written consent to the relevant communication.

13. NOTICES

- 13.1 Any notice or other written communication to be given under this DPS Agreement shall be delivered through the Electronic Platform. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 13.
- 13.2 All notices shall be deemed to have been served as follows:
- If communicated through the Electronic Platform, on the next calendar day following transmission.

14. GIFTS

- 14.1 The DPS Member shall not offer, give or agree to give to any person holding an office in the Contracting Authority 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 14.1, the Contracting Authority may terminate this DPS Agreement and any existing Contract(s) respectively and recover from the DPS Member any loss resulting from any such termination.

15. COSTS AND EXPENSES OF DPS AGREEMENT

- 15.1 All costs and expenses incurred by the DPS Member relating to its participation in this DPS Agreement and in any DPS Mini Competition shall be borne solely by the DPS Member. The Contracting Authority shall not have any responsibility or liability for any costs or expenses of whatsoever nature incurred by the DPS Member in this regard.

16. TERMINATION

16. 1 Subject to clause 16.2, this DPS Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving 30 calendar days written notice to the DPS Member through the Electronic Platform.

- 16.2 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:
- 16.2.1 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 of this DPS Agreement shall be deemed to be a serious breach of this DPS Agreement;
 - 16.2.2 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, within 30 days after a receipt of a request in writing via the Electronic Platform from the Contracting Authority.
 - 16.2.3 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; or
 - 16.2.4 in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Article 57 of EU Directive 2014/24/EU apply to the DPS Member.
 - 16.2.5 in circumstances where the DPS Member fails to submit supporting documents to the Contracting Authority upon the request of the Contracting Authority to demonstrate their compliance with selection criteria and exclusion grounds;
 - 16.2.6 If the DPS Member does not satisfy the exclusion grounds and selection criteria which it has self-certified, at RTP stage, that it complies with.
- 16.3 Subject to clause 16.2.2, the termination of a Contract awarded under this DPS Agreement does not affect the validity of this DPS Agreement.
- 16.4 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.
- 16.5 Where this DPS Agreement is terminated in accordance with section 17.2, DPS Members may re-apply for admission to the DPS at any point during the Period of Validity if the DPS Member can self-certify that it meets the exclusion grounds and selection criteria as set out in the RTP at a later date.

17. FREEDOM OF INFORMATION

17.1 The DPS Member acknowledges that the Contracting Authority is subject to the provisions of the Code of Practice on Freedom of Information for North South Implementation Bodies and Tourism Ireland ("the Code"). If, for any reason, it is wished that information provided to Tourism Ireland is not disclosed because of its sensitive nature, then it is incumbent upon the Contractor, when providing the information, to identify same and specify the reasons for its sensitivity.

A copy of the Code is available at the Tourism Ireland website
<https://www.tourismireland.com/About-Us/Freedom-Of-Information>

18. DISPUTE RESOLUTION

18.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.

18.2 The Dispute shall be referred as soon as practicable to the named contact in section 2.A of the most recent eESPD submitted by the DPS Member and to the undersigned within the Contracting Authority respectively.

18.3 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.

18.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.

18.5 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.

18.6 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.

18.7 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.

18.8 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.

19. COUNTERPARTS

19.1 This Agreement may be executed in any number of counterparts, each of which when [and delivered] shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement

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

For and on behalf of Tourism Ireland CLG SIGNED by _____ POSITION: _____ DATE: _____	For and on behalf of The DPS Member SIGNED by _____ POSITION: _____ DATE: _____
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