



SOUTH EAST ENERGY AGENCY.

Driving Sustainability

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

for the provision of goods and services

for energy and climate action consultancy projects

and for the provision of energy efficiency, renewable energy and retrofit works

(2 lots)

Publication Date: 21st February 2024

Contents

Part 1:	Introduction
Part 2:	Instructions to Candidates
Part 3:	Selection and Award Criteria
Appendix 1:	Requirements and Specifications
Appendix 2:	Applicant's Response Document
Appendix 3:	DPS Agreement
Appendix 4:	Services/Goods Contract
Appendix 5:	Works Contract
Appendix 6:	Confidentiality Agreement

Part 1: Introduction

1.1 Background

The South East Energy Agency (“SEEA”) (the “Contracting Authority”) is issuing this Request for Applications to Participate (“RFATP”) in a Dynamic Purchasing System (“DPS”) on its own behalf and on behalf of other agencies and public bodies such as SEAI Sustainable Energy Communities, members of the Association of Irish Energy Agencies (AIEA), One-Stop-Shops under the aegis of the National Retrofit Delivery Body, local authorities and LEADER companies. The DPS will be coordinated and managed by the SEEA.

The Contracting Authority is a non-profit, independent energy agency working primarily in Carlow, Kilkenny, Waterford and Wexford. It has a voluntary Board of Directors drawn from the private, public and community sectors. SEEA is supporting investment in the low carbon economy through people and business for economic growth. SEEA has identified a significant regional target for investment in energy efficiency, renewable energy and retrofitting works of **€75m annually** across transport, domestic, SMEs, agriculture, public sector and industrial by 2030, with further investment targeted to 2050, in line with Ireland’s energy and emissions reduction targets. Further information on the Contracting Authority may be found at www.SEEA.ie

It is envisaged that economic operators (“Candidates”) admitted to the DPS will provide consultancy advices, surveys, designs and the supply and installation services for full turnkey solutions, which they will independently project manage. In addition, the DPS will cover contractors instructed by DPS clients to carry out energy efficiency retrofit works. The goods, services and works will be required initially in the three counties within the SEEA’s regional mission i.e. Wexford, Kilkenny, Carlow, but some projects will arise outside of those counties.

This DPS is being established for a period of ten years in accordance with the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) (‘the Regulations’) for the purchasing of certain energy-related goods and services and the provision of energy efficiency, renewable energy and retrofitting works divided into two lots in order to support SEEA’s strategy to deliver energy related projects and partner with experts in particular fields.

IMPORTANT

To qualify for the DPS, Applicants should follow the instructions carefully and complete the Applicant’s Response Document (Appendix 2).

1.2 Summary of the Goods, Services and Works Required

The Contracting Authority invites requests to participate (“Applications”) from Candidates for appointment to the DPS.

A full description of the goods, services and works required across all lots is set out at **Appendix 1**.

The DPS will be divided into two broad lots:

Lot 1	SERVICES: Energy and Climate Action and Associated Consultancy Projects
Lot 1.1	Training and skills development
Lot 1.2	Planning permission services
Lot 1.3	Environmental assessments
Lot 1.4	Project Supervisor Design Stage (PSDP)
Lot 1.5	Project Supervisor Construction Stage (PSCS)
Lot 1.6	Health and safety advisors
Lot 1.7	Sustainable transport management
Lot 1.8	SEAI SSRH applications
Lot 1.9	Renewable energy consultancy – bioEnergy, wind, solar, hydrogen etc
Lot 1.10	Financial facilitation
Lot 1.11	Mechanical, Electrical and Plumbing (MEP) designers
Lot 1.12	Structural engineers
Lot 1.13	Grid connections/electricity connection studies
Lot 1.14	Metering and monitoring
Lot 1.15	Building Energy Management System (BeMS) services
Lot 1.16	Measurement and verification consultants
Lot 1.17	Energy performance contracting management
Lot 1.18	Energy Service Company (ESCO) services
Lot 1.19	Energy auditors (SI 426 (2014) compliant)
Lot 1.20	Building energy certificates
Lot 1.21	Building condition surveys and report

Lot 2	WORKS: Energy efficiency, renewable energy and retrofitting work
Lot 2.1	Project Management
Lot 2.2	Retrofitting works, including the design/supply/installation of:
Lot 2.2.a	Building fabric
Lot 2.2.b	MEP systems
Lot 2.2.c	Solar technologies
Lot 2.2.d	Lighting systems – internal and external
Lot 2.2.e	Miscellaneous equipment
Lot 2.2.f	General works

1.3 The Dynamic Purchasing System (DPS) - Overview

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

Stage 1 – Admittance to the DPS

Stage 1 involves the seeking of Applications for admittance to the DPS. Candidates should submit an Applicant's Response Document ("ARD") (**Appendix 2**) to this RFATP for admission to one, several or all lots. There is no restriction on the number of lots a Candidate may submit an Application for. The Application will be assessed as to whether it is compliant and meets the selection criteria for the lots applied for in section 3.2 of this RFATP. Compliant Candidates that meet the compliance and selection criteria will be admitted to the DPS. In order to be admitted to the DPS, Candidates must complete the ARD and the European Single Procurement Document ("eESPD"). Successful Candidates must enter into a DPS Agreement with the Contracting Authority (**Appendix 3**). Candidates may re-apply for admission to the DPS in the case of their exclusion for non-compliance, or where they fail initially to satisfy the selection criteria, after the DPS has been established and at time during the period of its validity, provided the exclusion grounds do not apply and they satisfy the selection criteria at a later date.

Stage 2 – Award of Contracts

Stage 2 involves inviting all admitted Candidates (each a "DPS Member") in a particular lot to tender for specific contracts under that lot by way of a DPS mini-competition conducted in accordance with the procedures set out at clauses 5 and 6 of the DPS Agreement. After the assessment of the tenders received in response a mini-competition, the Contracting Authority/DPS Client may decide to award the contract(s) to the DPS Member or DPS Members that has submitted the lowest price or most economically advantageous tender based on the published award criteria.

1.4 Overview of the DPS Application Process

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

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

- Register with e-Tenders and/or login to the Electronic Platform.
- Review all materials for this DPS competition on the Electronic Platform.
- Complete and upload the eESPD to the Electronic Platform. Failure to complete the eESPD in all respects will result in the Application being rejected.
- Complete the ARD.
- Candidates are not required to submit pricing proposals or costs at this stage.
- Applicants should follow the instructions provided carefully.
- Failure to complete the ARD in compliance with the instructions will result in the Application being rejected. The completed ARD should be submitted via eTenders.
- If the Application is successful, the Candidate will be sent confirmation via the Electronic Platform of its admittance to the DPS and Candidates will be required to sign a DPS Agreement.
- Candidates that do not meet the compliance and selection criteria of this RFATP will not be admitted to the DPS and will be so notified via the eTenders web platform.
- Unsuccessful Candidates may re-apply for admittance onto the DPS at any stage throughout the ten-year term as can economic operators that did not submit an Application in response to this RFATP by the application deadline.
- It is envisaged that all successful Candidates will be invited to all future DPS mini-competitions for the lot/region they identifies conducted under the DPS Agreement.

- A rotation procedure shall apply to contracts valued under €25,000.

1.5 DPS Clients

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

- One-Stop-Shops under the aegis of the National Retrofitting Delivery Body
- LEADER companies
- Members of Association of Irish Energy Agencies (AIEA)
- Energy Agencies
- Public bodies, including other contracting authorities, tasked with delivering retrofitting works.
- Carlow County Council
- Wexford County Council
- Kilkenny County Council

1.6 Term

The DPS that may result from this competition will be for an initial period of validity of ten years ("the Term"). The Contracting Authority reserves the right, at its discretion and subject to its obligations in law, to extend the Term for a period or periods of up to twelve months with a maximum of five such extensions.

1.7 Termination

The Contracting Authority reserves the right to terminate the DPS Agreement at any stage in accordance with the termination provisions set out at clause 17 of the DPS Agreement.

1.8 Expenditure, order of magnitude and frequency of contracts to be awarded

The Contracting Authority estimates that the aggregate expenditure on the goods and services to be covered by the proposed DPS may amount to some €75m (excluding VAT) over the term of the DPS. This estimated is predicated on public funding being forthcoming. It is not possible to provide an estimation of expenditure by lot. Candidates must understand that these figures are estimates only based on current and future expected usage.

1.9 SME participation

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

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

1.10 Candidate Briefing Session

The Contracting Authority will provide a briefing to all successful Candidates once the DPS becomes operational.

Part 2: Instructions to Candidates

2.1 Important Notices

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

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

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

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

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

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

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

DPS Admission or award of a Contract under a DPS mini-competition does not confer exclusivity on the successful Candidate(s).

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

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

2.1.4 The relevant provisions of General Data Protection Regulation apply.

2.2 Compliant Applications

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

- seeking written (electronic) clarification from the Candidate; or
- seeking further information from the Candidate; or
- waiving a requirement, which in Contracting Authority's view, is non-material or procedural.

Candidates are required:

- (a)** To complete and submit the eESPD and their ARD via the eTenders website clearly indicating

the lot(s) being applied for;

- (b) To complete and submit the eESPD via the e-Tenders website in line with the instructions provided;
- (c) To submit all documentation which this RFATP requires to be submitted;
- (d) To conform to and comply with all instructions and requirements set out in this RFATP; and
- (e) To submit the statement required under paragraph 2.4 below as part of the ARD.

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

2.3 DPS Agreement and Contracts

2.3.1 Candidates should note the terms and conditions of the DPS Agreement and the Goods and Services Contract for lot 1 and the Works Contract for lot 2 as set out at Appendices 4 and 5 to this RFATP respectively. These contracts are templates. They may be revised or amended at the sole discretion of the Contracting Authority/DPS Client at any stage throughout the Term of the DPS. Any such updated amended contract shall be appended to the tender documentation at mini-competition stage and by tendering for a DPS mini-competition a DPS Member agrees to enter into such amended Contract.

2.3.2 Candidates are required to confirm their acceptance of the DPS Agreement and the Contracts in the Candidate's Statement enclosed with the ARD at Appendix 2. Candidates may not amend the DPS Agreement or the Contracts.

2.4 Acceptance of RFATP Requirements

Each Candidate is required to accept the provisions of this RFATP. All Candidates must return, in the ARD, a scanned signed copy of the Candidate's Statement printed on the Candidate's letterhead. The Contracting Authority must be able to read the scanned signature of the Candidate. If the Contracting Authority cannot read the scanned signature, Candidates may be requested to resubmit the Statement. Candidates may not amend the Candidate's Statement.

2.5 Consortia and Prime / Subcontractors

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

2.6 Application Submission Requirements

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

post or hand delivery) will not be accepted. Applications may be submitted for one, several or all lots. Applications must clearly indicate the lot(s) being applied for

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

2.6.2 Initial applications must be received not later than 12.00hrs on 22nd September 2020.

2.6.3 Applications must be submitted in English.

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

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

2.7 Queries and Clarifications

2.7.1 All queries relating to any aspect of this RFATP or of the Candidate's Application must be directed to the messaging facility on the Electronic Platform. Queries will be accepted no later than 12:00 noon on 27th August 2020, in relation to this RFATP for the initial establishment of the DPS unless otherwise published by the Contracting Authority. Economic operators, which did not supply an Application, or did not meet the exclusion grounds or selection criteria at the time the DPS was initially established, may apply or re-apply subsequently for admission to the DPS at any point during the period of its validity and any queries in relation to this DPS must be directed to the messaging facility on the Electronic Platform. For the avoidance of doubt, Candidates may not contact potential DPS Clients regarding any aspect of this DPS.

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

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

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

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

2.8 Applications for Admittance to the DPS and Application Costs

2.8.1 Notwithstanding the application deadline in paragraph 2.6.2, both unsuccessful Candidates that submit an Application but fail to fulfil the compliance and selection criteria in the RFATP, and economic operators that did not submit an Application in response to this RFATP by the

application deadline may raise clarifications queries relation to any aspect of the competition or of this RFATP and apply or re-apply and submit an Application in response to this RFATP at any stage throughout the Term of the DPS. The Contracting Authority shall evaluate any such Application(s) against the compliance and selection criteria set out in this RFATP and shall duly notify the Applicant of the outcome of that Application in accordance with paragraph 3.4.1 of this RFATP.

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

2.9 Confidentiality

- 2.9.1 All documentation, drawings, data, statistics, information, patterns, samples or material disclosed or furnished by the Contracting Authority to Candidates during the course of this DPS:
- (a) are furnished for the sole purpose of replying to this RFATP only;
 - (b) may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;
 - (c) shall be treated as confidential by the Candidate and by any third parties (including subcontractors) engaged or consulted by the Candidate; and
 - (d) must be returned immediately to the Contracting Authority upon cancellation or completion of this DPS if so requested by the Contracting Authority.

2.10 Pricing

- 2.10.1 Candidates are reminded that they are not required to submit a Pricing Schedule in response to this RFATP. Successful Candidates to a DPS will however be required to submit pricing in response to future DPS mini-competitions conducted under the DPS.
- 2.10.2 All prices quoted in a DPS mini-competition must be all-inclusive (i.e. including but not being limited to materials, labour, shipping, packaging, delivery, installation, 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 Any currency variations occurring over the term of any Contract shall be borne by the Candidate.
- 2.10.4 Payments pursuant to this RFATP shall be made subject to and in accordance with the relevant Contract and the terms of any subsequent RFT.

2.11 Environmental, Social and Labour Law

- 2.11.1 In the performance of any Contract awarded, the successful Candidate(s) and their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the goods or related services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).
- 2.11.2 Candidates shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.

2.11.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the “2012 Act”) provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the goods and/or services will involve the provision to the Contracting Authority of Agency Workers (within the meaning of the 2012 Act), Candidates should ensure that they consider their obligations under the 2012 Act when pricing their Application. The Contracting Authority shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the goods and/or services.

2.12 Publicity

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

2.13 Registrable Interest

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

2.14 Anti-Competitive Conduct

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

2.15 Industry Terms Used in this RFATP

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

2.16 Freedom of Information

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

2.16.2 Candidates are asked to consider if any of the information supplied by them in their application should not be disclosed because of its confidentiality or commercial sensitivity. If Candidates consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Candidates must, when providing such information, clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Candidates do not identify information as confidential or commercially sensitive, it is liable to be released in response to a Freedom of Information request without further notice to or consultation with the

Candidate. The Contracting Authority will, where possible, consult with Candidates about confidential or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act.

2.17 Tax Clearance

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

2.18 Conflicts of Interest

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

2.19 Withdrawal from participation in this DPS

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

2.20 Site Visit

Site visits may be arranged in connection with the conduct of mini-competitions under the DPS.

2.21 Insurance

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

Employers' Liability: €12,700,000 (limit for any one claim or series of claims out of a single occurrence)

Public Liability: €6,500,000 limit for any one claim or series of claims arising out of a single occurrence

Product Liability: €6,500,000

Professional Indemnity: €500,000 (for any one claim/any one period excluding defence costs).

2.21.2 By signing the Candidate's Statement, Candidates confirm, that if awarded a Contract arising from

a DPS mini-competition pursuant to the DPS Agreement, they will, from the effective date of the Contract (as defined in the Contract), obtain and hold the types and levels of insurance as specified in the tender documentation for a mini-competition. A formal confirmation from the Candidate's insurance company or broker to this effect will be requested from the successful DPS Member(s) prior to the award of (and shall be a condition of) any Contract.

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

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

Part 3: Selection Criteria

3.1 Compliant Applications

3.1. Only those Candidates who have:-

- Submitted a compliant ARD pursuant to part 2.2 above, and
- Declared by way of the eESPD that no grounds for exclusion of the Candidate pursuant to Article 57 of the Directive (the “Exclusion Grounds”) apply to them or that, where any such Exclusion Grounds apply, and where the Candidate is not precluded from doing so under Article 57(6) (final paragraph) of the Directive, it can provide evidence to the effect that measures taken by the Candidate are sufficient to demonstrate its reliability despite the existence of any relevant Exclusion Ground, and
- Declared by way of the eESPD that they satisfy the selection criteria for this DPS as set out in part 3.2 below (the “Selection Criteria”),

will be admitted to the DPS.

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

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

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Candidates at any moment during the DPS to submit any or all of the following for the purposes of verification of the status of the Candidate (including the Prime Contractor and any Sub-contractor):

- (i) 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
- (ii) In the case of the Prime Contractor and any Sub-contractor on whose capacity the Prime Contractor relies, all or any of the supporting documents specified at paragraph 3.2 below.

If, upon request by the Contracting Authority, a Candidate does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFATP and the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion Ground, it shall not be admitted to the DPS or shall be excluded from this DPS.

If, upon request by the Contracting Authority, a Candidate does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate 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 the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion Ground, it shall be excluded from participation in this DPS unless it replaces the Subcontractor with one which meets all relevant requirements of this RFATP.

3.2 Selection Criteria

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

In order to be admitted to the DPS, Candidates must declare by way of the eESPD that they satisfy the financial and economic standing and technical and professional ability requirements set out hereunder.

The Contracting Authority may require economic operators to submit supporting documents at any stage of the process via electronic means, no later than five calendar days from the time of the request, unless notified otherwise in writing, via the Electronic Platform. Failure to provide the requested documentation in the specified time may, at the discretion of the Contracting Authority(s), result in the refusal of their application or the removal of the Candidate(s) from the DPS having already being admitted.

However, where the Candidate is unable, for a valid reason, to provide the specified documentation, the Candidate must inform the Contracting Authority of the reason why the documentation cannot be supplied and, if the Contracting Authority considers the reason given to be valid, provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

Candidates must complete the relevant sections of the ARD (Appendix 2) in line with instructions provided in the document.

Candidates may rely on the capacities of other entities in order to meet the Selection Criteria provided those parties are clearly pre-identified and included with the ARD.

Selection Criterion	Minimum Requirement
Financial and Economic Standing	For Lot 1, Candidates must declare that their turnover exceeded €30,000 (ex VAT) per annum in any one of the last three financial years. For Lot 2, Candidates must declare that their turnover threshold exceeded €100,000 (ex VAT) per annum in the last three financial years. Candidates must confirm in the eESPD they fulfill these turnover requirements and will provide evidence, if so requested, by way of audited accounts, accountant's letter/certificate or auditor's letter/certificate to demonstrate compliance with this selection criteria.
Technical and Professional ability	Candidates must demonstrate in a clear and comprehensive manner that they have the level of experience and capacity to deliver the contracts to be procured under this DPS. 1. Previous Demonstrated Track Record For each Lot applied for, Candidates must provide two verifiable reference contracts in progress or completed in the past three years directly relevant to each of the lot(s) applied for, which demonstrates that they have an appropriate level of experience, skills, efficiency and capacity to provide the goods, services or works as sought in this DPS for the lot(s) applied for. 2. Qualifications and Expertise of Proposed Project Managers For each lot applied for, Candidates must provide details about the proposed Project Manager(s) who must have relevant qualifications and at least three years' experience in the survey, design, supply and installation of energy management and conservation solutions relevant to the applied lots. The Project Manager shall be responsible for the

day-to-day management of the Contract; for preparing financial statement and other reports as required by the DPS Clients; liaising with the DPS Client to ensure the efficient and effective operation of the Contract. The CV of the proposed Project Manager(s) must be provided using the format set out in the ARD.

3. Qualifications and Expertise of Proposed Key Technical Staff

Candidates must provide details in respect of the proposed key technical staff to be assigned for the lots applied for. All such staff must have relevant qualifications and at least three years' experience in the provision of goods and/or services and works for the particular lot(s) applied for. The CVs of each of the proposed the key technical staff must be provided using the format set out in the ARD. It is important to provide evidence of current membership of a recognised professional or trade body.

4. Health and Safety

All Candidates must declare by way of the eESPD that they have a health and safety statement; that no fatalities or serious notifiable incidents have occurred over the past three years; and, that they shall comply with all current and relevant legislation, including the Safety, Health and Welfare at Work Act 2005, prevailing Building Regulations and associated Codes of Practice. A successful Candidate will be appointed as a works contractor, PSCS, Designer or PSDP in accordance with the Safety, Health and Welfare at Work (Construction) Regulations 2013. A successful Candidate for a works contract must propose a health and safety officer for approval and appointment by the PSDP in accordance with Safety, Health and Welfare at Work (Construction) Regulations 2013.

5. Sustainable Procurement Criteria

All Candidates must confirm by way of the eESPD that they will implement current guidelines on green public procurement in relation to the purchase of goods and services and the delivery of works.

6. Lot 2 (Works, including Retrofitting Works)

All Candidates must confirm by way of the eESPD that their business is registered with SEAI and they comply with the Better Energy Homes Contractor's Code of Practice. Where applicable, contractors must ensure the relevant NSAI standards (or equivalent) are achieved for any systems and/or products installed including the relevant certification, as detailed in SR54. A building methodology based on The Building Control Acts 2007 to 2014 (as amended), Technical Guidance Documents (including most relevant and up to date edition of TGD A, B, F, J and L) and the Acceptable Construction Details must be adhered to; ensuring that all goods supplied are reliable in use, of merchantable quality, fit for purpose and of a quality acceptable to the DPS Clients.

6. Lot 2 (Works – MEP Technologies)

All candidates must confirm by way of the eESPD that all technologies are registered on the SEAI Triple E register, or are equivalent in standards and meet the Triple E criteria. Where applicable, contractors must ensure the relevant NSAI standards are achieved for any systems and/or products installed including the relevant certification.

The information/documentation required above must be provided in the ARD in the prescribed format.

3.3 Notification

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

will be directed via eTenders portal. Tenderers should not email or phone call the Contracting Authority before a decision has been made on their respective submissions.

3.4 DPS Agreement

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

APPENDIX 1 - Requirements and Specifications

SEEA – Overview

SEEA, the Contracting Authority, is a not-for-profit independent agency based in Kilkenny aggregating energy efficiency and renewable energy projects across counties Carlow, Kilkenny and Wexford. Since its creation, SEEA has been involved in €25m (half of which was grant aided) worth of capital investment in such projects, with a resultant avoided energy spend of €15m saving over 12,000 tonnes of CO₂ and 32,000GWh in the process.

From service offerings such as energy auditing and project management, SEEA is committed to supporting every energy user in using energy more efficiently, monitoring energy use and towards a greater choice of renewable energy sources.

SEEA's mission is to support and drive the sustainable activities amongst the citizens and organisations of the region. This will be achieved by leveraging, promoting, researching, implementing and measuring projects that reduce total energy. SEEA aims to achieve this by ensuring a reduction of energy demand, lower CO₂ emissions and by driving economic activity towards sustainable enterprise in the region into future generations.

SEEA has a target investment in energy efficiency and renewable energy of €75m across domestic, SME, agriculture, public sector and industrial and transport settings by 2030, with further investment targeted to 2050, in line with Ireland's energy reduction targets. This will only be achieved by developing strategic partnerships with key service providers regionally and nationally to provide the goods and/or services required for the delivery of assigned projects.

Under Ireland's Climate Action Plan some 500,000 houses will be retrofitted over the decade to 2030. This DPS is intended to provide a business-friendly procurement platform for the supply chain.

Service providers admitted to the DPS will ideally provide turnkey solutions which they will be required to independently project-manage subject to general oversight and supervision of the Contracting Authority. The Contracting Authority will identify the projects and needs and assume the third party quality assurance role and provide technical direction and oversight where required. However, it shall be the responsibility of the Contractor to manage and deliver the individual projects safely, on schedule, and commissioned to stated quality levels.

SEEA requires the services of a range of technical experts and professionals to assist the Agency in delivering its supports to its customers through SEEA best practices in professional energy services. Tenderers should be fully familiar with the roles and responsibilities of SEEA, its business model and quality standards. Details can be found on www.SEEA.ie

The DPS Member will be a strategic partner of SEEA to help deliver energy efficiency and renewable energy projects. If the Member can only provide the service but not the goods itself or vice versa, this is only acceptable where the goods or services supplier details are notified to SEEA and the goods/services meet the required criteria which will be detailed by SEEA in any contract offering. There may be cases where only goods or only services will be required, therefore negating the need for sub-contractors.

Locations

The targeted projects will be located initially in the South East of Ireland region predominantly. However, there is a likelihood of the DPS being extended by way of national coverage of projects.

Candidates will be asked to nominate the regions where they are willing to provide goods and/or services. This will allow the Contracting Authority to identify interested and suitable parties and notify them in a timely manner of upcoming projects to allow for preparation of tendering and resource management.

Equipment

DPS members must be able to supply their own PPE, tools, products and equipment necessary to complete the assigned works under the respective Lot(s). DPS Clients will not be responsible for any damages, extra costs or stolen equipment whilst being utilised for assigned installations.

Key Account Manager

The DPS Member shall nominate a dedicated Key Account Manager (the “Key Account Manager”) to oversee the effective and efficient operation of the DPS and any Contracts awarded thereunder.

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

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

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

- Review performance by the DPS Member;
- Identify operational measures required of the DPS Member or Contracting Authority to improve the actual performance by the DPS Member;
- Review any results, reports or findings of any audits undertaken and confirm that the service delivery complies with the DPS;
- Modify and/or adjust any corrective action previously introduced, as appropriate; and
- Identify and discuss relevant issues between the parties to the DPS.

The nominated Key Account Manager must be acceptable to the Contracting Authority in its sole discretion having regard to his/her ability to oversee and comply, *inter alia*, with the provision of management information as set hereunder. No change shall be made to the identity of the Key Account

Manager without the prior written consent of the Contracting Authority. In the event that the Contracting Authority, in its sole discretion, is dissatisfied with the performance of Key Account Manager, it may require that a replacement, with appropriate experience, be appointed by the DPS Member within a timeframe to be specified by the Contracting Authority.

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

Provision of Management Information

The DPS Member shall provide management information to the Contracting Authority and DPS Clients, as may be requested by them, from time to time.

Construction Works Management Framework

The Contracting Authority/DPS Clients reserve the right to apply some or all of the provisions of the CWMF to works carried out under this DPS.

Requirements and Specifications

The requirements under each of the lots are specified below. The DPS members must be able to offer some or all of the areas highlighted, dependant on their organisation and the goods and/or services they provide. The areas highlighted cover the majority of the areas where SEEA anticipate projects will be delivered. The intention is to admit many different but relevant goods/services providers to the respective DPS lots to allow for greater coverage and more competitive offerings.

The areas detailed below cover most but not all of the required goods, services and works required. As new requirements arise, SEEA and other DPS Clients will then review the current DPS lot members to assess who, if any, can provide solutions to such requirements. DPS members may be contacted by way of market consultation in advance of any mini-competition to ensure they can fulfil the role requirements.

LOT 1: SERVICES: Energy and Climate Action Consultancy Projects

Lot 1 relates to the provision of energy and climate action consultancy and services including design, specification, procurement and project management. This option can be used in isolation or to complement measures delivered through lot 2 where specific or separate consultancy and project management services are required.

Services offered through this framework include:

1. Training and skills development

- Proven track record and ability to develop and deliver training courses across all energy and climate action related topics
- Experienced trainers to deliver energy related courses to public, private and community sectors

2. Planning permission services

- Planning applications for various size and types of renewable energy systems or building fabric upgrades, where required, and all necessary documents including drawings, environmental assessments and all other services related to submitting planning

permission applications.

3. Environmental assessments

Services to provide, where required

- Environmental Impact Assessments (EIA) in line with [Council Directive 85/337/EEC as amended by Directive 97/11/EC](#) and [2003/35/EC](#).
- Environmental Impact Statements (EIS)
- Strategic Environmental Assessments (SEA)

4. Project Supervisor Design Stage (PSDP)

5. Project Supervisor Construction Stage (PSCS)

6. Health and Safety Advisors

To ensure that clients duties under the Health and Safety at Work Act are reasonably and practicably handed over to a competent principle contractor. This includes assistance at the tender and work stages, (including post completion, commissioning and handover) and supervision of the appointed principle contractor to ensure:

- Compliance with the Health and Safety At Work Act and HSA Regulations
- Advising clients of health and safety requirements
- Inspection of sites and works to ensure that the level of health and safety to the client's employees, tenants and the general public are maintained
- Minimise operational losses, occupational health problems, accidents and injuries
- Risk assessments
- Health and safety plans

7. Sustainable Transport Management

- a. Mobility planning
- b. Alternative fuels research
- c. Fleetmatics
- d. Fuel management systems
- e. EV chargers (Installation, payment protocols to allow for RFID and contactless payment mechanisms, building integration, on street, fast chargers.
- f. Related services

8. SEAI SSRH Applications

- Mechanical, Electrical and Plumbing (MEP) design of heating systems
- Application submission under Support Scheme for Renewable Heat (SSRH) terms and conditions
- Energy Management Plan

9. Renewable energy consultancy

Feasibility studies, design of systems, related services for:

- a. Solar
- b. Wind
- c. Bioenergy
- d. Hydrogen
- e. Other renewable energy

10. Financial facilitation

11. Mechanical, Electrical and Plumbing (MEP) designers

12. Structural engineers

13. Grid connections/electricity connection studies

- Grid designs, grid capacity reports, connection agreements and related services

14. Metering and Monitoring

15. Building Energy Management System (BeMS) Services

- Designers/ Controls engineer

16. Measurement & Verification consultants

- IPMVP protocols or equivalent

17. Energy Performance Contracting management

18. ESCO Services

19. Energy Auditors (SI 426 (2014) compliant)

Provision of energy audit and surveys to recommend improvement measures, that include:

- Associated costs;
- Anticipated energy savings from an energy efficiency investment for buildings;
- Energy monitoring and targeting services including specification of monitoring regimes and defining an appropriate monitoring and targeting system to meet the building and occupiers needs; and
- The analysis of energy profiles to help characterise building energy performance, including risk from overheating and independent reports on metering arrangements.

20. Building Energy Certificates

- a. Display Energy Certificate (DECs)
- b. Building Energy Rating (BERs)
- c. Non-Domestic Building Energy Rating (NDBERs)

21. Building condition surveys and reports

- Building condition surveys – energy systems, building fabric and other general items
- DEAP design reports to show measures required to get to specific BER/NDBER rating

LOT 2: WORKS: Energy efficiency, renewable energy and retrofitting works

Lot 2 relates to the provision of individual or groups of energy efficiency measures for domestic, non-domestic and public sector buildings. This lot provides the opportunity for Framework Clients to appoint main contractors for all size and type of refurbishments and retrofit projects.

Companies appointed to the framework will be competent contractors (NSAI, RECI, Registered Gas Installer (GNI) or equivalent certified installers and approved system manufacturers/suppliers) who are capable of providing clients with full project management services. Companies should also be capable of providing the full range of enabling and ancillary measures, such as scaffolding etc., and offer a full suite of appropriate guarantees and warranties. Each measure will have its own product performance and installation requirements.

The range of energy efficiency and renewable energy systems must comply with all relevant funding streams suitable for traditional and non-traditional properties. Performance requirements must meet building regulations including appropriate regional variations.

1 Project Management

- Appointment of PSDP/PSCS where applicable
- Managing subcontractors and multi-discipline trades
- Site management and clerk of works services
- Quantity surveying

2 Retrofitting Works, including the design/supply/installation of:

a. Building Fabric

1. External wall insulation
2. Cavity wall insulation
3. Internal wall insulation
4. Floor insulation
5. Roof insulation
6. Windows and doors replacement
7. Rainscreen and cladding installation
8. Modular building (houses)

b. MEP Systems

1. Traditional boilers
2. Commercial boilers
3. Boiler optimisation Technologies
4. Biomass systems (transport, delivery, storage and boiler equipment)
5. Biogas systems (transport, delivery, storage and boiler equipment)
6. Certified wood burning stoves
7. Air to water heat pumps
8. Ground source heat pumps
9. Gas absorption heat pumps
10. CHP or CCHP
11. District heating interface units
12. Insulation materials (pipe work, hot and cold water tanks, duct work, draught proofing)
13. Heating controls
14. Electric heaters
15. Demand control ventilation
16. Mechanical ventilation with heat recovery
17. Pumps/VSDs

c. Solar technologies

1. Solar PV (with or without battery storage)
2. Solar thermal systems

d. Lighting systems – internal and external

1. LED lighting
2. Lighting controls

e. Miscellaneous Equipment

1. Energy storage solutions
2. Wind turbines
3. Hydropower systems
4. EV charging infrastructure
5. Building energy management systems
6. Catering equipment
7. Monitoring and metering
8. New innovative solution/equipment

f. General Works

1. General works on natural gas and biogas installations (Registered Gas Installer)

2. General works on heating/cooling systems
3. General works on plumbing systems
4. General works on electrical systems
5. General construction works on all trades linked to the retrofitting project

APPENDIX 2

APPLICANT'S RESPONSE DOCUMENT

Please read the instructions provided carefully. Failure to complete or respond to the information requested will render the tender response non-compliant.

The required details for all lots applied should be included in this document.

STEP 1

COMPLETE THE EUROPEAN SINGLE PROCUREMENT DOCUMENT

The ESPD, in effect a suitability prequalification questionnaire, can be accessed on eTenders in the file that advertised this tender opportunity. Once logged in, open the document on eTenders. You will be prompted to make declarations and respond to several questions dealing with exclusion and selection criteria (including financial and economic standing and technical and professional capability). Once reviewed and completed, press the 'Submission' button. This will automatically upload the ESPD as part of your tender response.

STEP 2

COMPLETE COMPANY DETAILS AS SET OUT IN TABLE HEREUNDER

Company Name	
Registered Address	
Company Registration Number	
Date when business started	
VAT Registration Number	
Contact Person/Authorised Representative	
Address (if different)	
Email	
Phone/Mobile	
General description of the business	

STEP 3

INDICATE THE LOTS YOU ARE BIDDING FOR (TICK THE BOX 'X' AS APPROPRIATE) AND IDENTIFY THE REGION WHERE THE GOODS/SERVICES/WORKS WILL BE DELIVERED.

List one or all of the following regions in respect of all lots applied for:

Dublin

Rest of Leinster

Munster

Connaught /Ulster

Lot 1	SERVICES: Energy and Climate Action Consultancy Projects	Region
Lot 1.1	Training and skills development	☐
Lot 1.2	Planning permission services	☐
Lot 1.3	Environmental assessments	☐
Lot 1.4	Project Supervisor Design Stage (PSDP)	☐
Lot 1.5	Project Supervisor Construction Stage (PSCS)	☐
Lot 1.6	Health and safety advisors	☐
Lot 1.7	Sustainable transport management	☐
Lot 1.7.a	Mobility planning	☐
Lot 1.7.b	Alternative fuels research	☐
Lot 1.7.c	Fleetmatics	☐
Lot 1.7.d	Fuel management systems	☐
Lot 1.7.e	EV chargers	☐
Lot 1.7.f	Related services	☐
Lot 1.8	SEAI SSRH applications	☐
Lot 1.9	Renewable energy consultancy	☐
Lot 1.9.a	Solar	☐
Lot 1.9.b	Wind	☐
Lot 1.9.c	Bioenergy	☐
Lot 1.9.d	Hydrogen	☐
Lot 1.9.e	Other renewable energy	☐
Lot 1.10	Financial facilitation	☐
Lot 1.11	Mechanical, Electrical and Plumbing (MEP) designers	☐
Lot 1.12	Structural engineers	☐
Lot 1.13	Grid connections/electricity connection studies	☐
Lot 1.14	Metering and monitoring	☐
Lot 1.15	Building Energy Management System (BeMS) services	☐
Lot 1.16	Measurement and verification consultants	☐
Lot 1.17	Energy Performance contracting management	☐
Lot 1.18	Energy Service Company (ESCO) services	☐
Lot 1.19	Energy Auditors (SI 426 (2014) compliant)	☐
Lot 1.20	Building energy certificates	☐
Lot 1.20.a	Display Energy Certificate (DECs)	☐
Lot 1.20.b	Building Energy Rating (BERs)	☐
Lot 1.20.c	Non-Domestic Building Energy Rating (NDBERs)	☐

Lot 1.21	Building condition surveys and reports	☐	
-----------------	---	--------------------------	--

Lot 2	WORKS: Energy efficiency, renewable energy and retrofitting works		Region
Lot 2.1	Project management	☐	
Lot 2.2	Retrofitting works, including the design/supply/installation of:	☐	
Lot 2.2.a	Building fabric		
Lot 2.2.a.1	External wall insulation	☐	
Lot 2.2.a.2	Cavity wall insulation	☐	
Lot 2.2.a.3	Internal wall insulation	☐	
Lot 2.2.a.4	Floor insulation	☐	
Lot 2.2.a.5	Roof insulation	☐	
Lot 2.2.a.6	Windows and doors replacement	☐	
Lot 2.2.a.7	Rainscreen and cladding installation	☐	
Lot 2.2.a.8	Modular building (houses)	☐	
Lot 2.2.b	MEP systems		
Lot 2.2.b.1	Traditional boilers	☐	
Lot 2.2.b.2	Commercial boilers	☐	
Lot 2.2.b.3	Boiler optimisation technologies	☐	
Lot 2.2.b.4	Biomass systems (transport, delivery, storage and boiler equipment)	☐	
Lot 2.2.b.5	Biogas systems (transport, delivery, storage and boiler equipment)	☐	
Lot 2.2.b.6	Certified wood burning stoves	☐	
Lot 2.2.b.7	Air to water heat pumps	☐	
Lot 2.2.b.8	Ground Source heat pumps	☐	
Lot 2.2.b.9	Gas Absorption heat pumps	☐	
Lot 2.2.b.10	CHP or CCHP	☐	
Lot 2.2.b.11	District heating interface units	☐	
Lot 2.2.b.12	Insulation (pipe work, hot/cold water tanks, duct work, draught proofing)	☐	
Lot 2.2.b.13	Heating controls	☐	
Lot 2.2.b.14	Electric heaters	☐	
Lot 2.2.b.15	Demand control ventilation	☐	
Lot 2.2.b.16	Mechanical ventilation with heat recovery	☐	
Lot 2.2.b.17	Pumps/VSDs	☐	
Lot 2.2.c	Solar technologies		
Lot 2.2.c.1	Solar PV (with or without battery storage)	☐	
Lot 2.2.c.2	Solar thermal systems	☐	
Lot 2.2.d	Lighting systems – internal and external	☐	
Lot 2.2.e	Miscellaneous equipment		
Lot 2.2.e.1	Energy storage solutions	☐	
Lot 2.2.e.2	Wind turbines	☐	
Lot 2.2.e.3	Hydropower systems	☐	
Lot 2.2.e.4	EV charging infrastructure	☐	
Lot 2.2.e.5	Building energy management systems	☐	

Lot 2.2.e.6	Catering equipment	☐	
Lot 2.2.e.7	Monitoring and metering	☐	
Lot 2.2.e.8	New innovative solution/equipement	☐	
Lot 2.2.f	General works		
Lot 2.2.f.1	General works on natural gas and biogas installations (Registered Gas Installer)	☐	
Lot 2.2.f.2	General works on heating/cooling systems	☐	
Lot 2.2.f.3	General works on plumbing systems	☐	
Lot 2.2.f.4	General works on electrical systems	☐	
Lot 2.2.f.5	General construction works on all trades linked to the retrofitting project	☐	

STEP 4

PROVIDE TWO REFERENCE SITES FOR EACH LOT APPLIED FOR (USING TEMPLATE HEREUNDER)

(COPY THIS TEMPLATE AS REQUIRED FOR ALL LOTS APPLIED FOR)

RULE: For each lot applied for, Candidates must demonstrate a track record in the provision of goods, services or works related to that lot. In this regard they must provide two verifiable reference contracts in progress or completed in the past three years directly relevant to each of lot applied for, which demonstrates that they have an appropriate level of experience, skills, efficiency and capacity to provide the goods, services or works as sought in this DPS for the lot(s) applied for. Failure to provide full reference details shall result in the Candidate being eliminated from the competition.

REFERENCE 1 (LOT:)

PREVIOUS PROJECT/CONTRACT #1	
Name of Project/Contract	Click here and insert the name of project or matter on which you delivered service
Client/Contracting Authority	Click here and insert the name of the client or contracting authority
Public or Private Sector?	Click here and insert either Public or Private
Contract Description	Click here and insert a full description of goods provided to the Client/Contracting Authority
Contract Management	Click here and insert details of the management systems/approach employed during the course of the contract
Contract Performance	Click here and insert tangible examples of where your expertise and skill added value
Contract Value excluding VAT	€Click here and insert the total value charged
Contract Duration (Start/Finish)	Click here and insert the start date and finish date of the project/contract
Comparability Narrative	Click here and insert a short narrative that outlines the extent to which you feel the goods are comparable to the Contracting Authorities current requirements
Name of Client Referee	Click here and insert name

Address of Client Referee	Click here and insert address
Telephone of Client Referee	Click here and insert telephone number
Email Address of Client Referee	Click here and insert email address

REFERENCE 2 (LOT:)

PREVIOUS PROJECT/CONTRACT #1	
Name of Project/Contract	Click here and insert the name of project or matter on which you delivered service
Client/Contracting Authority	Click here and insert the name of the client or contracting authority
Public or Private Sector?	Click here and insert either Public or Private
Contract Description	Click here and insert a full description of goods provided to the Client/Contracting Authority
Contract Management	Click here and insert details of the management systems/approach employed during the course of the contract
Contract Performance	Click here and insert tangible examples of where your expertise and skill added value
Contract Value excluding VAT	€Click here and insert the total value charged
Contract Duration (Start/Finish)	Click here and insert the start date and finish date of the project/contract
Comparability Narrative	Click here and insert a short narrative that outlines the extent to which you feel the goods are comparable to the Contracting Authorities current requirements
Name of Client Referee	Click here and insert name
Address of Client Referee	Click here and insert address
Telephone of Client Referee	Click here and insert telephone number
Email Address of Client Referee	Click here and insert email address

STEP 5

PROVIDE A CV FOR THE PROPOSED PROJECT MANAGER IN FOLLOWING FORMAT

RULE: For each lot applied for, Candidates must propose a Project Manager(s) who must have relevant qualifications and at least three years' experience, for example in the survey, design, supply and installation of energy management and conservation solutions relevant to the applied lots. The Project Manager shall be responsible for the day-to-day management of the Contract; for preparing financial

statement and other reports as required by the DPS Clients; liaising with the DPS Client to ensure the efficient and effective operation of the Contract. The CV of the proposed Project Manager must be provided using the format set out hereunder. Failure to provide full details about the Project Manager shall result in the Candidate being eliminated from the competition.

(COPY THIS TEMPLATE AS REQUIRED FOR ALL LOTS APPLIED FOR)

LOT:

Name	
Position in the Applicant's Company	
Highest Professional Qualification	
Number of years' experience as a senior Project Manager	
Assignments managed as a Project Manager during career	
Summary of key skills and expertise	
Summary of key experiences	
Availability/Capacity (in % terms) over coming year	
Narrative that demonstrates the Project Manager's specialist knowledge and experience in managing the delivery of projects in a collaborative manner	

STEP 6

**PROVIDE A CV FOR THE KEY TECHNICAL STAFF IN THE FOLLOWING FORMAT
(COPY THIS FORM AS REQUIRED)**

RULE:

For each lot applied for, Candidates must achieve a minimum score of 60% in respect of the proposed key technical staff who must have relevant qualifications and at least three years' experience in the provision of goods and/or services for the particular lot(s) applied for. The CVs of each of the proposed the key technical staff must be provided using the format set out in the ARD. It is important to provide evidence of current membership of a recognised professional body. Failure to provide full details about all ket personnel shall result in the Candidate being eliminated from the competition.

(COPY THIS TEMPLATE AS REQUIRED FOR ALL LOTS APPLIED FOR)

LOT:

Key Technical Staff

Name	
Position in the Tenderer's Company	

Highest Professional Qualification	
Number of years' experience	
Assignments completed during career	
Summary of key skills and expertise	
Summary of key experiences	
Availability/Capacity (in % terms) over coming year	

Health and Safety Officer (Works only)

Name	
Position in the Tenderer's Company	
Highest Professional Qualification	
Number of years' experience	
Assignments completed during career	
Summary of key skills and expertise	
Summary of key experiences	
Availability/Capacity (in % terms) over coming year	

STEP 7

COMPLETE AND SIGN THE CANDIDATE'S STATEMENT HEREUNDER

TO: The South East Energy Agency (the "Contracting Authority").

RE: Request for Applications to Participate (the "RFATP") in the DPS for the provision of goods and/or services for energy and climate action consultancy services and for the provision of energy efficiency, renewable energy and retrofitting works

Having examined this RFATP, including the Instructions to Candidates, the selection criteria, and the requirements and specifications, the terms and conditions of the DPS Agreement and the contracts (Appendices 4 and 5) we hereby agree and declare the following:

1. We hereby apply for membership of the DPS Lot(s) Number [please specify Lot(s) applied for]. We understand the nature and extent of the goods, services and/or works required to be delivered as described in the requirements and specifications at Appendix 1 to the RFATP.
2. We accept all of the Terms and Conditions of the RFATP, the DPS Agreement, Contract(s) and the Confidentiality Agreement at Appendix 6 of the RFATP and agree if awarded any contract pursuant to the DPS Agreement to execute the Contract and Confidentiality Agreement appended to the RFATP.
3. We confirm that we have complied with all requirements as set out at Part 2 of this RFATP.
4. We accept all the selection criteria as set out in Part 3 of the RFATP.
5. We agree to provide the goods, services and/or works in accordance with the RFATP and our application.
7. We agree that, if admitted to the DPS, we will be bound by the DPS Agreement at Appendix 3 and that, if awarded any contract pursuant to a DPS mini-competition or direct award, we shall comply with the terms and conditions of the Goods and Services and Works Contracts at Appendices 4/5.

8. We shall, if awarded any Contract pursuant to this DPS, have in place on the effective date of the Contract all insurances (if any) as required by paragraph 2.21.1 of the RFATP or as required by the RFT issued at DPS mini-competition.
9. We agree that, if awarded any Contract, we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
10. We confirm that all Data Subjects whose Personal Data is provided in our application have consented to the processing of such Personal Data by us, the Contracting Authority, the evaluation team and the supplier of the etenders.gov.ie website, for the purposes of our participation in this competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.

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

STEP 8

SAVE AND UPLOAD THIS ARD VIA ETENDERS

Appendix 3

Dynamic Purchasing Agreement for the provision of goods and services for energy and climate action consultancy projects and for the provision of energy efficiency, renewable energy and retrofitting works

THIS DYNAMIC PURCHASING AGREEMENT IS MADE ON THE _____ **DAY OF** _____ **2020**
 (“the DPS Agreement”)

BETWEEN:

- The South East Energy Agency whose offices are located at (“the Contracting Authority”); and
- XXX whose principal place of business is at XXXX (“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 [XXX] and entitled (“the RFATP”) the Contracting Authority invited Candidates to participate in a DPS agreement for the provision of the Goods/Services/Works described in Appendix 1 of the RFATP. References to the RFATP shall include any clarifications in relation to the RFATP issued by the Contracting Authority via the messaging facility on <http://www.etenders.gov.ie> (the “Electronic Platform”) between XXX and XXX (the “RFATP Clarifications”). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this DPS Agreement.
- The DPS Member submitted a response to the RFATP dated XXX (“the Application”). References to the Application shall include any clarifications issued in writing via the Electronic Platform by the DPS Member to the Contracting Authority between and (the “Application Clarifications”). The Application (including the Application Clarifications) is hereby incorporated by reference into this DPS Agreement.
- The DPS Member was appointed to the DPS as a result of the evaluation of its Application in accordance with the RFATP.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

“Commencement Date” means

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

“Goods/Services Contract” means the template contracts attached at Appendix 4 to the RFATP;

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

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

“Month” means a calendar month;

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

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

“Works Contract” means the template contracts attached at Appendix 5 to the RFATP;

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

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

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

- 2.1 In consideration of payment by the Contracting Authority of the sum of €2.00, the receipt of which is hereby acknowledged by the DPS Member, the DPS Member accepts its appointment under the provisions of this DPS Agreement and agrees to comply with the terms of this DPS Agreement.
- 2.2 This DPS Agreement does not entitle the DPS Member to be consulted in respect of or awarded any Contract during the DPS Term. The DPS Client(s) may at its or their sole discretion choose not to enter into any Contract pursuant to this DPS Agreement.
- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any and/or number of Contracts (if any) which may be procured in connection with this DPS Agreement and the Parties acknowledge that the DPS Client(s) are not bound to enter into any Contract or other arrangement with the DPS Member as a result of entering into this DPS Agreement. Without prejudice to the foregoing the DPS Member hereby acknowledges that

the Contracting Authority intends (but shall be under no obligation) to promote the DPS Agreement and to encourage use of the DPS Agreement by the DPS Client(s) and the DPS Member may be required to provide reasonable assistance in this respect.

- 2.4 This DPS Agreement does not confer exclusivity on any DPS Member. The DPS Clients may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within the scope of this DPS Agreement. In this event, the DPS Client(s) shall observe all obligations at law and shall not afford any advantage to the DPS Member.
- 2.5 This DPS Agreement shall take effect on the Commencement Date and expire ten years thereafter ("the DPS Term") unless terminated earlier in accordance with this DPS Agreement or extended pursuant to clause 2.6 subject to compliance with regulation 34(27) of the Regulations.
- 2.6 The Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the DPS Term for a period or periods of up to one year with a maximum of five such extensions on the same terms and conditions.
- 2.7 The DPS Member agrees that any information relating to this DPS Agreement and/or the performance of this DPS Agreement may be passed by the DPS Clients to the Contracting Authority and that the Contracting Authority may use this information in relation to the provision of the Goods/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 the 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/DPS Client. 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/DPS Member, 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 in Part 3 of the RFATP.

4. CONTRACTS

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

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.

- 4.3 The Contracting Authority/DPS Client may revise or amend the contracts in Appendices 4 and 5 at any stage throughout the Term of the DPS. Any such updated amended contract(s) shall be appended to the tender documentation at DPS mini-competition stage. The DPS Member agrees to enter into any such amended Contract.

5. PROCEDURE FOR AWARD OF CONTRACTS

- 5.1 On each occasion that the Contracting Authority or a DPS Client or group of DPS Clients propose to award a Goods/Services or Works Contract in excess of €25,000 under this DPS Agreement, the Contracting Authority/DPS Client shall issue (by electronic means) a Request for Tenders ("RFT") to all DPS Members for the lot(s) in question in accordance with the following procedure (a "DPS mini-competition"):
- 5.1.1 The RFT shall set out:
- the scope and term of the Contract to be awarded;
 - Whether the Contracting Authority/DPS Client(s) intend to award the Contract to one DPS Member or alternatively to two or more DPS Members;
 - the specific group of DPS Client(s) participating in each DPS 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;
 - the types of goods, services or works required by the DPS Client and the minimum standard of performance expected;
 - the types and levels of insurance required for the Contract;
 - the Pricing Schedule that will apply to the relevant DPS mini-competition; and
 - any additional conditions (if any) that will apply to the Contract to be awarded in addition to the terms and conditions of the Goods and Services Contract and Works Contract at Appendices 4 and 5 of the RFATP.
- 5.1.2 All responses to the RFATP must be submitted via the Electronic Platform only. Responses received in any other manner including e-mail or hardcopy will not be considered. The response submitted by the DPS Members will remain confidential until the deadline for submission of the response.
- 5.1.3 Any clarifications issued by the Contracting Authority or the DPS Client, as applicable, in relation to a RFATP will be communicated via the Electronic Platform only.
- 5.1.4 The Contracting Authority/DPS Client may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.1 below.
- 5.1.5 The Contracting Authority/DPS Client reserve the right to issue or seek written clarifications via the Electronic Platform.
- 5.1.6 The Contracting Authority may exclude from participation in any DPS mini-competition, any DPS Member where such Member has shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity or a DPS Client which led to early termination of that prior contract, damages or other comparable sanctions.
- 5.2.1 The Contracting Authority and DPS Clients(s) reserve the right to procure contracts with a value

under €25,000 by way of a mini-competition and to make a direct award where only one DPS Member is registered under the lot.

- 5.2.1 Where a mini-competition is not used, contracts under each lot may be awarded by way of rotation among the DPS Members for that lot. Where a rotation arrangement is considered to offer the best value for money option and most effective solution, DPS Members shall be ranked on a rotation list with reference to the tendered price for the goods, services or works for that lot. Once the DPS Agreement is in place, the Contracting Authority will request DPS Members to complete a Pricing Schedule for contracts under €25,000 and the prices quoted will determine their place on the rotation list.
- 5.2.3 The Contracting Authority and DPS Client(s) shall, in respect of all contracts below €25,000, provide: detailed technical specifications, a clear statement of required outputs and delivery dates.
- 5.2.4 The contract terms and conditions set out in appendices 4 and 5 shall apply to all contracts below €25,000.

6. AWARD CRITERIA

- 6.1 The award criteria for DPS Mini-Competition shall be:

Lot 1

Award Criteria	Weighting (range)
Price	50 – 100%
Quality of goods/services	0-50%
Product warranty	0-30%
Performance measurement	0-50%
Quality of personnel offered to deliver the services	0-50%
Quality of Project Delivery Plan	0-30%
Contract management	0-30%

Lot 2

Award Criteria	Weighting (range)
Price	50 – 100%
Quality of works	0-50%
Performance measurement	0-50%
Quality of personnel offered to deliver the services	0-50%
Quality of Project Delivery Plan	0-30%
Contract management	0-30%

- 6.3 The Contracting Authority/DPS Client may require the DSP Member to whom it has decided to award the Contract to supply up-to-date evidence as set out in paragraph 3.3.2 of the RFATP. Where the DPS Member cannot provide up-to-date evidence to demonstrate that each entity concerned meets the Selection Criteria and the compliance requirements specified at paragraph 3.1(b) and (c) of the RFATP, then the Contracting Authority may proceed to offer the Contract to the next highest-ranked DPS Member.

- 6.4 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 DPS Client.
- 6.5 The Contracting Authority/DPS Client(s) may cancel a DPS Competition at any time prior to a Contract being executed by the DPS Client. Any notification of preferred bidder status by the Contracting Authority/DPS Client shall not give rise to any enforceable rights by the DPS Member.

7. APPLICABLE LAW AND JURISDICTION

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

8. COMPLIANCE WITH LAWS

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

9 TAX CLEARANCE

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

10. ANTI COMPETITIVE CONDUCT

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

11. CONFLICTS OF INTEREST

- 11.1 Any actual or potential conflict of interest on the part of a DPS Member (including for the purposes of this clause 11 any employee(s), suppliers agents or Subcontractor) (a "Conflict") must be fully disclosed to the Contracting Authority and any relevant DPS Client(s) immediately in writing via the Electronic Platform as soon as the Conflict becomes apparent to the DPS Member. In the event of any Conflict, the Contracting Authority and / or the DPS Client(s) may invite the DPS Member to propose means by which the Conflict might be removed. The Contracting Authority and / or the DPS Client(s) will, in their absolute discretion, decide on the appropriate course of action.

12. REGISTERABLE INTEREST

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

13. CONFIDENTIALITY

- 13.1 All communications between the Contracting Authority or any DPS Client(s) and the DPS Member must be treated as being strictly confidential. The DPS Member undertakes to comply with all reasonable directions of the Contracting Authority and any DPS Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement(s) executed by the DPS Member pursuant to clause 13.2 below. All of the DPS Member's employees and personnel, including Subcontractors and their employees and personnel, who provide the Goods/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 6** to the RFATP.
- 13.3 No publicity regarding this DPS Agreement or any DPS mini-competition or Contract pursuant to this DPS Agreement is permitted unless and until the Contracting Authority and any relevant DPS Client(s) has given their prior written consent to the relevant communication.

14 NOTICES

- 14.1 Any notice or other written communication to be given under this DPS Agreement shall be delivered through the Electronic Platform. 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:
- if personally delivered, at the time of delivery;
 - 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
 - if communicated by email, on the next calendar day following transmission.

15. GIFTS

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

16. COSTS AND EXPENSES OF DPS AGREEMENT

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

17 TERMINATION

- 17.1 Subject to clause 17.2, this DPS Agreement may be terminated by the Contracting Authority/DPS Client, without liability for compensation or damages, by serving three months written notice to the DPS Member through the Electronic Platform.
- 17.2 The Contracting Authority/DPS Client 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/DPS Client, (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/DPS Client. 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; or
- 17.2.4 in circumstances where the Contracting Authority/DPS Client 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 changes the subcontractor(s) nominated and relied upon by the DPS Member in the Application for admission to the DPS but fails to demonstrate to the satisfaction of the Contracting Authority/DPS Client that by changing subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at Part 3 of the RFATP.
- 17.2.6 In circumstances where the Contracting Authority/DPS Client becomes aware of any conflicts of interest on the part of the DPS Member which cannot, in the opinion of the Contracting Authority/DPS Client, be removed by other means; and
 - 17.2.7. In circumstances where the Contracting Authority/DPS Client becomes aware of any registrable interest on the part of the DPS Member.
 - 17.2.8. In circumstances where the DPS Member fails to provide up-to-date evidence when requested to do so by the Contracting Authority/DPS Client 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.
- 17.3 Subject to clause 17.2.2, the termination of a Contract awarded under this DPS Agreement does not affect the validity of this DPS Agreement.
- 17.4 Termination of this DPS Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this DPS Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

18. FREEDOM OF INFORMATION

- 18.1 The DPS Member acknowledges that the Contracting Authority and or the DPS client is subject to the Freedom of Information Act 2014. Information furnished to the Contracting Authority or the

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

19. DISPUTE RESOLUTION

- 19.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- 19.2 The Dispute shall be referred as soon as practicable to (name) within the DPS Member and to (name) within the Contracting Authority respectively.
- 19.3 If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing via the Electronic Platform by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- 19.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- 19.5 Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- 19.6 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- 19.7 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The DPS Member shall comply fully with the requirements of the Agreement at all times.
- 19.8 If, and to the extent that, any Dispute has not been settled pursuant to the mediation within days of the commencement of the mediation, either party may apply to the Irish courts at any time thereafter.

20. KEY PERSONNEL

The DPS Member undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Application, including but not limited to the Key Account Manager, ("Key Personnel"), assigned by it to provide the services related to the Goods/Services shall be available for the term of this Agreement. The DPS Member acknowledges that the Key Personnel are essential to the proper provision of the Goods/Services to the Contracting Authority and the DPS Clients. In the event that any of the Key

Personnel assigned by the Supplier to provide the Services under this Agreement becomes unable to provide the Goods/Services for whatever reason then, the DPS Member acknowledges and undertakes that it shall immediately notify the Contracting Authority in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The DPS Member shall provide to the Contracting Authority such details as the Contracting Authority may reasonably require in writing regarding any Replacement Personnel. The Contracting Authority shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

21. FORCE MAJEURE AND CONTINGENCY PLAN

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

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

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

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

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

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

SIGNED by _____, being an Officer so authorised by the CONTRACTING AUTHORITY 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

1. Key Account Manager

The DPS Member shall nominate a dedicated Key Account Manager (the “Key Account Manager”) to oversee the effective and efficient operation of the DPS and any Contracts awarded thereunder.

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

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

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

- Review performance by the DPS Member;
- Identify operational measures required of the DPS Member or Contracting Authority to improve the actual performance by the DPS Member;
- Review any results, reports or findings of any audits undertaken and confirm that the service delivery complies with the DPS;
- Modify and/or adjust any corrective action previously introduced, as appropriate;
- Identify and discuss relevant issues between the parties to the DPS.

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

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

2. Provision of Management Information

The DPS Member shall provide management information to the Contracting Authority and DPS Clients, as may be requested by them, from time to time.

APPENDIX 4

Goods/Services Contract

[Insert name of Contracting Authority/ DPS Client]

and

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

Relating to the supply of goods/services pursuant to

Request for Applications to Participate in a Dynamic Purchasing System for the
provision of goods and services for energy and climate action consultancy
projects

THIS AGREEMENT is made on the [date e.g. 2nd] [month] [year]

[Insert name of Contracting Authority / DPS Client], of [Address] ("the Client");
and

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

WHEREAS:

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

(the “Response Clarifications”). The Response (including the Response Clarifications) is hereby incorporated by reference into this Agreement

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. This Agreement and Schedules A to F attached hereto;
 - ii. The RFATP;
 - iii. The RFT;
 - iv. The Application;
 - v. The Response.
2. The Contractor shall sell/provide and the Client shall purchase in accordance with this Agreement (“Agreement”) the Goods/Services described in Schedule B (“Goods/Services”). Schedule B details the nature, quantity, quality, time of delivery and functional and technical specifications of the Goods/Services in accordance with the RFT and the Submission (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
4. For the purposes of this Agreement, the Client’s Contact is [insert contact name] of [insert contact address]; the Contractor’s Contact is [Contractor contact name] of [Contractor contact address].
5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [Insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

The Client reserves the right to extend the Term for a period or periods of up to [insert] months with a maximum of [insert] 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	SIGNED for and on behalf of the Contractor
(being a duly authorised officer)	
Witness	Witness

Schedule A: Terms and Conditions

1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the supply/provision of Goods/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 supply/provision of the Goods/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 5 the Contractor shall:
1. Supply/provide the Goods/Services in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
 4. supply/provide the Goods/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 Goods/Services provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to clause 15, the Contractor shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors. Subcontractors may not be changed without the prior consent in writing of the Client. The Contractor must provide the Client with the rationale for the proposed change in Subcontractor in writing. The responsibility will be on the Contractor to demonstrate to the satisfaction of the Client, including by way of submitting updated documentary evidence as set out in clause 3.2 of the DPS Agreement, that by changing Subcontractor the Contractor continues to fulfil the compliance and selection requirements specified at part 3 of the RFATP.

- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 11.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement ("OGP") and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights of Transfer of Undertakings) Regulations 2003 (S.I. No 131 of 2003) and Council Directive 2001/23/EC (together the "TUPE Regulations") and failure to do so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Contracting Authority/DPS Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said TUPE Regulations.
- I. The DPS Member undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission, assigned by it to provide the Goods/Services/Works shall be available for the Term of the this Agreement. The DPS Member acknowledges that the key personnel are essential to the proper provision of Goods/Services/Works to the Contracting Authority/DPS Client. In the event that any of the Key Personnel assigned by the DPS Member to provide the Goods/Services/Works under this Agreement becomes unable to provide the Goods/Services/Works for whatever reason then, the DPS Member acknowledges and undertakes that it shall immediately notify the Contracting Authority/DPS Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise. The DPS Member shall provide the Contracting Authority/DPS Member such details as may be reasonably required in writing regarding any replacement personnel.

The Contracting Authority/DPS Member shall have absolute discretion as to the suitability of any proposed replacement personnel.

2. The Goods

- A. The Contractor shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified in the Specification or otherwise agreed in writing between the Parties.
- B. The DPS Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. The risk in any over-delivered Goods shall remain with the Contractor.
- C. The DPS Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- D. Any Contractor pre-printed terms and conditions produced, signed or stamped by either Party and for whatever purpose during the Term are hereby disallowed.
- E. Time of delivery shall be of the essence and if the Contractor fails to deliver the Goods 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 Goods and / or terminate this Agreement in either case without prejudice to any other rights and remedies of the Client.

3. Inspection of Goods

- A. The Client or its authorised representative may inspect (to include a call for advance samples) or test the Goods either completed or in the process of manufacture, during normal business hours on reasonable notice at the Contractor's premises (including the premises of any subcontractor or agent) and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint at the time of any such inspection or test and / or the approval given during or after such inspection or test shall not constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 3B.
- B. The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the Specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this clause the Client may (without prejudice to other rights and remedies) either:
 - 1. Treat the Agreement as discharged by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other Goods in

replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.

Or

2. Have such Goods promptly, and in any event within ten calendar days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the Specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.
- C. Rejected Goods shall be removed by the Contractor from the Client within ten calendar days from the date of the notification to the Contractor of their rejection. In the event of failure by the Contractor to remove Goods within ten calendar days of such notification, the Client may dispose of such Goods as he sees fit and pending such removal, the Goods will remain with the Client at the risk of the Contractor. Any costs incurred by the Client relating to such disposal shall at the option of the Client be borne by the Contractor.
- D. For the avoidance of doubt, the Client will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 3B.
- E. The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.
- F. The Contractor hereby guarantees the Goods for five years from the date of delivery (the "Guarantee Period") against faulty materials or workmanship. The Client shall within such Guarantee Period, or within 14 calendar days thereafter, give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such Guarantee Period under proper and normal use. The Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge, which replaced or repaired Goods shall also have the benefit of this clause for the Guarantee Period.

4. Risk and Title

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

5. Payment

- A. Subject to the provisions of this clause 5 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 11A from time to time;
 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Goods/Services for any billing period (including whether or not Goods/Services have been accepted, rejected, satisfactorily repaired or replaced as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. 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. Where indicated in the Specification, the Charges shall include the cost of instruction of the Client's personnel in the use and maintenance of the Goods and such instructions shall be in accordance with the requirements detailed in the Specification.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act 1997 of

any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the supply of the Goods will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

6. Warranties, Representations and Undertakings

- A. The Contractor acknowledges, warrants, represents and undertakes that:
1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply/provide the Goods/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 supply/provision of the Goods (to include manufacture and distribution process)/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 Candidate" dated **XXX** which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged; and
 7. the Client shall be under no obligation to purchase any minimum number or value of Goods.
- B. The Contractor shall be and undertakes to be responsible for and to take due precautions for the safe custody of any Goods on his premises which are the property of the Contractor and shall insure the same against any form of loss or damage and the Contractor so acknowledges and confirms.
- C. The Contractor confirms and undertakes that the Goods supplied will, at the time of delivery (and for the Guarantee Period), correspond to the description given by the Contractor in accordance with the Submission (to include any samples furnished thereunder) and the Specification (Schedule B) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in the Submission. None of the provisions of the Sale of Goods Acts 1893 and 1980 shall be excluded or limited under this Agreement.

- D. The Contractor undertakes to ensure that all and any necessary consents and/or licences are obtained and in place for the purposes of this Agreement. The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any losses (whether direct, indirect or consequential), liability, damages, claims, costs or expenses which arise by reason of any breach of third party intellectual property rights in so far as any such rights are used for the purposes of this Agreement.
- E. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out in clause 6A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

7. Remedies

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 7A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6(D), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver/provide Goods/Services of approved quality, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E. Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6(D) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed 100 per cent of the Charges paid or projected to be paid (whichever is higher) under this agreement regardless of the number of claims.
- F. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum may be withheld from any payment otherwise due calculated as follows:

("the Retention Amount") which Retention Amount shall not at any given time exceed 50% per cent of the Charges. In such event the Client shall identify the particular Goods 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 Goods 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 7F shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

8. Confidentiality

A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:-

1. its professional advisers subject to the provisions of this clause 8; or
2. as may be required by law; or
3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 8; or
4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 6 to the RFATP ("the Confidentiality Agreement").

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

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
2. which is or becomes public knowledge other than by breach of this clause; or
3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
4. is lawfully received by the disclosing Party from a third party (with full right to disclose).

C. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the

Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

- D. The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

9. Force Majeure

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
 - 1. the nature of the Force Majeure Event;
 - 2. the anticipated delay in the performance of obligations;
 - 3. the action proposed to minimise the impact of the Force Majeure Event;

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

- C. If the Force Majeure Event continues for 30 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.

10. Termination

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving 30 days written notice to the Contractor. This Agreement may

be terminated by the Contractor, without liability for compensation or damages, by serving 90 days written notice to the Client.

- B. Either Party shall have the right (in addition to its rights under clause 10(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
 2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
 3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
 4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that 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.

11. Contract Management

- A. The Client's Contact and the Contractor's Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
1. liaise with and keep the Client's Contact fully informed of any matter which might affect the observance and performance of the Contractor's obligations under this Agreement;
 2. maintain such records and comply with such reporting arrangements and protocols required by the Client from time to time;

3. comply with all reasonable directions of the Client; and
 4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client or its authorised representative may inspect the Contractor's premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.
- D. The Contractor shall be required to hold for the Term insurances of the nature and amount as set out in the RFT and shall immediately advise the Client of any material change to its insured status. The Contractor shall produce proof of current premiums paid upon request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 11D.

12. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to CEDR Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed

in the mediation, shall be for the sole account of, and shall be discharged by that Party.

- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times

13. Governing Law, Choice of Jurisdiction and Execution

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

14. Notices

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.
- B. A. All notices shall be deemed to have been served as follows:
1. if personally delivered, at the time of delivery;
 - 2.. if posted by registered post at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
 3. if communicated by email, on the next calendar day following transmission.

15. Assignment and Subcontract

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

16. Entire Agreement

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

17. Severability

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

18. Waiver

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

19. Non-exclusivity

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

20. Media

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

21. Conflicts, Registrable Interests and Corrupt Gifts

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Goods and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other

rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms “registrable interest” and “relative” shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (as amended) a copy of which is available on request.

- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 21C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

22. Access to Premises

- A. Any of the Client’s premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.
- B. The Contractor shall upon reasonable notice by the Client allow the Client access to its premises (including the premises of any Subcontractor or agent) where the Goods are being performed for the Client under this Agreement.

23. Non Solicitation

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

24. 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 supply/provision of the Goods (where known)/Services 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 supply/provision of the Goods/SErvices then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

25. DATA PROTECTION AND SECURITY

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

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

"Data Controller" has the meaning given under the Data Protection Laws;

"Data Processor" has the meaning given under the Data Protection Laws;

"Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "General Data Protection Regulation"), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland.

"Data Subject" has the meaning given under the Data Protection Laws;

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

"Personal Data" has the meaning given under Data Protection Laws;

"Processing" has the meaning given under the Data Protection Laws;

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

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

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

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

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

- i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
- ii. the data subject has enforceable rights and effective legal remedies;
- iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
- iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;

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

- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
 - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 - (2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - (3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement

- 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.
-

Schedule B: Goods: The Specification

[insert when completing the contract]

Schedule C: Charges

[insert when completing the 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 5 – CWMF Contract for Minor Works

As published as an attachment in the eTender Notice for this tender competition

APPENDIX 6

Confidentiality Agreement

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

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

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

WHEREAS

- A. By Request for Applications to Participate in a Dynamic Purchasing System dated [insert date] entitled “*Request for Applications to Participate in a Dynamic Purchasing System for the provision of energy and climate action consultancy projects and energy efficiency, renewable energy and retrofitting works*” (the “RFATP”) the Contracting Authority invited applications (“Applications”) to participate in a DPS for the supply/provision/delivery of the goods/services/works described in Appendix 1 to the RFATP. The Contractor submitted an Application to the RFATP dated the [insert date of Tender].

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

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

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

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

3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time.
4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
 - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
 - 4.2 not, without the prior written consent of the Contracting Authority and any relevant DPS Client, to communicate or disclose any part of such Confidential Information to any person except:
 - i to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or
 - ii to the Contractor’s auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority and the DPS Clients; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.
5. The obligations in this Agreement will not apply to any Confidential Information:
 - i in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority or the DPS Client, as applicable; or
 - ii which is or becomes public knowledge other than by breach of this clause; or
 - iii is independently developed by the Contractor without access to or use of the Confidential Information; or
 - iv is lawfully received from a third party (with full right to disclose).
6. The Contractor undertakes:
 - 6.1 to comply with all directions of the Contracting Authority and the DPS Clients with regard to the use and application of all and any Confidential Information (including personal data as defined in the Data Protection Law);
 - 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority and / or any DPS Client including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority and / or any DPS Client including by police authorities;

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

- D. Without prejudice to the generality of clause 10(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
- (1) process that Personal Data only on the written instructions of the Client;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);
 - (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
 - (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
 - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);
 - ii. the data subject has enforceable rights and effective legal remedies;
 - iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
 - iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data.
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.
- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
 2. ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. The Client does not consent to the Contractor appointing any third party processor of Personal Data under this agreement.
- N. Save for clauses 11B, 11C, 11D(4) and 11E, all the obligations on the Contractor in this clause 11 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

SIGNED for and on behalf of the Contracting Authority SIGNED for and on behalf of the Contractor

(being a duly authorised officer)

Witness

Witness

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**