



**Request for Applications to Participate in a  
Dynamic Purchasing System  
for the Provision of Specialised Art Transport Services to  
Cultural Bodies in Ireland**

**Tender Procedure: Restricted Procedure  
Publication Date: 08 March 2024**

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## Part 1: Introduction

1.1. The Governors and Guardians of the National Gallery of Ireland (NGI), with its stated partners for this competition (the “Contracting Authority”) is issuing this Request for Applications to Participate (“RFATP”) in a Dynamic Purchasing System (“DPS”) as the lead purchasing body (“CPB”). The NGI, which has considerable expertise and experience in the matter of this tender, is leading the sourcing of the services this tender relates to on behalf of the bodies designated and prospective users of this service / system.

1.2. This public procurement competition (“Competition”) is being conducted in accordance with the European Union (Award of Public Authority Contracts) Regulations 2016 (S.I. 284 of 2016) (the “Regulations”).

1.3. The Contracting Authority invites requests to participate (“Applications”) from economic operators (“Applicants”) for appointment to a Dynamic Purchasing System (“DPS”) for the provision of the services described in Appendix 1 to this RFATP (the “Services”).

1.4. In summary, the Services shall comprise of:

The provision of specialised art transport services, where the estimated value of each contract at the mini-competition stage is greater than €50,000 (ex Vat).

The DPS will be divided into two (2) Categories (each a “Category”) as described below.

Category 1 – Specialised Art transport for major international exhibitions requiring international transport and customs agency services.

Category 2 – Specialised transport for art movement requiring transport on the island of Ireland.

For lower value requirements, members of the relevant Lot 1 will be eligible for invitation to quotation processes. The parties to this DPS are free to pick parties on the DPS for the purposes of any quotes processes.

Applicants may apply for one or all Categories, without any restriction.

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

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

1.5. Overview of Admittance to the DPS and Award of Contracts  
Admittance to the DPS and the subsequent award of any contract(s) thereunder, as set out at Appendix 6 of this RFATP (“Contract(s)”), shall be conducted as follows:

### **Stage 1 – Admittance to the DPS:**

The Contracting Authority invites Applications from Applicants in response to the Compliance and Selection Criteria at paragraphs 3.1 and 3.2 of Part 3 of this RFATP. While Applicants are required to submit a response to and fulfil the Compliance and Selection Criteria, Applicants are **not** required to submit either a tender proposal or a pricing submission at this Stage 1 of the Competition. Tender responses and pricing submissions will instead be required in response to future (Stage 2) mini- competitions conducted under the DPS. All Applicants that meet the Compliance and Selection Criteria will be admitted to the DPS after completion (execution) of the DPS Agreement as set out at Appendix 5 to this RFATP (“DPS Agreement”) along with the Contracting Authority.

### **Ongoing application process to become a DPS Member**

Economic operators may apply for admission to the DPS or re-apply in the case of Applicants who failed to satisfy the Compliance or Selection Criteria, at any point throughout the Term (as defined in paragraph 1.8 below) of the DPS. Regardless of when they submit their application, in order to be admitted to the DPS, Applicants must fulfil all Compliance and Selection Criteria set out in this RFATP.

### **Stage 2 – Award of Contracts:**

All Applicants that enter into a DPS Agreement with the Contracting Authority at Stage 1 (each a “DPS Member”) will be invited to future Stage 2 competition(s) (“Mini-Competitions”) to submit a tender response based on the requirements set out in the relevant Stage 2 Request For Tenders (“RFT”). Mini-Competition(s) will be conducted in accordance with the procedures set out at clauses 5 and 6 of the DPS Agreement. After the assessment of the tenders received in response to an RFT, the DPS Client(s) may decide to award a Contract to the DPS Member that has submitted the most economically advantageous tender based on the award criteria set out in the RFT.

## **1.6. Overview of Application Process**

The DPS will be hosted on the eTenders web platform [www.etenders.gov.ie](http://www.etenders.gov.ie) (the “Electronic Platform”). All communications arising out of or in connection with the DPS will be by electronic means. No hard copy documents will be issued or accepted by the NGI and its stated partners and all communications with the Contracting Authority must be via the Electronic Platform to reflect the fact that different parties may be operating different contests.

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

1. Applicants must register with E-tenders and/or login to the Electronic Platform.
2. Applicants must review in full and comply with all requirements for this Competition set out in the RFATP and any published DPS documents for this Competition.
3. Applicants must complete and upload the electronic European Single

Procurement Document (“eESPD”) to the Electronic Platform.

4. Applicants must complete and submit the DPS Applicant Response Document (“ARD”) for each Category applied for. The ARD is available to download from the Electronic Platform. Applicants must respond to the Selection Criteria as detailed at section 3.2 of Part 3 of this RFATP, and upload their response to the Electronic Platform by the Application Deadline. Applicants are **not** required to submit a tender proposal or pricing schedule in response to the Appendix 1 requirements at this Stage 1. The tender proposal and pricing schedule will instead be required to be submitted in response to future Stage 2 Mini Competitions that may be conducted under the DPS.
5. Following the Application Deadline (as specified at Section 2.6 of this RFATP) and the evaluation of the Applications, the Contracting Authority will inform the Applicants who fulfil the Compliance and Selection Criteria in this RFATP that they are the initial applicants identified for admission.
6. The initial applicants identified for admission (that fulfil the Compliance and Selection Criteria in this RFATP) will receive such notification via the eTenders web platform and they will be required to sign the DPS Agreement at Appendix 5 to this RFATP prior to being admitted to the DPS.
7. The Contracting Authority will then proceed to execute (sign) a DPS Agreement(s) with those initial applicants identified for admission. The DPS will be deemed to be established upon the date on which the last DPS Agreement has been executed by both the Contracting Authority and an initial applicant identified for admission (‘the Establishment Date’). The Establishment Date will more specifically be set out in the contract award notice for this Competition published on OJEU and eTenders which shall also include the Establishment Date.
8. Applicants that do not meet the Compliance and Selection Criteria in this RFATP will not be admitted to the DPS and will be notified accordingly via the eTenders web platform.
9. Unsuccessful Applicants may re-apply for admission onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS, following the Establishment Date of the DPS.
10. Economic Operators that did not submit an application in response to this RFATP by the application deadline specified in paragraph 2.6 of this RFATP may apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS, following the Establishment Date of the DPS.
11. It is envisaged that all successful Applicants will be invited to future Mini- Competitions conducted under the DPS in respect of those categories in which they may have been successfully admitted to the DPS.

All future Mini-Competitions will be conducted in accordance with the terms of the DPS

Agreement at Appendix 5 and contracts will be awarded in accordance with clauses 5 and 6 of the DPS Agreement. may result from this Application and therefore increase their social and economic benefits.

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

## Part 2: Instructions to Applicants

### 2.1 Important Notices

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

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

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

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

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

No contractual rights 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 at Mini Competition shall not give rise to any enforceable rights by the Applicant.

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

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

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

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

2.1.4. In this clause 2.1.4, “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

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

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

## **2.2 Compliant Applications**

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

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

### **Applicants are required:**

- (a) To complete and submit with their Application the electronic version of the European Single Procurement Document (“eESPD”) which is available to download separately from [www.etenders.gov.ie](http://www.etenders.gov.ie). Alternatively, Applicants may submit an eESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that:
  - i. the information contained in it continues to be correct; and
  - ii. that they satisfy the Selection Criteria for this DPS as set out at part 3.2 below;

- (b) To submit all documentation which this RFATP requires to be submitted;
- (c) To follow the format of this RFATP and respond to each element in the order as set out in this RFATP;
- (d) To conform to and comply with all instructions and requirements set out in this RFATP;
- (e) To submit the Applicant's Statement (Appendix 2) required under paragraph 2.4, below;
- (f) Not to alter or edit this RFATP in any way; and

To complete and submit with their Application, the individual Category specific DPS Applicant Response Document ("ARD"). The individual ARDs must be completed in line with the instructions provided in each Category specific ARD document. The Category Specific ARD documents are available to download from [www.etenders.gov.ie](http://www.etenders.gov.ie).

### **2.3 DPS Agreement and Contract**

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

### **2.4 Acceptance of RFATP Requirements**

Each Applicant is required to accept the provisions of this RFATP. ALL APPLICANTS MUST RETURN, with their Application, a scanned signed copy of the Applicant's Statement, as set out in Appendix 2, printed on the Applicant's letterhead. The Contracting Authority must be able to read the scanned signature of the Applicant. If possible, please sign documents using blue ink. If the Contracting Authority cannot read the scanned signature, Applicants may be requested to resubmit. Applicants may not amend the Applicant's Statement.

### **2.5 Consortia and Prime / Subcontractors**

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit an application in response to this RFATP the Contracting Authority will deal with all matters relating to this Competition through a single nominated entity authorised to represent all members of the group of undertakings and who will carry overall responsibility for the DPS Agreement and performance of any Contract (the "Prime Contractor"), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the "Subcontractor").

The Applicant must provide details of all members of the group of undertakings and their role in the Application and clearly and comprehensively set out the name, title, telephone number, postal address, and email address of the nominated contact personnel of the Prime Contractor authorised to represent the Applicant and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person (including from any Subcontractor) will NOT be accepted, acknowledged or responded to.

## 2.6 Application Submission Requirements

2.6.1 Applications must be submitted via the electronic post-box available on [www.etenders.gov.ie](http://www.etenders.gov.ie) (the “Electronic Platform”). Only Applications submitted to the electronic post-box will be accepted. Applications submitted by any other means (including but not limited to by email, fax, post or hand delivery) will NOT be accepted.

Applicants 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. Applicants should take into account the fact that upload speeds vary. There is a maximum of 4GB for the total (combined) documents sent to the electronic post-box. In order to submit a document to the electronic post-box, please note that you must click “Submit Response”. After submitting you can still modify and re-send your response up until response deadline. Applicants should be aware that the “Submit Response” button will be disabled automatically upon the expiration of the response deadline.

### 2.6.2 Application Deadline

Subject to paragraph 2.8.1 of this RFATP, Applications must be received not later than **12.00 midday on 12 April 2024** (the “Application Deadline”). Please note that this deadline is an administrative date to establish the DPS. Applicants are reminded that applications will continue to be accepted in line with Clause 1.6, once the DPS has been established.

2.6.3 Applications must be submitted in English.

2.6.4 Each Applicant is limited to submitting one Application per Category in its own capacity and one Application per Category as part of a consortium/group of undertakings under this RFATP for admittance to the DPS. Categories for this DPS are set out at 1.4 and at Appendix 1 of this RFATP

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. Applicants must ensure electronic documents are not corrupt.

## 2.7 Queries and Clarifications

- 2.7.1 All queries relating to any aspect of this Competition or of this RFATP must be directed to the messaging facility on the Electronic Platform [www.etenders.gov.ie](http://www.etenders.gov.ie). Subject to paragraph 2.8.1 of this RFATP, queries must be submitted by no later than **12.00 midday on 29.03.2024**. For the avoidance of doubt, Applicants may not contact potential DPS Clients regarding any aspect of this Competition.
- 2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on the Electronic Platform [www.etenders.gov.ie](http://www.etenders.gov.ie). Where appropriate, queries may be amalgamated. Applicants should note that the Contracting Authority will not respond to individual Applicants privately.
- 2.7.3 The Contracting Authority reserves the right to issue or seek written clarifications 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 Applicants will be informed of any such amendment or extension through the Electronic Platform.
- 2.7.5 Applicants should ensure that they register their interest in this Competition, by clicking on the “Accept” button on the Electronic Platform, in order to receive all responses to queries and other updates in relation to this Competition.

## 2.8 Applications for Admittance to DPS and Applicant Costs

2.8.1 Notwithstanding the Application Deadline in paragraph 2.6.2 and the deadline for submission of clarification queries in paragraph 2.7.1, both unsuccessful Applicants that submit an Application but fail to fulfil the Compliance and Selection criteria in this RFATP, and economic operators that did not submit an Application in response to this RFATP by the Application Deadline may raise clarification queries relating to any aspect of this Competition or of this RFATP and apply / re-apply and submit an Application in response to this RFATP at any stage throughout the Term of the DPS, once established. 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 Applicants relating to their participation in this Competition shall be borne by and are a matter for discharge by the Applicants 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 Applicants during the course of this Competition:

- (a) are furnished for the sole purpose of replying to this RFATP only;

- (b) may not be used, communicated, reproduced or published for any other purpose without the prior written permission of the Contracting Authority;
- (c) shall be treated as confidential by the Applicant and by any third parties (including subcontractors) engaged or consulted by the Applicant; and must be returned immediately to the Contracting Authority upon cancellation or completion of this Competition if so requested by the Contracting Authority.

## **2.10 Pricing**

- 2.10.1 Applicants are reminded that they are not required to submit a Pricing Schedule in response to this RFATP. Successful Applicants appointed to the DPS will however be required to submit pricing in response to future Mini-Competitions conducted under the DPS
- 2.10.2 All prices quoted in any subsequent Mini-Competitions must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- 2.10.3 *Not Used*
- 2.10.4 Any currency variations occurring over the term of any Contract shall be borne by the Applicant.
- 2.10.5 Payments for Services provided pursuant to this RFATP shall be made subject to and in accordance with the Contract at Appendix 6 to this RFATP and the terms of any subsequent RFT.
- 2.10.6 *Not Used*

## **2.11 Environmental, Social and Labour Law**

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

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

## **2.12 Publicity**

No publicity regarding this DPS or any DPS Admission, Agreement, 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 Applicant 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 Applicant or Subcontractor after the submission of an Application, must be communicated to the Contracting Authority immediately upon such information becoming known to the Applicant/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](http://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 Applicant from this Competition or a Mini-Competition or terminating any DPS Agreement and / or Contract entered into by such Applicant.

## **2.14 Anti-Competitive Conduct**

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

## **2.15 Industry Terms Used in this RFATP**

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

## **2.16 Freedom of Information**

2.16.1 Applicants should be aware that, under the Freedom of Information Act 2014, information provided by them during this Competition may be liable to be

disclosed.

2.16.2 Applicants are asked to consider if any of the information supplied by them in their application should not be disclosed because of its confidentiality or commercial sensitivity. If Applicants consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Applicants must, when providing such information, clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Applicants 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 Applicant. The Contracting Authority will, where possible, consult with Applicants about confidential or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

## **2.17 Tax Clearance**

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

## **2.18 Conflicts of Interest**

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

## **2.19 Withdrawal from participation in this DPS**

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

## 2.20 Site Visit

*Not used*

## 2.21 Insurance

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

| Type of Insurance      | Indemnity Limit                                          |
|------------------------|----------------------------------------------------------|
| Employer's Liability   | €12.7m                                                   |
| Public Liability       | €6.5m                                                    |
| Professional Indemnity | €1,5m (for each and every claim excluding defence costs) |

2.21.2 By signing the Applicant's Statement at Appendix 2, Applicants confirm, that if awarded a Contract arising from a Mini-Competition pursuant to the DPS Agreement, (i) they will, from the Effective Date of the Contract (as defined in the Contract), obtain and hold the types and levels of insurance as specified in the relevant RFT (ii) confirm that the territorial limits and jurisdiction of the insurance policies will include Ireland and (iii) confirm that they are not aware of any exclusions, restrictions, conditions or warranties or, in the case of policies with an aggregate limit of indemnity, any outstanding claims, which could have a material adverse impact on the level of coverage specified above. A formal confirmation from the Applicant's insurance company or broker to this effect will be requested from the successful DPS Member(s) prior to the award of (and shall be a condition of) any Contract.

2.21.3 The successful Applicant will, during the term of any 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; produce valid certificates of insurance upon request.

## Part 3: Selection Criteria

### 3.1 Compliant Applications

#### 3.1. Only those Applicants who have:-

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

Applicants should note that where an Applicant (Prime Contractor) is relying on the capacity of other entities (Subcontractors) for the purposes of fulfilling any of the Selection Criteria in part 3.2 below it must:

- (i) complete and submit a separate eESPD in respect of each such Subcontractor and
- (ii) submit proof, to the satisfaction of the Contracting Authority, that each such Subcontractor will place the necessary resources at the disposal of the Prime Contractor.

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

In order to ensure the proper conduct of the procedure, Applicants are required to submit **with their Application** any or all of the following for the purposes of verification of the status of the Applicant (including the Prime Contractor and any Subcontractor):

- (i) a Declaration in the form attached at Appendix 4;
- (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;
- (iii) all or any of the supporting documents specified at paragraph 3.2 below.

If an Applicant does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) its fulfilment of the Selection Criteria (or any one of them) in accordance with this RFATP and (ii) the absence of Exclusion Grounds, or its reliability despite the existence of a relevant Exclusion Ground, it shall not be

admitted to the DPS.

If an Applicant does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies of the Selection Criteria (or any one of them) in accordance with this RFATP and (ii) the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion Ground, it shall be excluded from participation in this Competition unless it replaces the Subcontractor with one which meets all relevant requirements of this RFATP.

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

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

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

### **3.2 Selection Criteria for Admittance to DPS**

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

- Applicants that fulfil the Compliance and Selection Criteria in this RFATP will be sent confirmation via the eTenders web platform of their identification for admission to the DPS and will be required to sign the DPS Agreement at Appendix 5 to this RFATP.
- Applicants that do not meet the Compliance and Selection Criteria in this RFATP will not be admitted to the DPS and will be notified accordingly via the eTenders web platform.

- Unsuccessful Applicants may re-apply for admission onto the DPS at any stage throughout the Term (as defined in paragraph 1.8) of the DPS, once the DPS has been established.

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

In addition to the eESPD, Applicants must complete and submit the relevant sections of the **DPS Applicant Response Document (“ARD”), for each Category for which an application is being made: the ARD is** available to download from the Electronic Platform, in line with instructions provided in that document, and upload it to the Electronic Platform by the Application Deadline.

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

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

### **3.2.1 - Financial and Economic Standing**

#### **Evaluation – Pass / Fail**

Applicants must confirm and declare by way of eESPD and ARD that their turnover when averaged over the three most recent years of financial accounts equals or exceeds the minimum annual turnover level in the table below in respect of EACH Category applied for.

To demonstrate this turnover requirement, Applicants must declare by way of eESPD they fulfil the turnover requirement for EACH Category applied for.

Alternatively, if the date of establishment of the Applicant is more recent, the Applicant must declare by way of eESPD that their average annual turnover in each of the financial reporting years (prior to the application date) since the Applicant has been established is equal to or exceeds the minimum turnover level in the table below in respect of EACH Category applied for.

In the case of the Applicant being a consortium, this financial criterion may be fulfilled by the consortium members as a whole.

**EVIDENCE REQUIRED: Note to Applicants re Financial and Economic Selection Criterion** Applicants must submit with their Application audited financial statements for each of the last three financial years (or where the date of establishment is more recent, for each year the Applicant has been established), which must include an

unqualified audit report on financial statements to confirm the Tenderer's turnover for each of the three most recent financial years (for which audited accounts are available).

**NOTE to Applicants:** For the avoidance of doubt if an Applicant is submitting a response for multiple Categories they must submit an eESPD, ARD and Documentary Evidence of Financial and Economic Standing for all Categories applied for.

However, where the Applicant is unable, for a valid reason, to provide the documentation specified, the Applicant 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.

**TABLE - Financial & Economic Standing Minimum Requirements**

| Categories                                                                                                                                          | Applied Y/N | Minimum Annual Turnover Requirement |
|-----------------------------------------------------------------------------------------------------------------------------------------------------|-------------|-------------------------------------|
| <b>1 -Category 1 – Specialised Art transport for major international exhibitions requiring international transport and customs agency services.</b> | Y           | €500,000                            |
| <b>2 - Category 2 – Specialised transport for art movement requiring transport on the island of Ireland.</b>                                        | Y           | €200,000                            |

### 3.2.2 – Technical and Professional Ability

#### Evaluation – Pass / Fail

Applicants must declare by way of eESPD and in the ARD that they satisfy the technical and professional requirement(s) set out below in respect of each Category applied for and must provide the information (and, where indicated, documents) below to demonstrate that they satisfy the technical and professional requirement(s) as set out.

Applicants must demonstrate in a clear and comprehensive manner that they have the level of experience and capacity necessary to deliver the services required under the relevant categories of this DPS, for which they intend to submit an Application.

**To demonstrate experience**, Applicants must complete the **Applicant Response Document (ARD) specific to each Category for which an Application is being submitted**. Applicants must provide details of three (3) reference contracts relating to the provision of Category specific specialised art transport services delivered within the last four (4) years prior to the DPS application date for each category applied for. Each of the three reference contracts must be of a similar nature, scope and complexity to the Services sought in respect of each Category applied for as set out in this RFATP.

Applicants shall also set out in their Applicant Response Document (ARD) the duration of the reference contracts including when each commenced and when each is either due to expire / has expired, and the relevant reference contract referee's contact details including name, position, email address and telephone number of the referees. The Contracting Authority may contact the referees provided for verification purposes without any prior notice being given to the Applicant.

Applicants will also set out:

- their understanding of the requirements for services of this nature by lot.
- their understanding of key risks relating to the management of services of this nature by category.
- details of how they manage their impact on the environment in their organisations.

Applicants should refer to Appendix 1, Section 2 of this document to familiarise themselves with typical type of services likely to be required under each Category.

In order to facilitate evaluation of responses, **Applicants must submit Section 6 of the Applicant Response Document (ARD)**, completed in line with instructions provided in that document.

### 3.3 Presentation of Proposals

*Not Used*

### 3.4 Notification and Admittance to the DPS

3.4.1 The Contracting Authority will notify Applicants of its decision in relation to the

establishment of the DPS and/or of the outcome of their Application to participate in the DPS.

3.4.2 Admittance to the DPS will be conditional upon the successful Applicant(s) (including the Prime Contractor and any Subcontractors) having submitted the following to the Contracting Authority along with their Application:

- (i) a Declaration in the form attached at Appendix 4;
- (ii) if applicable, evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;
- (iii) all or any of the evidence and supporting documents specified at paragraphs 3.1 and 3.2 above.

### **3.5 DPS Agreement**

3.5.1 The successful Applicant(s) must sign and return the DPS Agreement(s) to the Contracting Authority no later than seven (7) calendar days from the date of request by the Contracting Authority. A signed DPS Agreement returned by the successful Applicant(s) is not binding on the Contracting Authority until the Contracting Authority has signed the DPS Agreement in accordance with paragraph 2.1.2 above.

# Appendix 1: Requirements and Specifications

## OVERVIEW OF DPS AND PROCESS FOR AWARD OF CONTRACTS AT MINI COMPETITION STAGE 2.

### 1.1. Background to the Dynamic Purchasing System

The Contracting Authority is seeking to establish a Dynamic Purchasing System (DPS) for the Provision of Specialised Art Transport Services.

### 1.2. The National Gallery of Ireland

As a designated National Cultural Institution with significant expertise in this area, NGI is leading this tender process and acting as the lead body on behalf of those bodies, eligible to use this framework (see section 1.6 of this document).

### 1.3. Aims and Objectives

The Dynamic Purchasing System (DPS) is designed to facilitate ease of access for contracting authorities that require access to skilled, specialised art transport service providers without the need to submit a full commercial proposal each time. Admission to the DPS will be made on the basis of the Applicant's capacity, as evidenced by a combination of turnover (financial and economic standing), previous experience (technical and professional ability), knowledge and its management of climate change.

The DPS lends itself to the dynamic nature of the curators organising exhibitions / moving fine art, allowing Economic Operators to apply, or re-apply, for admission to the DPS at any stage during its Term.

### 1.4. Overview of how the Tender Process will operate.

The NGI invites providers of specialised art transport services who wish to participate in the DPS to respond to this RFATP. The NGI will evaluate the Applications in response to this RFATP. Those successful Applicants included in the DPS will be invited to participate in Mini-Competitions co-ordinated and managed by the Contracting Authority and/or the DPS Clients over the lifetime of the DPS. Further details of how the DPS will operate is set out at paragraph 1.6 of Part 1 of the RFATP.

This Appendix 1 provides a general overview of potential requirements under the DPS. Full specifications and requirements for DPS Clients will be set out in future Mini-Competitions conducted under the DPS at Stage 2. Applicants are reminded that while they are required to submit a response to and fulfil the Compliance and Selection Criteria in Part 3 of the RFATP, Applicants are **not** required to submit a tender proposal or pricing schedule in response to the RFATP at this Stage 1 of the Competition, which will instead be required in response to future Mini-Competitions, (Stage 2) conducted under the DPS.

### **1.5. DPS Clients**

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

### **1.6. Overview of how the Mini-Competitions will operate**

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

Decisions in respect of which Category is best suited to meet their requirements remains at the discretion of DPS Clients when undertaking mini-competitions.

The Contracting Authority issuing the mini-competition will establish and administer the DPS Agreement.

The DPS membership may be used for lower value quotes process also below the level at which this DPS must be used.

### **1.7. Contracts awarded under the DPS**

A successful DPS Member that enters into a Contract is referred to as the "Contractor" in this Appendix 1.

## SECTION 2 – REQUIREMENTS AND SPECIFICATIONS

### Typical Subject Matter for all Categories

The following tables include typical subject matters such as may arise under each of the Categories for the provision of Art Transport services and which DPS Members may be requested to undertake if successful in a mini competition conducted under the DPS.

Full specifications and requirements, including pricing requirements, for the services required will be set out at Stage 2 in any future Mini-Competitions.

It should be noted that there is no commitment to run mini competitions for any of the services listed or under any of the DPS Categories.

The tables provide a list of typical services likely to be required and merely serve to illustrate the type of Services that may be procured under the DPS.

**Important Note: The Services required in this DPS are specialised art transport services, not general transport or general freight / courier services**

#### **Category 1 – Specialised Art transport for major international exhibitions requiring international transport and customs agency services.**

The Contractor shall, and where applicable shall procure that its staff shall have the ability to perform all aspects of the service with the level of care and skill required for including, but not limited to:

- knowledge of the cultural importance, unique nature and construction of works of art and understanding of the works they handle;
- an understanding of the level of care and skill required for the different handling, packing, display and transport requirements and how they react to shock, vibration and extremes of humidity and temperature;
  - The Contractor is not expected to be an expert in conservation but is expected to have a full understanding of its area of expertise so that it is able to take sensible precautions against foreseeable risks of damage and loss.
- expertise in handling, packing and transporting works of art of various media, size and weight;
- expertise in the planning, administration, deployment and co-ordination of the full range of services required for the assembly, transfer and dispersal of multi-partite, major international art exhibitions;
- the proven expertise, authorisations and guarantees required to deal with the temporary or permanent import or export of works of art into and out of all countries, including transits through countries, should have good knowledge of the Irish system, and make official declarations to Revenue & Customs;
- knowledge and capability of working with similar organisations and private lenders;
- detailed knowledge of the expertise, capacity and performance of overseas agents;
- knowledge of the role and authority of couriers and the capacity to provide courier supervision;

#### **Capability**

The Contractor shall be suitably qualified with a proven track record in working with museums and galleries on an international scale and act in accordance with generally recognized best industry practice standards for packing, transport and storage of valuable works of art. The Contractor shall, and where applicable shall procure that its staff shall:

- comply with all applicable statutory, local authority, national and international laws and regulations relating to the Services including Irish & EU legislation governing the carriage of goods by air and road and Irish & EU statutory regulations applying to Customs and Excise and the import and export of goods; (and overseas agents shall comply with equivalent legislation)
- comply with any equivalent legislation or professional standards as those set out in this Agreement which are applicable anywhere in the world where the Contractor or its Staff provides the Services;
- employ trained and qualified staff (as appropriate) to perform all aspects of the service with expertise and to a high standard;
- have strong and discrete security measures;
- have warehousing facilities for the storage of works of art and empty cases: the premises environmentally controlled and protected by 24-hour intruder and fire alarm systems which meet standards of international best practice;
- for the transport of objects by air, be listed as a Regulated Agent on the EU RAKC database or on the UK CAA database.
- for the transport of objects by air, have the capacity to provide airport representatives with airside passes to deal with import and export formalities, arrange “witness loads” including courier supervision in cargo sheds, and provide tarmac supervision;
- have established and proven quality processes;
- comply with all health and safety legislation including the Safety, Health and Welfare at Work Act 2005, (Ireland); (and overseas agents shall comply with equivalent legislation);

#### **Qualifications & Training**

- The Contractor shall ensure that its staff have completed all the necessary training and obtained the necessary certifications in their specific roles in order to perform their parts of the Service including awareness training of other roles within the company and within the museum sector;
- All Contractor staff handling objects and/or packing cases shall have successfully completed training in object handling, condition reporting for apparent defects and Health & Safety (drivers, technicians, packers, airport representatives) and the same shall apply to overseas agents and subcontractors;
- The Contractor and their agents shall ensure that their drivers and other staff understand the authority, function and expertise of the courier and that they must take heed of the courier's instructions regarding handling and care of the object as the courier has knowledge of the physical characteristics of the object, how it is packed and how it will react to external stresses;
- The Contractor and their agents shall ensure that their drivers, airport representatives and other staff dealing with couriers understand that in extreme circumstances when conditions are no longer safe for the objects, and in the event that the relevant organisation's representatives and the Contractor cannot be contacted, the courier has the authority to stop the transit and/or change the place of delivery;

#### **Advice and Communication**

- The Contractor shall be able to confidently and with informed knowledge, provide expert advice as requested by the relevant organisation on a range of subjects such as, for example, modes of transport, export license requirements, CITES, import/export formalities, VAT, most efficient scheduling, routing and combining objects in shipments, handling and packing, overseas agents, museum and gallery practices in sending couriers with objects;
- The Contractor and their agents shall alert the relevant organisation immediately of any changes affecting transport services (eg changes to import/export regulations, VAT rules, port security requirements, cancellation of flights, ferries, freight trains; changes to airfreight services, visa requirements, export licensing and CITES requirements, weather conditions at ports and en route; delays, strikes; and so on);
- The Contractor shall maintain a constant exchange of information at every stage with their agents and with the relevant organisation;

- The Contractor shall provide the relevant organization the outside normal working hours contact telephone numbers for the exhibition coordinators at origination and destination, airport reps, driver/technicians and contact numbers for any other party directly involved (e.g. couriers)
- The Contractor shall ensure that drivers, airport representatives and technicians are fully and clearly briefed in advance and that they are provided with the name and phone numbers of the relevant organisation's representatives and the phone numbers of any couriers;
- The Contractor shall ensure that drivers are provided with the telephone numbers for the emergency services in each country en route;

### **Planning**

- The Contractor shall conduct an initial risk assessment of the project to identify risks involved and the Contractor's strategy shall include appropriate measures to prevent or mitigate these risks;
- The Contractor shall take all reasonable care to protect the works from every foreseeable risk of loss or damage such as loss, theft, fire, flood, vandalism, accidental damage, fraud, close proximity to hazardous substances, untrained personnel and so on;
- The Contractor shall have a disaster plan which identifies risks and vulnerabilities and their controls and a programme of in-house training on emergency procedures for all staff;
- The Contractor shall have in place policies and procedures dealing with pest control, chemicals and other hazardous substances;
- The Contractor shall notify the relevant organisation immediately of any event which places the safety of the works in jeopardy;
- Outside normal working hours contact telephone numbers shall be supplied by the relevant organisation for each project;
- The Contractor shall appoint a senior transport coordinator as the main point of contact for the relevant organisation who shall see the project through from start to finish;
- The Contractor shall ensure that there is at least one other experienced transport coordinator who is fully acquainted with the exhibition and able to administer the project in the absence of the principal transport coordinator;
- The Contractor shall maintain regular communication with the relevant organisation to fully inform them on the state of play, the progress or lack of progress, and discuss next steps;
- The Contractor shall ensure the relevant organisation is included in relevant email exchanges with overseas agents, lenders and exhibition partners and ensure that communications remain open and fluid between the parties;
- The Contractor shall ensure that each subcontractor is of such character and has the expertise so as to be able to perform their part of the service with reasonable care and skill;
- The Contractor shall ensure that subcontractors, overseas agents and their subcontractors are provided with the lender and insurance conditions applying to the provision of their part of the service;
- The Contractor shall monitor the work of their overseas agents to ensure that packing, transport, storage, airport services and courier arrangements are carried out according to instructions and in keeping with the project schedules and within indemnity/insurance cover periods, and to ensure subcontractors comply with terms and conditions applying to their part of the service;
- The Contractor shall provide detailed schedules of collections and deliveries including driver and truck details;
- The Contractor shall discuss and agree with the relevant organisation the transport schedules in advance and shall provide regular updates of any changes to the schedules. Schedules shall indicate whether transport is via a dedicated vehicle or a part load, or by an agreed subcontractor;
- The Contractor shall meet Lenders' terms and conditions of loan applying to the transport of works which have been agreed between the Contracting Body and Lenders and also any insurance conditions applying to works. Details of the Lender and insurance conditions shall be provided by the relevant organisation;

## **Operations**

### **Consignors**

- The Contractor and their agents shall contact consignors to discuss the packing and travel arrangements; to obtain information about the objects, to obtain information regarding access to the objects, access to the premises, to establish whether consignors shall send a courier and, if so, the extent of the courier's duties;
- The Contractor shall ensure that contact with consignors is made early and that communication with consignors continues in a timely fashion so that the consignors have sufficient time to prepare their objects for exhibition, and where applicable, to make courier arrangements, and to deal with the knock-on activities relating to loans out within their institution;
- The Contractor shall ensure all export licenses are applied for in ample time, taking into account the long lead in times in various countries. They shall be expected to apply on behalf of lenders where necessary and ensure all paperwork is in order well before the transport date

### **Vehicles**

The Contractor shall operate a sufficiently large fleet of specialised fine art vehicles for carrying works and shall maintain their vehicles in an efficient, good and serviceable condition. Vehicles carrying works (whether the Contractor's or their Sub-Contractors') shall:

- be manned by two fully qualified drivers trained in handling objects and capable of dealing effectively with an emergency situation. Drivers shall be polite, presentable, focused and attentive to the requirements of their tasks and contactable by telephone at all times;
- have solid sides and roof with a windowless freight compartment separate from the driving cab;
- be equipped with separate locking devices with alarms in the van and cab. Keys for the van and cab shall be kept separately;
- have air-ride suspension to protect against vibration and shock;
- be equipped with tail-lift;
- have "climate control" equipment in the van to protect against extremes in humidity and temperature with a read-out in the cab. The Contractor shall ensure that conditions are monitored for the duration of the journey;
- be equipped with fire and smoke detectors and fire extinguishers, and the drivers trained in their use;
- be equipped with satellite navigation;
- be clean throughout and with non-smoking cabin;
- be regularly serviced;
- be equipped with one or more seats for the courier or couriers (which shall have seat belts, arm rests, good cushioning, leg and foot room, head support, and meet Health and Safety standards). The Contractor shall provide a 'follow car' to accommodate additional couriers, as required.
- The Contractor shall have the capacity to provide alternative vehicles should mechanical problems arise (and shall have in place international breakdown cover/controls).
- Vehicles should be checked every day to ensure no damage, interference, tampering, have taken place and that the cab and load compartments are secure and alarm is functioning and that vehicle seals (where applicable) have not been broken.
- The Contractor and their agents shall not subcontract any part of the carriage by road to a common carrier unless circumstances are exceptional and on condition that the relevant organisation is consulted in advance.

## **Equipment**

- Vehicles shall be fully and appropriately equipped for loading, offloading and securely strapping packed and wrapped objects (or unwrapped objects if applicable), display cases and equipment. They shall be equipped for handling, lifting, cushioning cases/objects of different media, size and weight safely and in accordance with Health and Safety regulations;
- The Contractor shall provide all equipment and tools necessary for de-installation, packing, unpacking and installation at consignors' premises;
- Equipment, tools and materials shall be maintained in an efficient, good and serviceable condition;

### **Security**

- The Contractor shall provide details of the airport representatives, technicians, drivers and vehicles for each shipment at least 48 hours in advance of collections and deliveries from/to the relevant organisation;
- The Contractor and their Sub-Contractors shall ensure that their staff carry their Company ID showing their level of aviation security training when coming to the relevant organisation for collections and deliveries, and for any other purpose;
- In addition to drivers/technicians must always carry EU issued photo identification (i.e. driving license or passport) and, where applicable, evidence of Aviation Security training, which is a mandatory requirement for the Regulated Agent and Known Consignor Scheme
- The Contractor and their Sub-Contractors shall make arrangements for security or police escorts for high value road shipments as required;
- Security escort cars shall be manned by two qualified drivers, both equipped with mobile phones and provided with the numbers for the emergency services in each country on route, and with the phone numbers of the drivers and couriers in the transport, together with the phone numbers of the Contractor and overseas Sub-Contractors;
- As soon as an airfreight container has been loaded with the objects, the airport representative shall ensure that it is sealed and not re-opened at a later stage either to remove goods or add goods to the load;
- The Contractor and their agents shall make arrangements for airport security in cargo and airside to remain with the objects to ensure that cases are not moved or tampered with or removed from pallets and containers once loaded or that nothing is added to pallets or containers or removed once the objects have been loaded.

### **Road Transport**

- The Contractor shall identify the type and number of vehicles required for the project depending on the size of the packing cases, their weight, the quantity and the total value of the objects;
- The Contractor shall make available and schedule their most appropriate vehicle for each transit, bearing in mind the loading bay information they will receive
- All vehicles provided for couriers with 'hand-carries' shall be manned by two fully qualified drivers (the presence of the courier does not count);
- For road journeys involving a ferry crossing, the Contractor shall arrange for the vehicle's climate control to function. Vehicles shall carry the correct continental fittings for plugging-in to the power supply on ferries;
- Drivers shall ensure that one driver always remains with the loaded vehicle during refreshment and refuelling stops (and stops for any other reason). This rule does not apply when the vehicle is stowed on a ferry or freight train or when parked inside a secure overnight stop (although drivers may be required to sleep on the vehicle should the vehicle be unable to park inside.) Any stops should be kept to an absolute minimum;

### **Air Transport**

- For the transport of Works by air, the Contractor shall be listed as a Regulated Agent on the EU RAKC database or on the UK CAA database. and will comply at all times with all current guidelines for Regulated Agents;
- The Contractor shall alert the Contracting Body within 24 hours if they have been deregulated, apply for voluntary de-listing or if they decide to no longer trade as a Regulated Agent;
- The Contractor's shall ensure that airport representatives (including subcontracted overseas agents' airport representatives) hold up to date airside passes;
- Air freight shall travel on direct flights wherever possible using reputable airlines under IATA air waybills and booked as high value goods and as 'must ride' or equivalent;
- The Contractor shall ensure that airlines are pre-alerted and prepared for the arrival or despatch of high value consignments so as to ensure safe passage of the objects between the delivery / collection vehicle and the pallet or container, and ensure safe loading/unloading to or from the pallet or container;
- The Contractor shall provide airport representatives at the airports of origin and destination to deal with the import/export documentation, Customs, airline and security formalities, and oversee cargo handling at all stages from delivery to departure;
- The Contractor shall provide personnel at each airport who have full access to cargo sheds and also to the aircraft on the tarmac who shall witness the movement of the relevant organisation's cargo between shed and aircraft and loading cargo to / unloading cargo from the aircraft;
- Airport representatives at each airport shall arrange entry to cargo sheds for couriers to witness palletising/de-palletising, containerising/de-containerising, road vehicle loading/unloading, and the movement of the objects between the road vehicle and the pallet/container;
- Plane change options are not desirable and should be avoided but for where it may be unavoidable because of the destination, the Contractor shall arrange for Cargo supervision on the tarmac and in cargo (if applicable), and arrange for courier attendance;
- The airport representative shall ensure that no dangerous goods or hazardous substances are included in the container or pallet holding the objects.

### **Overnight Storage**

- The Contractor and their agents shall arrange secure overnight storage for vehicles in their own or their agents' fine art warehouses;
- The Contractor shall provide the relevant organisation in advance with a facilities and security report of the proposed premises in which the vehicle shall be parked so that they can assess the suitability of the premises and the arrangements;
- The premises used for overnight storage must be protected by a 24-hour intruder and fire alarm system and CCTV;
- Works should remain under-load on the vehicle and be parked inside the warehouse and be plugged-in;
- Vehicles shall carry the correct continental fittings for plugging-in to the power supply at the premises;
- When a vehicle cannot be plugged-in it must be parked inside the warehouse and the premises must be environmentally controlled as appropriate;
- Should arrangements need to be made to unload the objects from the vehicle into the warehouse the Contractor shall arrange for trained object handling personnel and appropriate equipment to be available where required and for the place of storage to be climate controlled. Smoking, food and drink shall be prohibited in areas where works are stored;
- The Contractor and their agents shall arrange accommodation for couriers accompanying the objects;

### **Short Term Storage**

- The Contractor shall provide secure and environmentally controlled fine art warehousing facilities for the temporary storage of works as and when necessary;
- The Contractor shall provide the relevant organisation in advance with a facilities and security report of the proposed premises so that it can be assessed for suitability;
- If UK based, the premises shall have been approved by the UK National Security Adviser within the past 3 years. (The equivalent for international storage premises). The premises must be protected by a 24-hour intruder and fire alarm system and CCTV. From time to time (for example, for very high value objects, the relevant organisation may request additional continuous manned supervision);
- Objects shall be stored in areas that have environmentally controlled conditions. The Contractor shall ensure stable humidity and temperature levels are maintained. Smoking, food and drink shall be prohibited in the area where works are stored;

### **Couriers**

- The Contractor shall provide couriers with detailed itineraries at least one week in advance of their journey, giving 24-hour contact details of key personnel at each stage of the journey;
- The Contractor and the overseas agents shall brief couriers in advance of local rules and regulations;
- The Contractor shall ensure that couriers are provided with copies of the documents relating to their shipment (air waybill, pro forma shipping invoice, copies of export licenses or CITES as appropriate);
- The Contractor shall ensure that travel tickets are provided for couriers which are partially flexible and for the class most appropriate for the journey time involved and whether accompanying or not accompanying freight. The relevant organisation shall confirm which type of ticket shall apply;
- The Contractor shall ensure that the appropriate travel insurance is provided for couriers where it is not already provided by the home institution;
- For road transports involving an overnight stop en route or long ferry crossing, the Contractor shall ensure that hotel accommodation and/or a sole use cabin is obtained for the courier;
- Travel tickets, travel insurance wording and itineraries for NGI couriers must be sent to the relevant organisation (or in the case of couriers from lenders to the lender's relevant Registrar) no less than four working days before the journey shall take place;
- The Contractor may occasionally be asked to provide couriers with per diem expenses by the relevant organisation: amounts to be determined by the relevant organisation;
- In order for couriers to rendezvous with vehicles outside normal working hours and supervise handling, movements, loading and offloading, the Contractor and their agent shall make arrangements for couriers to be collected from their hotel/home, as requested. The Contractor shall also make arrangements to take couriers to their hotels following delivery to the relevant organisation or other venue, as requested;
- For both road and air transports, the Contractor and their agents shall ensure that couriers oversee all handling, loading and unloading, and all movements of the objects for which they are responsible so far as is possible;
- The Contractor shall provide an airport representative to meet incoming couriers accompanying freight into Ireland on arrival at the aircraft and shall escort the courier to cargo to attend de-palletising/de-containerising and loading to the truck (and overseas agents shall make similar arrangements where possible);
- Air freight shall travel on direct flights wherever possible, however, where unavoidable long haul flights which include a refueling or plane change stop on route, the Contractor shall arrange for an airport representative to provide courier assistance;

- The Contractor and their agents shall provide an airport representative who shall escort outgoing and incoming couriers with hand-carries at all times and assist them inside the aircraft to ensure the hand-carry is safely stowed and secured on departure and safely removed on arrival;
- The airport representative shall attend the outgoing courier at all stages from the cargo shed to the terminal, and shall provide assistance at check-in. Finally, the airport representative shall confirm with the courier prior to the courier boarding the aircraft that their cargo is on board. In the event that the cargo is not loaded or is taken off the flight, the airport representative shall ensure that the courier does not board the aircraft;
- The Contractor and the overseas agents shall ensure that airport representatives provide outgoing couriers with copies of air waybills and shipping invoices (and copies of CITES and/or export licences where appropriate) and shall ensure that the couriers have a note of the identification number/s of their pallet/s or container/s prior to departure;
- Airport representatives (and drivers during road transports) shall provide incoming and outgoing couriers with a steady flow of information about the progress of their import/export and shall ensure that the courier is not left unattended for long periods;

#### **Import and Export**

- The Contractor and their agents shall arrange import and export Customs clearances and shall be fully confident of arrangements to be made for entry, transit and exit into, through and out of all countries
- So far as is possible, the Contractor and their agents shall obtain exemption from x-ray, unpacking and physical examination of objects at all ports;
- The Contractor and their agents shall obtain, in good time, export licenses and any other certificates and licenses required for import and export;
- The Contractor shall ensure all export licenses are applied for in ample time, taking into account the long lead in times in various countries. They shall be expected to apply on behalf of lenders where necessary and ensure all paperwork is in order well before the transport date
- The Contractor shall ensure that all necessary documentation is correctly completed and the relevant records are kept with respect to those works: and are correctly released upon re-export;

#### **Damage Reporting**

- The Contractor shall notify the relevant organisation immediately by telephone and in writing in the event of damage or loss so that the Owner is not denied the opportunity to register a claim for compensation within the required time limit;
- If damage to works is noticed at any stage, this must be reported immediately to the relevant organisation by telephone (and a written report must be made and submitted within 24 hours) advising the facts relating to the damage;
- If loss occurs, this must be reported immediately to the relevant organisation by telephone (and a written report must be made and submitted within 24 hours), advising the facts relating to the loss;
- If, at packing an object at a lender's premises, the Contractor's technicians consider that an object is not fit to travel, this must be reported by the technicians to the relevant organisation immediately;
- If damage to a packed case is noticed at any stage, this must be reported to the relevant organisation together with a note advising the facts relating to the damage;
- The relevant organisation shall be notified if damage is noticed on empty packing cases at any time during collection, delivery or whilst in storage;

#### **Documentation**

- In addition to documents previously mentioned (air waybills, pro forma shipping invoices, delivery and receipt notes, condition reports, apparent defect reports) the Contractor and their agents shall provide the relevant organisation on request copies of other documents generated by the Contractor and their agents for purposes of the relevant organisation's business;
- The Contractor will list all works on collection / delivery paperwork (or attached schedule) and will ensure a copy is always given to the Contracting Body and/or Lender;

**Category 2 – Specialised transport for art movement requiring transport on the island of Ireland.**

**Applicants should note that whilst this list is indicative of typical services likely to be required, it is not exhaustive.**

Trucks used for transporting the Goods shall:

- Have at least two technicians on a truck. It is never acceptable to have only one technician collect/deliver artworks. The driver can also be a technician but if the driver is not also a technician then there must be two technicians aboard the truck in addition to the driver
- Be equipped with air-ride suspension, climate control and a tail lift
- Have a system for securing crates/works of art to the inside walls of the truck(batons/hooks);
- Have door locks that are in good working order;
- Be in good mechanical condition and regularly serviced
- Not bear any markings or references on the exterior that indicate expressly or implicitly that they are used for transporting artworks;
- Be equipped with sufficient straps to secure the crates/works of art inside the truck, have all equipment necessary on hand including blankets, trolleys and packing materials
- The Contractor shall have the capacity to provide alternative vehicles should mechanical problems arise
- The Contractor and their agents shall not subcontract any part of the carriage by road to a common carrier unless circumstances are exceptional and on condition that the relevant organisation is consulted in advance
- Trucks shall not be left unattended at any time (apart from on ferries & trains where drivers are not permitted to stay with their vehicles)
- Stops should be kept to an absolute minimum, ensuring drivers are prepared for the journey in advance to avoid delay
- Drivers/technicians shall be equipped with mobile phones and shall be in a position to contact a coordinator within the relevant organisation 24 hours a day;
- Drivers/technicians shall be properly trained in how to act in case of an emergency;
- Drivers/technicians shall not smoke on or near a truck while carrying the Goods; and
- Drivers/technicians shall obey all applicable laws and rules of the road.

In relation to the drivers and technicians who will provide the Services, the below criteria is essential

- Knowledge and capability of working with similar organisations and private lenders
- Technicians are required to have had relevant training and experience with a minimum of 2 years' experience packing and installing fine art in a museum, gallery or fine art services company setting and have expertise in handling, packing and transporting works of art of various media, size and weight
- Knowledge of the cultural importance, unique nature and construction of works of art and understanding of the works being handled
- An understanding of the level of care and skill required for the different handling, packing, display and transport requirements of works of art and how they react to shock, vibration and extremes of humidity and temperature
- The Contractor is not expected to be an expert in conservation but is expected to have a full understanding of its area of expertise so that it is able to take sensible precautions against foreseeable risks of damage and loss
- Awareness of what PPE is appropriate for which jobs and ensure it is worn

### **Security & information**

- All information in relation to the provision of the Services is strictly confidential. Such information is provided to you on a 'need to know' basis and may not be disclosed to third parties without the prior approval of the relevant staff.
- Such information may be disclosed to personnel within your organisation on a need to know basis only. E-mails from the relevant organisation or about the Services should not be printed out and should be deleted when they are no longer needed. They may not be forwarded to third parties without the prior approval of the relevant organisation staff.
- Correspondence relating to the Services should be kept in a safe place with access restricted only to those directly involved with the Services.
- Drivers and technicians should only have access to information relating to the Services that they need in order to carry out their job. They should be made aware by their managers that any information relating to the Services is confidential and cannot be shared with others including; colleagues, family, friends and staff other than relevant organisation's main contact for the project.
- All contractors should have strong and discrete security measures;
- The Contractor shall provide details of the technicians, drivers and vehicles for each shipment at least 48 hours in advance of collections and deliveries from/to the relevant organisation;
- The Contractor shall ensure that their staff carry their Company ID for collections and deliveries, and for any other purpose;
- The Contractor shall ensure that their staff comply with all health and safety legislation including the Safety, Health and Welfare at Work Act 2005, (Ireland)

### **Deliveries and collections**

- Works of art may only be collected and delivered from/to the address supplied by the relevant organisation
- Works of art may only be collected and delivered from/to the institution and person specified by the relevant organisation
- If there is any uncertainty or doubt concerning the delivery/collection address you must ring the relevant contact within the organisation before taking in or handing over the particular work of art
- Contractors shall obtain a signature from the person receiving or handing over the work of art and shall ensure that receipts are signed upon delivery/collection and can be produced upon the relevant organisation's request

### **Damage Reporting**

- The Contractor shall notify the relevant organisation immediately by telephone and in writing in the event of damage or loss so that the Owner is not denied the opportunity to register a claim for compensation within the required time limit;
- If damage to works is noticed at any stage, this must be reported immediately to the relevant organisation by telephone (and a written report must be made and submitted within 24 hours) advising the facts relating to the damage;
- If loss occurs, this must be reported immediately to the relevant organisation by telephone (and a written report must be made and submitted within 24 hours), advising the facts relating to the loss;

- If, at packing an object at a lender's premises, the Contractor's technicians consider that an object is not fit to travel, this must be reported by the technicians to the relevant organisation immediately;
- If damage to a packed case is noticed at any stage, this must be reported to the relevant organisation together with a note advising the facts relating to the damage;
- The relevant organisation shall be notified if damage is noticed on empty packing cases at any time during collection, delivery or whilst in storage;

## Award criteria for mini competitions

Members may be required to demonstrate that they fulfil) in future Mini-Competitions and are included in this Appendix 1 to provide Applicants with an overview of potential requirements and criteria in future Mini-Competitions. Applicants are reminded that while they are required to submit a response to and fulfil the Compliance And Selection Criteria in Part 3 of the RFATP, Applicants are **not** required to submit a tender proposal in response to the requirements and award criteria below, nor is a pricing proposal required at this Stage 1 of the Competition. Qualitative and Cost Award Criteria will instead be required in response to any future Mini-Competitions conducted under the DPS.

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

The Award Criteria for these mini competitions shall include all, or some, of the following criteria:

| No.          | AWARD CRITERIA                                                                                                                                                                               | WEIGHTING RANGE |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1.           | <b>Quality of Approach and Service Methodology</b><br><br><b>May Include:</b><br>Understanding of the requirements<br>Project Delivery Methodology<br>Skills and experience of key personnel | 10% - 80%       |
| 2.           | <b>Contract Management</b><br><b>May Include:</b><br>Contract Management Methodology<br>Managing Change<br>Performance Management<br>Risk Management<br>Communications management            | 10% - 40%       |
| 4.           | <b>Price</b><br><b>Options May include</b><br>Fixed Project Price<br>Blended Daily Rate<br>Day Rate                                                                                          | 10% - 50%       |
| <b>TOTAL</b> |                                                                                                                                                                                              | <b>100%</b>     |

The Contracting Authority is seeking to promote Environmental, Sustainability and Social considerations through this DPS arrangement.

## Appendix 2: Applicant's Statement

**TO:** The Governors and Guardians of the National Gallery of Ireland (the "Contracting Authority").

**RE:** Request to Participate in the DPS for the Provision of specialised art transport services

Having examined the Request for Application to Participate in the DPS (the "RFATP") including the Instructions to Applicants, the Selection Criteria, the Requirements and Specifications, and the terms and conditions of the DPS Agreement and the Contract we hereby agree and declare the following:

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

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

### **Appendix 3: Electronic European Single Procurement Document (eESPD)**

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

## Appendix 4: Declaration as to Personal Circumstances of Applicant

Re: Request to Participate in a Dynamic Purchasing System for the Provision of Specialised Art Transport Services.

**NAME:** *[Click here and insert name]*

**ADDRESS:** *[Click here and insert name]*

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

- (a) Has never been the subject of a conviction for participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA.
- (b) Has never been the subject of a conviction for corruption, as defined in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union and Article 2(1) of Council Framework Decision 2003/568/JHA as well as corruption as defined in the national law of the Contracting Authority or *[click here and insert name of entity]*.
- (c) Has never been the subject of a conviction for fraud within the meaning of Article 1 of the Convention on the protection of the European Communities' financial interests.
- (d) Has never been the subject of a conviction for terrorist offences or offences linked to terrorist activities, as defined in Articles 1 and 3 of Council Framework Decision 2002/475/JHA respectively, or for inciting or aiding or abetting or attempting to commit an offence, as referred to in Article 4 of that Framework Decision.
- (e) Has never been the subject of a conviction for money laundering or terrorist financing, as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council.
- (f) Has never been the subject of a conviction for child labour and other forms of trafficking in human beings as defined in Article 2 of Directive 2011/36/EU of the European Parliament and of the Council.

- (g) Is not in breach of its obligations relating to the payment of taxes or social security contributions.
- (h) Has, in the performance of all public contracts, complied with applicable obligations in the field of environmental, social and labour law that apply at the place where the works are carried out or the Services provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016).
- (i) Is not bankrupt or the subject of insolvency or winding-up proceedings, its assets are not being administered by a liquidator or by the court, it is not in an arrangement with creditors, its business activities are not suspended nor is it in any analogous situation arising from a similar procedure under national laws and regulations.
- (j) Is not guilty of grave professional misconduct.
- (k) Has not entered into agreements with other economic operators aimed at distorting the DPS.
- (l) Is not aware of any conflict of interest due to its participation in the DPS;
- (m) Has not had any prior involvement in the preparation of the DPS;
- (n) Is not guilty of significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages or other comparable sanctions.
- (o) Is not guilty of serious misrepresentation in supplying the information required for the verification of the absence of grounds for exclusion or the fulfilment of the Selection Criteria for this DPS and did not withhold such information and did not fail to submit supporting documents in respect of this DPS as required under Regulation 59 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016).
- (p) Has not undertaken to unduly influence the decision-making process of the Contracting Authority in respect of the DPS, or obtain confidential information that may confer upon it undue advantages in respect of the DPS; or negligently provided misleading information that may have a material influence on decisions concerning exclusion, selection or award.

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

\_\_\_\_\_  
**Signature of Declarant**

\_\_\_\_\_  
**Name of Declarant in print or block capitals**

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

\_\_\_\_\_  
(signed)  
**Practising Solicitor/Commissioner for Oaths**

## Appendix 5: Dynamic Purchasing System Agreement

Dynamic Purchasing System Agreement for the provision of Specialised Art Transport Services

**THIS DYNAMIC PURCHASING AGREEMENT IS MADE ON THE** [insert day] **DAY OF** [Insert Month] **2024 (“the DPS Agreement”)**

**BETWEEN:** The Governors and Guardians of the National Gallery of Ireland whose offices are located at Merrion Square, Dublin 2, D02 K303 (“the Contracting Authority”); and [Insert name of DPS Member] whose principal place of business is at [ ] (“the DPS Member”) (each a “Party” and together the “Parties”)

### WHEREAS:

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

## IT IS HEREBY AGREED AS FOLLOWS:

### 1. Definitions and Interpretation

**“Commencement Date”** means \_\_\_\_\_;

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

**“DPS Client”** means any party identified in Part 1, paragraph 1.7 of the RFATP who may award Contracts pursuant to this DPS Agreement;

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

**“Establishment Date of the DPS”** means the date as defined at paragraph 1.6 of the RFATP;

**“Month”** means a calendar month;

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

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

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

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

### 2. Appointment of DPS Member, Scope and Term of the DPS Agreement

- 2.1 In consideration of payment by the Contracting Authority of the sum of €2.00, the accepts its appointment under the provisions of this DPS Agreement and agrees to comply with the terms of this DPS Agreement.
- 2.2 This DPS Agreement does not entitle the DPS Member to be consulted in respect of, or awarded any Contract during the DPS Term. The DPS Client(s) may at its or their sole discretion choose not to enter into any Contract pursuant to this DPS Agreement.
- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual

value of any Services and/or number of Contracts (if any) which may be procured in connection with this DPS Agreement and the Parties acknowledge that the DPS Client(s) are not bound to enter into any Contract or other arrangement with the DPS Member as a result of entering into this DPS Agreement. Without prejudice to the foregoing the DPS Member hereby acknowledges that the Contracting Authority intends (but shall be under no obligation) to promote the DPS Agreement and to encourage use of the DPS Agreement by the DPS Client(s) and the DPS Member may be required to provide reasonable assistance in this respect.

- 2.4 This DPS Agreement does not confer exclusivity on any DPS Member. The DPS Clients may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within the scope of this DPS Agreement. In this event, the DPS Client(s) shall observe all obligations at law and shall not afford any advantage to the DPS Member.
- 2.5 This DPS Agreement shall take effect on the Commencement Date and shall expire on the fifth anniversary of the Establishment Date of the DPS as defined at clause 1.6 of the RFATP, unless terminated earlier in accordance with this DPS Agreement.
- 2.6 “Not Used”
- 2.7 The DPS Member agrees that any information relating to this DPS Agreement and/or the performance of this DPS Agreement may be passed by the DPS Clients to the Contracting Authority and that the Contracting Authority may use this information in relation to the provision of the Services and in the analysis and reporting of spend data including the preparation and publishing of reports.

### **3. DPS Agreement Management**

- 3.1 The DPS Member hereby agrees and undertakes to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement or as may be notified in writing via the Electronic Platform by the Contracting Authority to the DPS Member from time to time.
- 3.2 The DPS Member shall provide up-to-date documentary evidence that each entity concerned fulfils the compliance and selection requirements as set out in Part 3 of the RFATP no later than five (5) calendar days following receipt of a request from the Contracting Authority.
- 3.3 Subcontractors nominated and relied upon by the DPS Member in their Application for admission to the DPS may not be changed throughout the Term of this DPS Agreement without the prior consent in writing of the Contracting Authority. The DPS Member must set out the rationale for the proposed change in Subcontractor. The responsibility will be on the DPS Member to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as set out in clause 3.2 of this DPS Agreement, that by changing Subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at part 3 of the RFATP.

#### **4. Contract**

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

#### **5. Procedure for Award of Contracts**

- 5.1 On each occasion that a DPS Client or group of DPS Clients propose(s) to award a Contract under this DPS Agreement, the Contracting Authority / DPS Client shall issue by electronic means a Request for Tenders ("RFT") to all DPS Members in accordance with the following procedure (a "Mini-Competition").
- 5.1.1 The RFT shall set out:
- the scope and term of the Contract to be awarded;
  - the specific DPS Client participating in each Mini-Competition;
  - the relevant Award Criteria;
  - the deadline (date and time) for the receipt of responses to the RFT (each a "Response") taking into account the complexity of the Contract and the time needed to prepare an appropriate Response. Responses received after the deadline will not be considered;
  - the types and levels of insurance required for the Contract;
  - the type of service(s) required by the DPS Client(s);
  - the Pricing Matrix that will apply to the relevant Mini-Competition;
  - any additional conditions (if any) that will apply to the Contract to be awarded in addition to the terms and conditions of the Contract at Appendix 6 of the RFATP.
- 5.1.2 All Responses to the RFT must be submitted via the Electronic Platform only. Responses received in any other manner including e-mail or hardcopy will not be considered.
- 5.1.3 Any clarifications issued by the Contracting Authority or the DPS Client, as applicable, in relation to a RFT will be communicated via the Electronic Platform only.
- 5.1.4 The Contracting Authority/DPS Client may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.1 below
- 5.1.5 The Contracting Authority/DPS Client reserve the right to issue or seek written clarifications via the Electronic Platform.

## 6. Mandatory Requirement and Award Criteria

### 6.1 Award Criteria for Mini-Competitions

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

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

| No.          | AWARD CRITERIA                                                                                                                                                                               | WEIGHTING RANGE |
|--------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1.           | <b>Quality of Approach and Service Methodology</b><br><br><b>May Include:</b><br>Understanding of the requirements<br>Project Delivery Methodology<br>Skills and experience of key personnel | 10% - 80%       |
| 2.           | <b>Contract Management</b><br><b>May Include:</b><br>Contract Management Methodology<br>Managing Change<br>Performance Management<br>Risk Management<br>Communications management            | 10% - 40%       |
| 4.           | <b>Price</b><br><b>Options May include</b><br>Fixed Project Price<br>Blended Daily Rate<br>Day Rate                                                                                          | 10% - 50%       |
| <b>TOTAL</b> |                                                                                                                                                                                              | <b>100%</b>     |

- 6.1 The DPS Client will require the DPS Member to whom it has decided to award a Contract to supply up-to-date evidence as set out in Section 3.1 and Section 3.2 of the RFATP. Where the DPS Member cannot provide up-to-date evidence as required in clause 3.2 of this DPS Agreement to demonstrate that each entity concerned meets the compliance and selection requirements specified at paragraphs 3.1 and 3.2 of the RFATP, then the DPS Client may proceed to offer the Contract to the next highest-ranked DPS Member for that Mini Competition.
- 6.2 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.
- 6.3 The Contracting Authority/DPS Client(s) may cancel a Mini-Competition at any time prior to a Contract being executed by the DPS Client. Any notification of preferred bidder status by the Contracting Authority/DPS Client shall not give rise to any enforceable rights by the DPS Member.

## **7. Applicable Law and Jurisdiction**

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

## **8. Compliance with laws**

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

## **9. Tax Clearance**

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

## **10. Anti Competitive Conduct**

- 10.1 W i t h o u t prejudice to the generality of clause 8.1, the DPS Member shall comply with the Competition Act 2002 (as amended, the “2002 Act”). The 2002 Act makes it a criminal offence for Applicants to collude on prices or terms in a public procurement competition.

## **11. Conflicts Of Interest**

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

## **12. Registerable Interest**

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

in Public Office Act 1995.

### **13. Confidentiality**

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

### **14. Notices**

- 14.1 Any notice or other written communication to be given under this DPS Agreement shall be delivered through the Electronic Platform, via e-mail or in exceptional circumstances by post. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 14.
- 14.2 All notices shall be deemed to have been served as follows:
  - a. if personally delivered, at the time of delivery;
  - b. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
  - c. if communicated by email, on the next calendar day following transmission.

### **15. Gifts**

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

## 16. Costs and Expenses of DPS Agreement

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

## 17. Termination

- 17.1 This DPS Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving one (1) month'S written notice to the DPS Member through the Electronic Platform.
- 17.2 The Contracting Authority shall have the right (in addition to any other rights which it has at law) to terminate this DPS Agreement immediately and without liability for compensation or damages on the happening of any of the following events:
- 17.2.1 if the DPS Member commits any serious breach or a series of breaches of any provision of this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority, (if the breach(es) are capable of remedy), within 30 days after receipt of a request in writing via the Electronic Platform from the Contracting Authority. Without prejudice to the generality of the foregoing, a failure to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement shall be deemed to be a serious breach of this DPS Agreement;
- 17.2.2 if the DPS Member commits any serious breach or a series of breaches of any Contract awarded pursuant to this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority and the DPS Client(s), within 30 days after a receipt of a request in writing via the Electronic Platform from the Contracting Authority or any DPS Client.
- 17.2.3 if the DPS Member becomes insolvent, becomes bankrupt, is wound up, enters into examinership, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
- 17.2.4 in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) apply to the DPS Member;

- 17.2.5 In circumstances where the DPS Member fails to provide up-to-date evidence when requested to do so by the Contracting Authority in accordance with clause 3.2 of this DPS Agreement to demonstrate to the satisfaction of the Contracting Authority that they meet the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.6 In circumstances where the DPS Member changes the Subcontractor(s) nominated and relied upon by the DPS Member in their Application for admission to the DPS but fails to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as required in clause 3.2 of this DPS Agreement, that by changing Subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.7 in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the DPS Member which cannot, in the opinion of the Contracting Authority, be removed by other means; and
- 17.2.8 in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the DPS Member.
- 17.3 Subject to clause 17.2.2, the termination of a Contract awarded under this DPS Agreement does not affect the validity of this DPS Agreement.
- 17.4 Termination of this DPS Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this DPS Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **18. Freedom of Information**

- 18.1 The DPS Member acknowledges that the Contracting Authority and or the DPS client is subject to the Freedom of Information Act 2014 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014. Information furnished to the Contracting Authority or the DPS client by the DPS Member may be released pursuant to the Contracting Authority's or the DPS client's statutory obligations. If the DPS Member considers that any of the information supplied by it to the Contracting Authority or the DPS client under this DPS Agreement or any Contract should not be disclosed because of its sensitivity it should, when providing the information, indicate this and specify the reason for its sensitivity. The Contracting Authority or the DPS client will consult the DPS Member about this sensitive information before making a decision on any Freedom of Information request received. The Contracting Authority and or the DPS client accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

## 19. Dispute Resolution

- 19.1 In the event of any dispute arising out of or relating to membership of this DPS Agreement (the “Dispute”), the Parties shall first seek settlement of the Dispute as set out below.
- 19.2 The Dispute shall be referred as soon as practicable to [insert DPS Member senior contact] within the DPS Member and to the Professional Services Category Manager within the Contracting Authority respectively.
- 19.3 If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing via the Electronic Platform by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- 19.4 If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to the Mediator’s institute of Ireland to appoint a mediator.
- 19.5 Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- 19.6 The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- 19.7 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The DPS Member shall comply fully with the requirements of the Agreement at all times.
- 19.8 If, and to the extent that, any Dispute has not been settled pursuant to the mediation within 30 days of the commencement of the mediation, either party may apply to the Irish courts at any time thereafter.

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

|                                                                                                                                                                         |                                                                                                                                                              |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <p><b>SIGNED</b> by _____,<br/>being an Officer so authorised<br/>by the <b>CONTRACTING AUTHORITY</b></p> <p>in the presence of:</p> <p>_____</p> <p><b>Witness</b></p> | <p><b>SIGNED</b> by _____,<br/>being an Officer so authorised<br/>by the <b>DPS MEMBER</b></p> <p>in the presence of:</p> <p>_____</p> <p><b>Witness</b></p> |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------|

**Appendix 6 - Services Contract**

[Insert name of Contracting Authority]

and

[Insert successful DPS Member’s full legal name]

**AGREEMENT**

Relating to the provision of Services pursuant to

Request for Tenders for the provision of Specialised Art Transport Services

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

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

**WHREAS:**

- A. By Request for Applications to Participate entitled "[redacted]" advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number [redacted] of [redacted] ("the RFT") the Contracting Authority invited economic operators to participate in a Framework Agreement for the provision of the Services described in Appendix 1 of the RFT (the "Services"). References to the RFT 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 "RFT Clarifications"). The RFT (including the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFT dated [insert date of Response to the RFT] ("the Response to the RFT"). References to the Response to the RFT shall include any clarifications issued by the Contractor in writing via the Electronic Platform to the Contracting Authority between [insert date] and [insert date] (the "Response to the RFT Clarifications"). The Response to the RFT (including the Response to the RFT Clarifications) is hereby incorporated by reference into this Agreement.
- C. The Contracting Authority and the Contractor entered into a Framework Agreement on [insert date of Framework Agreement] (the "Framework Agreement"). The Framework Agreement is incorporated by reference into this Agreement.
- D. In accordance with the Framework Agreement, by way of Supplementary Request for Tenders dated [insert date of SRFT] ("the SRFT"), the Client invited responses from all Framework Members for the provision of the Services set out in the SRFT. References to the SRFT shall include any clarifications issued by the Client via the messaging facility on the Electronic Platform between [insert date] and [insert date] (the "SRFT Clarifications"). The SRFT (including the SRFT Clarifications) is hereby incorporated by reference into this Agreement.
- E. The Contractor submitted a response to the SRFT dated the [Date of Response to the SRFT] (the "Response to the SRFT"). References to the Response to the SRFT shall include any clarifications issued by the Contractor in writing via the Electronic Platform to the Contracting Authority between [insert date] and [insert date] (the "Response to the SRFT Clarifications"). The Response to the SRFT (including the Response to the SRFT Clarifications) is hereby incorporated by reference into this Agreement.

**IT IS HEREBY AGREED AS FOLLOWS:**

- 1. This Agreement consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - i. This Agreement and Schedules A to E attached hereto;

- ii. The RFT;
  - iii. The SRFT
  - iv. The Response to the RFT.
  - v. The Response to the SRFT.
2. The Contractor agrees to provide the Services described in Schedule B (“the Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the SRFT and the Response to the SRFT (“the Specification”).
  3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
  4. For the purposes of this Agreement, the Client’s Contact is [insert contact name] of [insert contact address]; the Contractor’s Contact is [Contractor contact name: to be completed on signing] of [Contractor contact address: to be completed on signing].
  5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”). Notwithstanding the foregoing, the Agreement shall in any event expire on the fifth anniversary of the Establishment Date of the DPS as defined at clause 1.6 of the RFATP, if the Agreement has not already expired or otherwise terminated.
  6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
  7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
  8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
  9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
  10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

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

## Schedule A: Terms and Conditions

### 1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
  - 1. provide the Services in accordance with the Specification, the SRFT, the Client's directions and the terms of this Agreement;
  - 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
  - 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
  - 4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations") . The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Response to the SRFT hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4) above, to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.

- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
- F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
- G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by a Client of this framework to the Contracting Authority and that the Contracting Authority may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the "TUPE Regulations") and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

## **2. Key Personnel**

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

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

### **3. Payment**

- A. Subject to the provisions of this clause 3 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
  - 1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 10A from time to time;
  - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
  - 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Services for any billing period (including whether or not Services have been accepted, rejected, satisfactorily re-performed or as the case may be) must be raised by the Client's Contact within 14 calendar days of receipt of invoice. In circumstances where no queries are raised within the said 14 day period the invoice shall be deemed accepted. Upon resolution of any queries on the invoice to the satisfaction of the Client or upon such deemed acceptance the invoice shall be payable by the Client. Payment is subject to any rights reserved by the Client under any other provision of this Agreement; and
  - 4. The Client being in possession of the Contractor's current Tax Clearance Certificate. The Contractor shall comply with all applicable EU and domestic taxation law and requirements.
- C. The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- D. Wherever under this Agreement any sum of money is recoverable from or payable by the Contractor (including any sum which the Contractor is liable to pay to the Client in respect of any breach of this Agreement), the Parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.

- E. The Charges shall include any and all costs or expenses incurred by the Contractor, its employees, servants and agents in the performance of its obligations under this Agreement.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act, 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

#### 4. Warranties, Representations and Undertakings

A. The Contractor acknowledges, warrants, represents and undertakes that:

1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
6. the status of the Contractor, as declared in the “Declaration as to Personal Circumstances of Tenderer” dated [insert date] , which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
8. *Delete and replace with “Not Used” if not applicable:*

it has inspected the Client’s premises, lands and facilities before submitting its Response to the SRFT and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;

- 9 it retains and shall maintain for the Term insurances for the nature and amount specified in the SRFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 4A.9; and
- 10 the Client shall be under no obligation to purchase any minimum number or value of Services.

B. The Contractor undertakes to notify the Client forthwith of any material change to the status of the Contractor with regard to the warranties, acknowledgements, representations and undertakings as set out at clause 4A and to comply with all reasonable directions of the Client with regard thereto which may include termination of this Agreement.

## 5. Remedies

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

- A. The Contractor shall be liable for and shall indemnify the Client for and in respect of all and any losses, claims, demands, damages or expenses which the Client may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Contractor, its employees, Subcontractors or agents or any of them or as a result of the Contractor's failure to exercise skill, care and diligence as outlined in clause 1. The terms of this clause 5A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6(G), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Services, the Client shall be entitled to recover from the Contractor any excess prices which may be paid by the Client.
- D. Except as otherwise expressly provided by this Agreement, all remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.
- E. ***Delete and replace with "Not Used" if not applicable:***  
Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6(G) (for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed [insert amount – eg: [number] per cent of the Charges paid or projected to be paid (whichever is higher) under this Agreement] regardless of the number of claims.
- F. If for any reason the Client is dissatisfied with the performance of the Contractor, a sum

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

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

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

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

Without prejudice to any general right to damages under this Agreement where the Contractor does not provide the Services within delivery dates or lead times in accordance with this Agreement, the Client may, at his discretion, deduct [amount] per week/day, or part thereof, for each week/day of late delivery as liquidated damages up to a maximum amount of [amount] (the “Liquidated Damages Threshold”). Where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Client shall be entitled to:

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

## 6. Intellectual Property

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

of this Agreement, and any IPR in Contractor's standard hardware and software products or modifications or updates to such products.

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

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

- 1. (i) procure the necessary rights for the Client to continue use;
- 2. (ii) replace the relevant deliverable with a non-infringing equivalent;

3. (iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or
  4. (iv) if the Contractor cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Client Charges paid for such deliverable less a reasonable amount for the Client's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, TOGETHER with all losses (whether direct, indirect or consequential) thereby accruing to the Client as a result of the breach.
- H. Upon the termination of this Agreement for whatever reason, the Contractor shall immediately deliver up to the Client all the Materials prepared up to the date of termination. The provisions of this clause 6 will survive the expiration or termination of this Agreement for any reason.

## **7. Confidentiality**

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:
1. its professional advisers subject to the provisions of this clause 7; or
  2. as may be required by law; or
  3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or
  4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 7 to the RFT ("the Confidentiality Agreement").

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

1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
  2. which is or becomes public knowledge other than by breach of this clause; or
  3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
  4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will,

if requested by the Client, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.

- D. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity, and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- E. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

## **8. Force Majeure**

- A. A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 8B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Contractor (or Subcontractor or agent) places of business.
- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:
  - 1. the nature of the Force Majeure Event;
  - 2. the anticipated delay in the performance of obligations;
  - 3. the action proposed to minimise the impact of the Force Majeure Event;

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

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

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

## 9. Termination

- A. This Agreement may be terminated by the Client, without liability for compensation or damages, by serving one month's written notice to the Contractor. This Agreement may be terminated by the Contractor, without liability for compensation or damages, by serving one month's written notice to the Client.
- B. Either Party shall have the right (in addition to its rights under clause 9(a) and any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages on the happening of any of the following:
1. if the other Party commits any serious breach or a series of breaches of any provision of this Agreement and fails to remedy such breach(es) (if the breach(es) are capable of remedy) within 30 days after receipt of a request in writing from the other Party;
  2. if the other Party becomes insolvent, becomes bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
  3. in circumstances where the Client becomes aware of any conflict of interest on the part of the Contractor which cannot, in the opinion of the Client, be removed by other means; and
  4. in circumstances where the Client becomes aware of any registrable interest on the part of the Contractor.
- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor.
- D. Termination of this Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.
- E. If requested by the Client, the Contractor shall, promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons

providing the Services as may be required by the Client (“Employment Information”). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

## **10. Contract Management**

- A. The Client’s Contact and the Contractor’s Contact shall liaise on a regular basis to address any issues arising which may impact on the performance of this Agreement and to agree milestones, compliance schedules and operational protocols as required by the Client from time to time. If requested in writing by the Client the Contractor shall meet formally with the Client to report on progress and shall comply with all written directions of the Client.
- B. The Contractor agrees to:
  - 1. liaise with and keep the Client’s Contact fully informed of any matter which might affect the observance and performance of the Contractor’s obligations under this Agreement;
  - 2. maintain such records and comply with such reporting arrangements and protocols as required by the Client from time to time;
  - 3. comply with all reasonable directions of the Client; and
  - 4. comply with the service levels and performance indicators set out in Schedule D.
- C. The Client or its authorised representative may inspect the Contractor’s premises, lands and facilities (or such part or parts thereof relating solely to this Agreement) with due access to relevant personnel and records upon reasonable notice in writing to ensure compliance with the terms of this Agreement. The Contractor shall comply with all reasonable directions of the Client thereby arising. The cost of inspection shall be borne by the Client.

## **11. Disputes**

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

## **12. Governing Law, Choice of Jurisdiction and Execution**

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

## **13. Notices**

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 13.
- B. All notices shall be deemed to have been served as follows:

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

#### **14. Assignment and Subcontract**

- A. Subject to a Party's obligations at law, any assignment to a third party or other transfer of a Party's rights or obligations under this Agreement (the "Assignment") requires the prior written consent of the other Party. Prior to any such Assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Assignment not complied with in the manner prescribed herein shall be null and void.
- B. Subject to a Party's obligations at law, any sub-contract of a Party's rights or obligations under this Agreement requires the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed. Any attempted subcontract not complied with in the manner prescribed herein shall be null and void.

#### **15. Entire Agreement**

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

#### **16. Severability**

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

#### **17. Waiver**

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

#### **18. Non-Exclusivity**

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

## **19. Media**

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

## **20. Conflicts, Registrable Interests and Corrupt Gifts**

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any Subcontractor nor agent as the case may be has any conflicts in relation to the Services and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any Subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (Subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof, to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 20C or the commission of any offence by the Contractor, any Subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Contractor of the amount or value of any such gift, consideration or commission.

## **21. Access to Premises**

- A. Any of the Client's premises made available from time to time to the Contractor by the Client in connection with this Agreement, shall be made available to the Contractor on a non-exclusive licence basis and shall be used by the Contractor solely for the purpose of performing its obligations under this Agreement. The Contractor

shall have use of such premises as licensee and shall vacate the same on completion, termination or abandonment of this Agreement.

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

## **22. Equipment**

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

## **23. Non-Solicitation**

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

## **24. Change Control Procedure**

- A. At any time during the Term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change

requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").

- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.
- E. The Parties must indicate their acceptance or rejection of the change control request and/or Impact Assessment within a reasonable timeframe of its completion and Tender Submission for review, subject to a maximum of twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of an Impact Assessment, this Agreement and/or the Schedules should be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the Impact Assessment, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. The Contractor and the Client will agree a reasonable charge in advance for investigating each proposed variation and preparing each estimate, whether or not the variation is implemented. If the Client's request for any variation is subsequently withdrawn but results in a delay in the performance of the Services then the Contractor will not be liable for such delay and will be entitled to an extension of time equal to not less than the period of the delay.

## **25. Data Protection and Security**

- A. "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. 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.
- H. 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.
- I. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- J. 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.
- K. 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.

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

- L. 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.
- M. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

## **Schedule B: Services: The Specification**

[Insert when completing contract]

## **Schedule C: Charges**

[Insert when completing contract]

## **Schedule D: Service Levels**

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

## **Schedule E: Data Protection**

**[complete when completing the contract]**

### **Processing, Personal Data and Data Subjects**

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

## Appendix 7 Confidentiality Agreement

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

The [insert name of Contracting Authority]/[DPS Client], of [insert Address] (hereinafter “the Contracting Authority”) [or the “DPS Client”] (“the Client”) 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 Specialised Art Transport Services*” (the “RFATP”), the Governors & Guardians of the National Gallery of Ireland (the “Contracting Authority”) invited applications (“Applications”) to participate in a DPS for the supply of the services described in Appendix 1 to the RFATP (the “Services”). The Contractor submitted an Application to the RFATP dated the [insert date of Tender].

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

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

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

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

3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland from time to time.
4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
  - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
  - 4.2 not, without the prior written consent of the [Contracting Authority /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/DPS Client]; 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/DPS Client] 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/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/DPS Client], as applicable, all Confidential Information or at the written direction of the [Contracting Authority/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 / 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/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/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/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 Contracting Authority 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/DPS Client]

\_\_\_\_\_  
(being a duly authorised officer)

Witness

SIGNED for and on behalf of the Contractor

\_\_\_\_\_

Witness

# Schedule A to the Confidentiality Agreement: Data Protection

*[complete when completing the confidentiality agreement]*

## Processing, Personal Data and Data Subjects

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

**End of Document**

