

Dynamic Purchasing System Qualification

for the provision of Design Team
consultant services including
architect, engineers, surveyors, lead
design consultant and other
consultants
for St. John of God Community Services
clg.

Initial DPS deadline: 08th of October 2024

Contents

Part 1:	Introduction
Part 2:	Instructions to Candidates
Part 3:	Compliance and Selection Criteria
Appendix 1:	Requirements and Specifications
Appendix 2:	Candidate's Statement
Appendix 3:	Electronic European Single Procurement Document (eESPD)
Appendix 4:	Declaration as to Personal Circumstances of Candidate
Appendix 5:	DPS Agreement
Appendix 6:	Standard Conditions of Engagement for Consultancy Services
Appendix 7:	Confidentiality Agreement

Part 1: Introduction

- 1.1 St. John of God Community Services (the “Contracting Authority”) is issuing this Dynamic Purchasing System Qualification (“DPSQ”). St. John of God Community Services (the “SJOG CS”) is a HSE (Health Service Executive) funded agency providing services to children and adults with intellectual disability, and to children, adolescents and adults with mental ill health. References to the Contracting Authority will be deemed to include all the regions within St. John of God Community Services clg.
- 1.2 This public procurement competition (“Competition”) is being conducted in accordance with the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) (the “Regulations”).
- 1.3 The Contracting Authority invites requests to participate (“Applications”) from economic operators (“Candidates”) for appointment to a DPS for the provision of the services described in Appendix 1 to this DPSQ (“the Service”).
- 1.4 In summary the Services comprise:

The provision of for the provision of Design Team consultant services including architect, engineers, quantity surveyor, lead design consultant and other consultants for St. John of God Community Services clg.

The Contracting Authority reserves the right to include new trade/services during the term of this DPS. When a trade/service category is added to this DPS, the Contracting Authority will notify/broadcast the message on e-Tenders.

As potential Candidates in the market may be able to provide all the services described above, the Contracting Authority will not split the DPS into different lots to avoid unnecessary duplication of qualification and minimise the administration tasks for both the Contracting Authority and the qualified Candidates. If a qualified candidate only provides architect services, they may ignore DPS tenders requesting for Quantity Surveyor services and not respond to any tender notifications not related to their trade.

Further information of the required services is described in Appendix 1 to this DPSQ (“Requirements and Specifications”).

1.5 Outline description of Stage 1 and 2

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

Stage 1 – Admittance to the DPS:

The Contracting Authority invites Applications in response to this DPSQ from economic operators. Economic operators may apply for admission to the DPS, or re-apply in the case of Candidates who failed to satisfy the compliance or selection criteria in this DPSQ, at any point throughout the entire Term (as defined in paragraph 1.8 below) of the DPS. Applications will be assessed by the Contracting Authority against the compliance and selection criteria in paragraphs 3.1 and 3.2 of this DPSQ. All Candidates that meet the compliance and selection criteria in this DPSQ will be admitted to the DPS. Successful Candidates must enter into the DPS Agreement with the Contracting Authority set out at Appendix 5 to this DPSQ.

Stage 2 – Award of Contracts:

All Candidates that entered into a DPS Agreement with the Contracting Authority in Stage 1 (each a “DPS Member”) will be invited to stage 2 competition(s) (“DPS Tender”) to submit a tender based on the requirements set out in the stage 2 request for tenders (“RFT”). DPS Tender(s) will be conducted in accordance with the procedures set out at clauses 5 and 6 of the DPS Agreement. After the assessment of the tenders received in response to the RFT the Contracting Authority may decide to award the contract(s) to the DPS Member or DPS Members that have submitted the lowest price or most economically advantageous tender based on the award criteria set out in the RFT.

1.6 Overview of the DPS Process

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

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

1. Candidates must register with E-tenders and/or Login to the Electronic Platform;
2. Candidates must review all DPS materials published on the Electronic Platform for this Competition;
3. Candidates must complete and upload the electronic European Single Procurement Document (“eESPD”) to the Electronic Platform;
4. Candidates must complete the DPS Application Response Document in relation to the selection criteria as detailed in section 3.2 of this DPSQ. Candidates are **not** required to submit a tender proposal or pricing in response to the Appendix 1 requirements;
5. Candidates that fulfil the compliance and selection criteria in this DPSQ will be sent confirmation via the eTenders web platform of its qualification to the DPS and Candidates will be required to sign the DPS Agreement at Appendix 5 to this DPSQ. Once signed, the Candidate will be admitted to the DPS;
6. Candidates that do not meet the compliance and selection criteria in this DPSQ will not be admitted to the DPS and will be notified accordingly via the eTenders web platform.
7. Unsuccessful Candidates may re-apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS.
8. Economic Operators that did not submit an Application in response to this DPSQ by the application deadline specified in the cover page of this DPSQ may apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS.
9. It is envisaged that all successful DPS Members will be invited to all future DPS Tenders conducted under the DPS.
10. Future DPS Tender will be conducted in accordance with the DPS Agreement at Appendix 5 and contracts will be awarded in accordance with clauses 5 and 6 of the DPS Agreement.

1.7 DPS Clients

The following entities, (each a ‘DPS Client’) may award (or ‘call off’) contracts (each a ‘Contract’) under the DPS Agreement in accordance with the rules set out in the DPS Agreement at Appendix 5. The Contracting Authority is also a DPS Client.

1. Saint John of God Community Services clg - Liffey Services
2. Saint John of God Community Services clg - Kerry Services
3. Saint John of God Community Services clg – Dublin South East Services
4. Saint John of God Community Services clg – North East Services
5. Saint John of God Community Services clg – Community Mental Health Services

The Contracting Authority reserves the right to include new DPS Clients during the term of this DPS. When a DPS Client is added to this DPS, the Contracting Authority will notify/broadcast the message on e-Tenders.

1.8 Term

Any DPS that may result from this Competition will, subject to paragraph 1.9 below, be for a period of validity of up to 5 years ("the Term").

The Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the DPS Term for a period or periods of up to twelve (12) months with a maximum of two (2) of such extensions on the same terms and conditions.

1.9 Termination of DPS

Candidate's attention is drawn to clause 17 of the DPS Agreement in Appendix five. The Contracting Authority reserves the right to terminate the DPS Agreement at any stage throughout its Term in accordance with the termination provisions set out at clause 17 of the DPS Agreement.

1.10 Estimated Expenditure of contracts to be awarded

The Contracting Authority estimates that the aggregate expenditure on the Services to be covered by the proposed DPS Agreements may amount to some €700,000 (excl. VAT) over the Term and any extensions. Candidates must understand that the figures in this section 1.10 are estimates only based on current and future expected usage.

1.11 SME participation

Contracting Authority policy seeks to encourage participation on a fair and equal basis by Small and Medium Enterprises ("SME"s) in this DPSQ to Participate in the DPS and, if successful, in future DPS Tenders. SMEs that believe the scope of this DPSQ is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Contracts that may result from this DPSQ 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 DPSQ.

Part 2: Instructions to Candidates

2.1 Important Notices

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

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

This DPSQ does not constitute an offer or commitment to enter into a DPS Agreement or a Contract.

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

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

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

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

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

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

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

2.1.4 In this clause 2.1.4, "Data Protection Laws" means all applicable national and EU data protection laws, regulations and guidelines including but not limited to Regulation (EU)

2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time.

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

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

2.2 Compliant Applications

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

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

Candidates are required:

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

- (c) To follow the format of this DPSQ and respond to each element in the order as set out in this DPSQ;
- (d) To conform to and comply with all instructions and requirements set out in this DPSQ;
- (e) To submit the statement required under paragraph 2.4 below;
- (f) Not to alter or edit this DPSQ in any way; and
- (g) To complete and submit with their Application the DPS Application Response Document (“ARD”) in line with instructions provided in that document.

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

2.3 DPS Agreement and Contract

- 2.3.1 Candidates should note the terms and conditions of the DPS Agreement and the Standard Conditions of Engagement for Consultancy Services set out at Appendix 6 to this DPSQ respectively.
- 2.3.2 Candidates are required to confirm their acceptance of the DPS Agreement and the Standard Conditions of Engagement for Consultancy Services in the Candidate’s Statement at Appendix 2. Candidates may not amend the DPS Agreement or the Standard Conditions of Engagement for Consultancy Services.

2.4 Acceptance of DPSQ Requirements

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

2.5 Consortia and Prime / Subcontractors

Where a group of undertakings (in whatever form and regardless of the legal relationship between them) come together to submit an application in response to this DPSQ the Contracting Authority will deal with all matters relating to this Competition through a single nominated entity authorised to represent all members of the group of undertakings and who will carry overall responsibility for the DPS Agreement and performance of any Contract (the “Prime Contractor”), irrespective of whether or not tasks are to be performed by a subcontractor or other consortium member (the “Subcontractor”). The Candidate must provide details of all members of the group of undertakings and their role in the Application and clearly and comprehensively set out the name, title, telephone number, postal address, and email address of the nominated contact personnel of the Prime

Contractor authorised to represent the Candidate and to whom all communications shall be directed and accepted until this Competition has been completed or terminated. Correspondence from any other person (including from any Subcontractor) will NOT be accepted, acknowledged or responded to.

2.6 Application Submission Requirements

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

Candidates must ensure that they give themselves sufficient time to upload and submit all required Application documentation before the initial Application Deadline in the cover page of this DPSQ has passed. Candidates should take into account the fact that upload speeds vary. In order to submit a document to the electronic post-box, please note that you must click “Submit Response”. After submitting you can still modify and re-send your response up until response deadline. Candidates should be aware that the “Submit Response” button will be disabled automatically upon the expiration of the response deadline.

2.6.2 Application Deadline

As per Deadline in the cover page of this DPSQ. Once the initial deadline has passed, interested Candidates can apply at any time before the expiry or termination of the DPS.

2.6.3 Applications must be submitted in English.

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

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

2.7 Queries and Clarifications

2.7.1 All queries relating to any aspect of this Competition or of this DPSQ must be directed to the messaging facility on the Electronic Platform www.etenders.gov.ie. For the avoidance of doubt, Candidates may not contact potential DPS Clients regarding any aspect of this Competition.

2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on the Electronic Platform www.etenders.gov.ie. Where appropriate, queries may be

amalgamated. Candidates should note that the Contracting Authority will not respond to individual Candidates privately.

- 2.7.3 The Contracting Authority reserves the right to issue or seek written clarifications via the Electronic Platform.
- 2.7.4 The Contracting Authority reserves the right, at any time before the Application Deadline, to update or amend the information contained in this document and/or to extend the Application Deadline. Participating Candidates will be informed of any such amendment or extension through the Electronic Platform.
- 2.7.5 Candidates should ensure that they register their interest in this Competition, by clicking on the “Accept” button on the Electronic Platform, in order to receive all responses to queries and other updates in relation to this Competition.

2.8 Applications for Admittance to DPS and Candidate Costs

- 2.8.1 Notwithstanding the Application Deadline in paragraph 2.6.2 and deadline for submission of clarification queries in paragraph 2.7.1, both unsuccessful Candidates that submit an Application but fail to fulfil the compliance and selection criteria in this DPSQ, and economic operators that did not submit an Application in response to this DPSQ by the Application Deadline may raise clarification queries relating to any aspect of this Competition or of this DPSQ and apply / re-apply and submit an Application in response to this DPSQ at any stage throughout the Term of the DPS. The Contracting Authority shall evaluate any such Application(s) against the compliance and selection criteria set out in this DPSQ and shall duly notify the Candidate of the outcome of that Application in accordance with paragraph 3.4.1 of this DPSQ.
- 2.8.2 All costs and expenses incurred by Candidates relating to their participation in this Competition shall be borne by and are a matter for discharge by the Candidates exclusively.

2.9 Confidentiality

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

- (d) must be returned immediately to the Contracting Authority upon cancellation or completion of this Competition if so requested by the Contracting Authority.

2.10 Pricing

- 2.10.1 Candidates are reminded that they are not required to submit a Pricing Schedule in response to this DPSQ. Successful Candidates appointed to a DPS will however be required to submit pricing in response to future DPS Tenders conducted under the DPS.
- 2.10.2 All prices quoted in any subsequent DPS Tenders 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 Candidate.
- 2.10.5 Payments for Services provided pursuant to this DPSQ shall be made subject to and in accordance with the Standard Conditions of Engagement for Consultancy Services at Appendix 6 to this DPSQ 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 Candidate(s) and their Subcontractors (if any), shall be required to comply with all applicable obligations in the field of environmental, social and labour law that apply at the place where the services are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.
- 2.11.2 Candidates shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument S.I. No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.
- 2.11.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the "2012 Act") provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the Services will involve the provision to the Contracting Authority of Agency Workers (within the

meaning of the 2012 Act), Candidates should ensure that they consider their obligations under the 2012 Act when pricing their Application. The Contracting Authority shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the Services.

2.12 Publicity

No publicity regarding this Competition, the DPS Agreement, a DPS Tender, or Contract pursuant to a DPS Tender is permitted unless and until the Contracting Authority (or DPS Client as applicable) has given its prior written consent to the relevant communication.

2.13 Registrable Interest

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

2.14 Anti-Competitive Conduct

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

2.15 Industry Terms Used in this DPSQ

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

2.16 Freedom of Information

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

2.16.2 Candidates are asked to consider if any of the information supplied by them in their Application should not be disclosed because of its confidentiality or commercial sensitivity. If Candidates consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Candidates must, when providing such information,

clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Candidates do not identify information as confidential or commercially sensitive, it is liable to be released in response to a Freedom of Information request without further notice to or consultation with the Candidate. The Contracting Authority will, where possible, consult with Candidates about confidential or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

2.17 Tax Clearance

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

2.18 Conflicts of Interest

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

2.19 Withdrawal from participation in this Competition

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

2.20 Site Visit

Not Used

2.21 Insurance

2.21.1 The successful Candidate(s) shall be required to hold, for the term of any Contract awarded pursuant to a DPS Tender, **insurances of the type and to the level specified in each DPS**

Tender. Candidates should note that they are not obliged to have insurances in place in order to enter into a DPS Agreement with the Contracting Authority. The types of and levels of insurance required are not likely to exceed the following insurances:

Type of Insurance	Indemnity Limit
Employer's Liability	€13 million limit for any one claim or series of claims arising out of a single occurrence
Public Liability	€6.5 million limit for any one claim or series of claims arising out of a single occurrence
Product Liability	€6.5 million
Professional Indemnity	€500,000 s on an each and every claim basis.

2.21.2 By signing the Candidate's Statement at Appendix 2, Candidates confirm, that if awarded a Standard Conditions of Engagement for Consultancy Services arising from a DPS Tender pursuant to the DPS Agreement, they will, from the Effective Date of the Contract (as defined in the Contract), obtain and hold the types and levels of insurance as specified in the relevant RFT. A formal confirmation from the Candidate's insurance company or broker to this effect will be requested from the successful DPS Member(s) prior to the award of (and shall be a condition of) any Contract.

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

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

Part 3: Compliance and Selection Criteria

3.1 Compliant Applications

3.1 Only those Candidates who have:-

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

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

Where a Candidate (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 submit 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.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Candidates at any moment during the Competition to submit any or all of the following for the purposes of verification of the status of the Candidate (including the Prime Contractor and any Subcontractor): (i) a Declaration in the form attached at Appendix 4; (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground; (iii) in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, all or any of the supporting documents specified at paragraph 3.2 below,

and the Candidate must provide that documentary evidence no later than five (5) calendar days following that request.

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

If, upon request by the Contracting Authority, a Candidate does not provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies of the Selection Criteria (or any one of them) in accordance with this DPSQ 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 DPSQ.

3.2 Selection Criteria

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

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

The Contracting Authority may require Candidates to submit supporting documents at any stage of the process via electronic means, no later than 5 calendar days from the time of the request, unless notified otherwise in writing, via the Electronic Platform. However, where the Candidate is unable, for a valid reason, to provide the documentation specified below, the Candidate must inform the Contracting Authority of the reason why the documentation cannot be supplied and, if the Contracting Authority considers the reason given to be valid, provide such other suitable alternative documentation to prove, to the satisfaction of the Contracting Authority, their economic and financial capacity.

Candidates must complete the relevant sections of the DPSQ Application Response Document (“ARD”) in line with instructions provided in that document.

Candidates are reminded that they may rely on the capacities of other entities in order to meet the Selection Criteria.

Selection Criteria	Minimum Requirement	Evaluation
Minimum Turnover	Candidates must demonstrate that their turnover when averaged over the three most recent years of financial accounts, or where the date of establishment is more recent when averaged over the year(s) the entity has been established, equals or exceeds €100,000. To demonstrate this turnover requirement, Candidates must complete the Response Document and must submit with their Application any of the following documentary evidence; financial accounts or where the Candidates' accounts are audited then audited financial accounts, accountant's letter/certificate, or auditor's letter/certificate	Pass/Fail
Insurance levels	Candidates must provide their response on the Response Document regarding compliance to the Contracting Authority's insurance requirements described in item 2.21 of this DPSQ and must submit with their Application Insurance Certificate confirming cover.	
Educational and Professional & Health Safety Qualifications	Candidates must demonstrate in a clear and comprehensive manner that they have the level of Educational and Professional & Health Safety Qualifications to provide the services to be procured under the DPS. To demonstrate this, Candidates must complete the DPS Response Document and attached the CV Template completed in full for the proposed consultant(s) to the DPS including any recent Health & Safety qualification/certification. It is important to note that personnel who can demonstrate adequate training and qualifications but cannot demonstrate experience, or appropriate experience are not deemed to be adequate. Applicants/tenderers should always be required to demonstrate experience.	Pass/Fail

Selection Criteria	Minimum Requirement	Evaluation
Previous project experience	Candidates must submit provide on the Response Document a written narrative of previous experience providing the services in the public sector and/or the private sector in respect of three reference contracts, delivered within the last three years of the date the Candidate submitted their Application. The written narrative for each reference contract must include the organisation experience in assisting Contracting Authorities preparation public tenders. The Contracting Authority reserves the right to request the Candidate for the contract referee's contact details including name, 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 Candidate. If references are not satisfactory, the Contracting Authority reserves the right to reject the application or disqualify the Candidate.	
Health & Safety	Completion of Self-Declaration on Adequate Health & Safety Procedures.	

The information required above must be provided in the DPS Response Document.

3.3 Presentation of Proposals

Candidates may be required to make a presentation of the proposal contained in their Application. The Contracting Authority will not be responsible for the cost of such presentations (in accordance with paragraph 2.8). Performance at presentations will NOT be evaluated.

3.4 Notification and Admittance to the DPS

3.4.1 The Contracting Authority will notify Candidates of its decision in relation to the establishment of the DPS and/or of the outcome of their Application to participate in the DPS.

3.4.2 Admittance to the DPS will be conditional upon the successful Candidate(s) (including the Prime Contractor and any Subcontractors) submitting the (to the extent not already provided) within five (5) calendar days of request by the Contracting Authority:

- (i) a Declaration in the form attached at Appendix 4;
- (ii) if applicable, evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;

- (iii) all or any of the evidence and supporting documents specified at paragraphs 3.1 and 3.2 above.

3.5 DPS Agreement

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

Appendix 1: Requirements and Specifications

1. COMPANY OVERVIEW

Saint John of God Community Services clg (SJoG CS) is a Section 38 agency funded by the Health Service Executive (HSE) and we provide services and support to over 8,000 children, adolescents and adults with intellectual disability or mental ill health throughout Ireland. The organisation is configured into five Regions with a Regional Management Team responsible for the delivery of services and supports in each Region.

2. REQUIREMENT OVERVIEW

The Contracting Authority is seeking for Design Team consultants e.g. architect, building services engineer, civil/structural engineers, quantity surveyor, lead design consultant, other consultants including project supervisor for the design process and/or Design Team services for works/projects required during the term of this DPS.

The qualified consultants under this DPS must provide confirmation of experience with all steps of a construction process via public procurement including:

- Experience with all stages of the construction process as per <https://constructionprocurement.gov.ie/>
 - Preliminary Stage
 - Design stage
 - Tender stage including specification and creation of documents and evaluation of tenders
 - Construction stage
 - Handover of works
- Required certification
- Preparation of technical reports
- Preparation/Advice/Completion of standard tender documents
- Support with evaluation
- Completion of surveys
- Cost estimation

Please note that this list is not exhaustive, and the Contracting Authority reserves the right to issue DPS Tenders where the required service is covered by one the professional categories described above. Further details of each requirement will be issued by the DPS Client at Stage 2 i.e. DPS tender.

Based on previous projects, the Contracting Authority estimates that majority of the projects would be under €1 million (excl. VAT) where the PW-CF6 – Public Works Short Form of Contract will be applicable. If the requirement is for Term/Planned Maintenance and Refurbishment Works then PW-CF11 might be applicable.

At the pre-tender stages, the Contracting Authority will rely on the successful Candidate experience and expertise to advise if a different Public Works contract should be used instead based on risk or any other concern e.g. PW-CF5.

Final approval of each stage described above must be confirmed in writing by the DPS Client's responsible person.

The proposed consultants must have the applicable qualification, professional indemnity insurance cover and previous experience in consultancy service of a similar nature. Note that the Contracting Authority may request at the DPS qualification of DPS tender stage further information to confirm if the proposed staff or firm have the required registration with the following bodies:

Consultant category	Professional bodies
Architects	Royal Institute of the Architects of Ireland (RIAI)
Building Surveyors	Society of Chartered Surveyors Ireland (SCSI)
Quantity Surveyors	Society of Chartered Surveyors Ireland (SCSI)
Civil, Structural or Building Services Engineers	Engineers Ireland (IEI) Association of Consulting Engineers of Ireland (ACEI)

It is important to note that, as per the Health Safety Authority (HAS), the Contracting Authority must appoint a Project Supervisor for the Design Process (PSDP) when a project will take longer than 30 working days or 500 person days to complete, where there is more than one contractor or if particular risks exist.

The Contracting Authority would use one of the following platforms/methods when advertising tenders for Works for the required projects and it will be able to assist the successful consultants with the technical side of issuing tenders for works on these platforms:

1. DPS for Planned Maintenance and Refurbishment Works for Saint John of God Community Services clg on e-Tenders.
2. SupplyGov.ie
3. 5 written quotes (up to a maximum of €200,000 excl. VAT). Note: to be used if the two options above are not applicable or no qualifying responses received.
4. E-Tenders Note: to be used if the options above are not applicable or no qualifying responses received and above €200,000 excl. VAT.

Appendix 2: Candidate's Statement

Please refer to the DPSQ Response Document attached on e-Tenders.

Appendix 3: Electronic European Single Procurement Document (eESPD)

The Electronic European Single Procurement Document is available separately from www.etenders.gov.ie and must (in accordance with paragraph 3.1 of the DPSQ) be submitted with the Candidate's Application in response to this DPSQ.

Appendix 4: Declaration as to Personal Circumstances of Candidate

Please refer to the DPSQ Response Document attached on e-Tenders.

Appendix 5: Dynamic Purchasing System Agreement

Dynamic Purchasing Agreement for the provision of Design Team consultant services including architect, engineers, surveyors, lead design consultant and other consultants for St. John of God Community Services clg.

THIS DYNAMIC PURCHASING AGREEMENT IS MADE ON THE DAY OF 202

(“the DPS Agreement”)

BETWEEN:

Saint John of God Community Services clg whose offices are located at **Hospitaller House, Stillorgan, Co. Dublin, Ireland** (“the Contracting Authority”); and

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

(each a “Party” and together the “Parties”)

WHEREAS:

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

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

“Commencement Date” means _____;

“Contract” means a Standard Conditions of Engagement for Consultancy Services which is awarded in accordance with this DPS Agreement

“Standard Conditions of Engagement for Consultancy Services” means the template attached at Appendix 6 to the DPSQ;

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

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

“Month” means a calendar month;

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

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

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

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

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

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

- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any Services and/or number of Contracts (if any) which may be procured in connection with this DPS Agreement and the Parties acknowledge that the DPS Client(s) are not bound to enter into any Contract or other arrangement with the DPS Member as a result of entering into this DPS Agreement. Without prejudice to the foregoing the DPS Member hereby acknowledges that the Contracting Authority intends (but shall be under no obligation) to promote the DPS Agreement and to encourage use of the DPS Agreement by the DPS Client(s) and the DPS Member may be required to provide reasonable assistance in this respect.
- 2.4 This DPS Agreement does not confer exclusivity on any DPS Member. The DPS Clients may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within the scope of this DPS Agreement. In this event, the DPS Client(s) shall observe all obligations at law and shall not afford any advantage to the DPS Member.
- 2.5 This DPS Agreement shall take effect on the Commencement Date and expire five (5) years thereafter ("the DPS Term") unless terminated earlier in accordance with this DPS Agreement or extended pursuant to clause 2.6 subject to compliance with regulation 34(27) of the Regulations.
- 2.6 The Contracting Authority reserves the right, at its discretion and subject to its obligations at law, to extend the DPS Term for a period or periods of up to twelve (12) months with a maximum of two (2) of such extensions on the same terms and conditions.
- 2.7 The DPS Member agrees that any information relating to this DPS Agreement and/or the performance of this DPS Agreement may be passed by the DPS Clients to the Contracting Authority and that the Contracting Authority may use this information in relation to the provision of the Services and in the analysis and reporting of spend data including the preparation and publishing of reports.

3. DPS AGREEMENT MANAGEMENT

- 3.1 The DPS Member hereby agrees and undertakes to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement or as may be notified in writing via the Electronic Platform by the Contracting Authority to the DPS Member from time to time.
- 3.2 The DPS Member shall provide up-to-date documentary evidence that each entity concerned fulfils the compliance and selection requirements as set out in Part 3 of the DPSQ 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 DPSQ.

4. CONTRACT/STANDARD CONDITIONS OF ENGAGEMENT FOR CONSULTANCY SERVICES

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

5. PROCEDURE FOR AWARD OF CONTRACTS

- 5.1 On each occasion that the Contracting Authority, a DPS Client or group of DPS Clients propose(s) to award a Contract under this DPS Agreement, the Contracting Authority/DPS Client shall issue (by electronic means) a Request for Tenders ("RFT") to all DPS Members in accordance with the following procedure (a "DPS Tender"):
- 5.1.1 The RFT shall set out:
- the scope and term of the Contract to be awarded;
 - whether the Contracting Authority / DPS Client intends to award the Contract to one DPS Member or alternatively to more DPS Members.
 - the specific group of DPS Clients participating in each DPS Tender;
 - 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 Standard Conditions of Engagement for Consultancy Services;
 - the type of Services(s) required by the DPS Client(s);
 - the Pricing Matrix that will apply to the relevant DPS Tender
 - 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 DPSQ.
- 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. The Response submitted by the DPS Members will remain confidential until the deadline for submission of the Response.
- 5.1.3 Any clarifications issued by the Contracting Authority or the DPS Client, as applicable, in relation to a RFT will be communicated via the Electronic Platform only.
- 5.1.4 The Contracting Authority/DPS Client may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.1 below. Based on the award

criteria and whether the Contracting Authority / DPS Client wishes to award a Contract to the single highest ranking DPS Member or the two highest ranking DPS Members (as set out in the RFT), the Contracting Authority / DPS Client may either:

- (i) Award a Contract to the highest ranking DPS Member; or
- (ii) Award a Contract to the two highest ranking DPS Members in which additional condition 27 of the Contract shall be deemed to apply.

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

6.1.1 Mandatory Requirement for DPS Tenders

Mandatory requirements will be defined at the DPS Tender stage as a Pass/Fail criteria.

6.1.2 Award Criteria for DPS Tenders

The award criteria for DPS Tender shall be:

A. Lowest Price

OR

B. Most Economically Advantageous Tender (“MEAT”)

In the event that a DPS Tender is based on the MEAT, then the Award Criteria may include all, or a number of, the following criteria:

- Price
- Previous experience related to the project
- Proposed consultant experience/qualification
- Qualification
- Lead Time
- Environmental/Social considerations

The Contracting Authority reserves the right to breakdown the above into different categories based on new requirements during the term of this DPS or have new criteria added to future DPS tenders.

6.2 Where the DPS Member cannot provide up-to-date evidence as required in clause 3.2 of this DPS Agreement to demonstrate that each entity concerned meets the compliance and selection requirements specified at paragraphs 3.1 and 3.2 of the DPSQ, then the Contracting Authority may proceed to offer the Contract to the next highest-ranked DPS Member.

6.3 No enforceable commitment of any kind, contractual or otherwise will exist unless and until a formal written Contract has been executed by or on behalf of the DPS Client.

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

7. APPLICABLE LAW AND JURISDICTION

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

8. COMPLIANCE WITH LAWS

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

9 TAX CLEARANCE

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

10. ANTI COMPETITIVE CONDUCT

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

11. CONFLICTS OF INTEREST

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

12. REGISTERABLE INTEREST

- 12.1 Any registerable interest involving a DPS Member and the Contracting Authority, any DPS Client, member of the Government, member of the Oireachtas (Parliament), or employees of the Contracting Authorities and/or divisions/agencies under the aegis of the relevant Ministers, and their relatives, must be fully disclosed in any Response. In the event of this information only coming to the notice of a DPS Member after the submission of a Response, it must be communicated to the Contracting Authority and / or DPS Client(s) immediately

upon such information becoming known. The terms 'registerable interest' and 'relative' shall be interpreted as per Section 2 of the Ethics in Public Office Act 1995.

13. CONFIDENTIALITY

- 13.1 All communications between the Contracting Authority or any DPS Client(s) and the DPS Member must be treated as being strictly confidential. The DPS Member undertakes to comply with all reasonable directions of the Contracting Authority and any DPS Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement(s) executed by the DPS Member pursuant to clause 13.2 below. All of the DPS Member's employees and personnel, including Subcontractors and their employees and personnel, who provide the Services may be required, at the absolute discretion of the Contracting Authority and/or the DPS Client(s), to sign a confidentiality agreement in a format as determined by the Contracting Authority and/or the DPS Client(s).
- 13.2 The DPS Member shall execute a Confidentiality Agreement in the form set out at Appendix 8 to the DPSQ.
- 13.3 No publicity regarding this DPS Agreement or any DPS Tender 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 DPS Tender 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 month written notice to the DPS Member through the Electronic Platform.
- 17.2 The Contracting Authority shall have the right (in addition to any other rights which it has at law) to terminate this DPS Agreement immediately and without liability for compensation or damages on the happening of any of the following events:
- 17.2.1 if the DPS Member commits any serious breach or a series of breaches of any provision of this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority, (if the breach(es) are capable of remedy), within 30 days after receipt of a request in writing via the Electronic Platform from the Contracting Authority. Without prejudice to the generality of the foregoing, a failure to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement shall be deemed to be a serious breach of this DPS Agreement;
- 17.2.2 if the DPS Member commits any serious breach or a series of breaches of any Contract awarded pursuant to this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority and the DPS Client(s), within 30 days after a receipt of a request in writing via the Electronic Platform from the Contracting Authority or any DPS Client.
- 17.2.3 if the DPS Member becomes insolvent, becomes bankrupt, is wound up, enters into examinership, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
- 17.2.4 in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) apply to the DPS Member;
- 17.2.5 In circumstances where the DPS Member fails to provide up-to-date evidence when requested to do so by the Contracting Authority in accordance with clause 3.2 of this DPS Agreement to demonstrate to the satisfaction of the Contracting Authority that they meet the compliance and selection requirements specified at Part 3 of the DPSQ;
- 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 DPSQ;
- 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. Information furnished to the Contracting Authority or the DPS client by the DPS Member may be released pursuant to the Contracting Authority's or the DPS client's statutory obligations. If the DPS Member considers that any of the information supplied by it to the Contracting Authority or the DPS client under this DPS Agreement or any Contract should not be disclosed because of its sensitivity it should, when providing the information, indicate this and specify the reason for its sensitivity. The Contracting Authority or the DPS client will consult the DPS Member about this sensitive information before making a decision on any Freedom of Information request received. The Contracting Authority and or the DPS client accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

19. DISPUTE RESOLUTION

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

- 19.7 For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The DPS Member shall comply fully with the requirements of the Agreement at all times.
- 19.8 If, and to the extent that, any Dispute has not been settled pursuant to the mediation within **30** days of the commencement of the mediation, either party may apply to the Irish courts at any time thereafter.

20. KEY PERSONNEL

The DPS Member undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Application, including but not limited to the Key Account Manager, ("Key Personnel"), assigned by it to provide the services related to the Services shall be available for the term of this Agreement. The DPS Member acknowledges that the Key Personnel are essential to the proper provision of the Services to the Contracting Authority and the DPS Clients. In the event that any of the Key Personnel assigned by the Contractor to supply the Services under this Agreement becomes unable to provide the Services for whatever reason then, the DPS Member acknowledges and undertakes that it shall immediately notify the Contracting Authority in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise ("Replacement Personnel"). The DPS Member shall provide to the Contracting Authority such details as the Contracting Authority may reasonably require in writing regarding any Replacement Personnel. The Contracting Authority shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

21. FORCE MAJEURE AND CONTINGENCY PLAN

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

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

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

- 21.2 If the Force Majeure Event continues for 60 calendar days either Party may terminate at 14 days' notice.
- 21.3 The DPS Member shall have in place a credible contingency plan (the "Contingency Plan") approved by the Contracting Authority that can be activated in case of an emergency or in unforeseen circumstances that will guarantee continuity of supply to all DPS Clients without exception within a reasonable timeframe. The DPS Member shall advise the Contracting Authority of any material change to the Contingency Plan (as approved by the Contracting

Authority prior to the execution of this Agreement) from time to time and comply with any reasonable directions of the Contracting Authority with regard to same.

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

SIGNED by _____, being an Officer so authorised by the CONTRACTING AUTHORITY in the presence of: _____ Witness	SIGNED by _____, being an Officer so authorised by the DPS MEMBER in the presence of: _____ Witness
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Appendix 6: Standard Conditions of Engagement for Consultancy Services

Please refer to the latest Standard Conditions of Engagement for Consultancy Services on <https://constructionprocurement.gov.ie/>

Appendix 7 Confidentiality Agreement

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

The Saint John of God Community Services clg, of Hospitaller House, Stillorgan, Co. Dublin (hereinafter “the Contracting Authority”) of the one part;

and

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

WHEREAS

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

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

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

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

1. The Contractor acknowledges that Confidential Information may be provided to them by the Contracting Authority and that each item of Confidential Information shall be governed by the terms of this Agreement.
2. For the purposes of this Agreement "Confidential Information" means:
 - 2.1 unless specified in writing to the contrary by the Contracting Authority all and any information (whether in documentary form, oral, electronic, audio-visual, audio-recorded or otherwise including any copy or copies thereof and whether scientific, commercial, financial, technical, operational or otherwise) relating to the Contracting Authority, the supply of Goods/Services under the Contract and all and any information supplied or made available to the Contractor (to include employees, agents, Subcontractors and other suppliers) for the purposes of the Contract(s) including personal data within the meaning of the Data Protection Laws; and
 - 2.2 any and all information which has been derived or obtained from information described in sub-paragraph 2.1.
3. For the purposes of this Agreement “Data Protection Laws” means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the “General Data Protection Regulation”), and any guidelines and codes of practice issued by the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland from time to time

4. Save as may be required by law, the Contractor agrees in respect of the Confidential Information:
 - 4.1 to treat such Confidential Information as confidential and to take all necessary steps to ensure that such confidentiality is maintained;
 - 4.2 not, without the prior written consent of the Contracting Authority, to communicate or disclose any part of such Confidential Information to any person except:
 - i to those employees, agents, Subcontractors and other suppliers on a need to know basis; and/or
 - ii to the Contractor's auditors, professional advisers and any other persons or bodies having a legal right or duty to have access to or knowledge of the Confidential Information in connection with the business of the Contractor

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.
5. The obligations in this Agreement will not apply to any Confidential Information:
 - i in the Contractor's possession (with full right to disclose) before receiving it from the Contracting Authority; or
 - ii which is or becomes public knowledge other than by breach of this clause; or
 - iii is independently developed by the Contractor without access to or use of the Confidential Information; or
 - iv is lawfully received from a third party (with full right to disclose).
6. The Contractor undertakes:
 - 6.1 to comply with all directions of the Contracting Authority with regard to the use and application of all and any Confidential Information or data (including personal data as defined in the Data Protection Laws);
 - 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority including by police authorities;
 - 6.3 upon termination of the Competition (or the Contract) for whatever reason to furnish to the Contracting Authority all Confidential Information or at the written direction of the Contracting Authority to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority so request in writing. For the avoidance of doubt "document" includes documents stored on a computer storage medium and data in digital form whether legible or not.
7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting

- Authority and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the Contract (if awarded) for any reason.
 10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
 11. A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:
 - “Data Controller” has the meaning given under the Data Protection Laws;
 - “Data Processor” has the meaning given under the Data Protection Laws;
 - “Data Subject” has the meaning given under the Data Protection Laws;
 - “Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;
 - “Personal Data” has the meaning given under Data Protection Laws;
 - “Processing” has the meaning given under the Data Protection Laws;
 - B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
 - C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Contracting Authority 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 11(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 Contracting Authority;
 - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Contracting Authority, 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 Contracting Authority 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 Contracting Authority with respect to the processing of the Personal Data;
- E. The Contractor shall promptly notify the Contracting Authority 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 Contracting Authority's obligations under the Data Protection Laws and provide full co-operation and assistance to the Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority, amend, delete or return Personal Data and copies thereof to the Contracting Authority 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 Contracting Authority, 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 Contracting Authority 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 Contracting Authority 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 Contracting Authority or the Contracting Authority'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 Contracting Authority's option, reimburse the Contracting Authority for any reasonable expenses it incurs in having the Personal Data restored by a third party.

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

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

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

The Contracting Authority consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 11 as between the Contracting Authority and the Contractor. The Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 11.

- N. Save for clauses 11B, 11C, 11D(4) and 11E, all the obligations on the Contractor in this clause 11 relating to the processing of Personal Data shall apply to the processing of all Confidential Information.

SIGNED for and on behalf of the
Contracting Authority

SIGNED for and on behalf of the
Contractor

(being a duly authorised officer)	
Witness	Witness

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