



**Request for Applicants to Participate in a
Dynamic Purchasing System
for the Supply of Schoolbooks to the Education
and Training Boards (ETBs)**

Tender Procedure: Restricted Procedure

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Part 1: Introduction

- 1.1 The Education Procurement Service (EPS) on behalf of the Education and Training Boards (ETBs) (the “Contracting Authority”) is issuing this Request For Applicants To Participate (“RFATP”) in a Dynamic Purchasing System (“DPS”). The Education Procurement Service (the “EPS”) is a central procurement body (CPB) within the Department of Education tasked with sourcing goods and services on behalf of the public service.
- 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 DPS for the supply of the Goods described in Appendix 1 (Requirements and Specifications) to this RFATP (the “Goods”).
- 1.4 In summary, the supply of the Goods shall comprise:

The supply of Schoolbooks to the Education and Training Boards (ETBs).

The term “Schoolbooks” is used throughout this document to encompass all relevant textbooks and workbooks identified by the aforementioned Schools as necessary for completion of the curriculum for each subject. It also includes necessary additional texts such as novels and plays for English.

The DPS is broken down into sixteen (16) geographical lots as shown in the table overleaf. The table also contains links to each ETB’s website to provide details on the full list of schools governed by each ETB.

Ref	Product Description	Estimated Annual Value of all Lots
Lot Number	Printed Schoolbooks	€25,000,000
Lot 1	Donegal ETB https://www.donegaletb.ie/schools-youth-services/post-primary-schools/	
Lot 2	Cork ETB https://www.corketb.ie/our-schools-colleges/	
Lot 3	Tipperary ETB https://tipperaryetb.ie/post-primary/	
Lot 4	Kerry ETB https://www.kerryetb.ie/schools-youth-music/post-primary-schools/ https://www.kerryetb.ie/schools-youth-music/primary-schools/	
Lot 5	City of Dublin ETB https://www.cityofdublINETB.ie/post-primary-schools/our-post-primary-schools/ https://www.cityofdublINETB.ie/community-national-schools/our-cns-schools/	
Lot 6	Co Dublin/ Dun Laoghaire ETB https://www.ddletb.ie/schools/about-our-schools/	
Lot 7	Louth/ Meath ETB https://www.lmetb.ie/schools/community-national-schools/ https://www.lmetb.ie/schools/post-primary-schools/	
Lot 8	Longford/ Westmeath ETB https://www.lwetb.ie/schools/	
Lot 9	Limerick/ Clare ETB https://lcetb.ie/schools-division/	
Lot 10	Galway/ Roscommon ETB https://gretb.ie/schools/	
Lot 11	Mayo/ Sligo/ Leitrim ETB https://msletb.ie/post-primary-schools/	
Lot 12	Cavan/ Monaghan ETB https://www.cmetb.ie/schools/	
Lot 13	Kildare/ Wicklow ETB https://kwetb.ie/schools/	
Lot 14	Kilkenny/ Carlow ETB https://kcetb.ie/en/schools/	
Lot 15	Waterford/ Wexford ETB https://www.wwetb.ie/schools/	
Lot 16	Laois/ Offaly ETB https://www.loetb.ie/schools	

Applicants may respond to one or more Lots. There are no restrictions on the number of Lots that an Applicant can participate in. Applicants must, using the Applicant Response Document (ARD), indicate the Lot(s) they wish to participate in. It is wholly at the discretion of the Applicant as to which Lots they wish to apply for.

At the Stage 2 - Invite for Tender competition within the DPS, it will be a requirement that the approved DPS members be able to supply each individual school's complete booklist as published at competition. The book list is not exhaustive, and additional items may be required over the duration of the contract and will be subject to the same tendered discount rate applicable for such items. If a supplier is considering applying for inclusion as an approved DPS member, then the supplier must satisfy themselves that they will be able to meet this requirement at Stage 2 competition.

In addition to the information in this Part 1, please also see Appendix 1 (Requirements and Specifications) of this document for further information on appointment to the DPS and the award of the Contracts.

1.5 **Overview of Admittance to the DPS and Award of Contracts**

Admittance to the DPS and subsequent award of any Goods Contract thereunder 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 in 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 pricing submission at this Stage 1 of the Competition. Tender responses and pricing submissions will instead, be required in response to future Stage 2 competitions known as Stage 2 Invite to Tender ("Stage 2 Invite to Tender") conducted under the DPS. All Applicants that meet the Compliance and Selection Criteria will be admitted to the DPS provided they enter into the DPS Agreement (at Appendix 5 to this RFATP) 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 fail to satisfy the Compliance or Selection Criteria, at any point throughout the entire Term (as defined in paragraph 1.8 below) of the DPS.

Stage 2 – Award of Contracts:

All Applicants that enter into the DPS Agreement with the Contracting Authority in Stage 1 (each a "DPS Member"), will be invited to future Stage 2 Invite to Tender to submit a tender based on the requirements set out in the Stage 2 Request For

Tenders (“RFT”). Stage 2 Invite to Tender(s) will be conducted in accordance with the procedures set out in Clauses 5 and 6 of the DPS Agreement. After the assessment of the tenders received in response to the RFT, the Contracting Authority / DPS Client(s) may decide to award the Contract(s) 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 (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 EPS and all communications with the Contracting Authority must be via the Electronic Platform.

The following is an overview of the electronic process Applicants must follow when submitting an application for admittance to the DPS at Stage 1.

1. Applicants must register with eTenders 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 the DPS Applicant Response Document (“ARD”) for each Lot applied for. The ARD is available to download from the Electronic Platform. Applicants must respond to the Selection Criteria as detailed in sections 3.1 and 3.2 of Part 3 of this RFATP and upload their response to the Electronic Platform by the Stage 2 Invites to Tender Commencement Date. Applicants are **not** required to submit a tender proposal or a pricing schedule in response to the Appendix 1 Requirements and Specifications at this Stage 1. The tender proposal and pricing schedule will instead be required to be submitted in response to future Stage 2 Invite to Tenders conducted under the DPS.
5. Following the Stage 2 Invites to Tender Commencement Date (as specified at Section 2.6 of this RFATP) and the evaluation of the Applications, the Contracting Authority will inform the Applicants that 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 of their admittance to the DPS and 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 established upon the date on which the last DPS Agreement has been executed by both the Contracting Authority and the initial Applicant identified for admission (the “Establishment Date”). The Establishment Date will be more specifically set out in the contract award notice for this Competition published on OJEU and eTenders.
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 admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.8 below) of the DPS.
10. Economic Operators that did not submit an application in response to this RFATP by the Stage 2 Invites to Tender Commencement Date 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.
11. It is envisaged that all successful DPS Members will be invited to all future Stage 2 Invite to Tenders conducted under the DPS for the Lot(s) to which they have been appointed.
12. All future Stage 2 Invite to Tenders 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’) Goods Contracts (each a ‘Contract’) under the DPS Agreement in accordance with the rules set out in the DPS Agreement at Appendix 5.

- Donegal ETB
- Cork ETB
- Tipperary ETB
- Kerry ETB
- City of Dublin ETB
- Co Dublin/ Dun Laoghaire ETB
- Louth/Meath ETB
- Longford/ Westmeath ETB
- Limerick/ Clare ETB
- Galway/ Roscommon ETB
- Mayo/ Sligo/ Leitrim ETB
- Cavan/ Monaghan ETB

- Kildare/ Wicklow ETB
- Kilkenny/ Carlow ETB
- Waterford/ Wexford ETB
- Laois/ Offaly ETB

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 **(five) years** from the Establishment Date of the DPS (the “Term”). The Contracting Authority reserves the right to extend the Term for a period of up to 2 (two) years, subject to the Contracting Authority’s obligation at law. The maximum term of this DPS will be 7 (seven) years.

1.9 Termination of DPS

The Contracting Authority would refer all Applicants to Clause 17 of the DPS Agreement in Appendix 5. The Contracting Authority reserves the right to terminate the DPS Agreement at any stage throughout its Term in accordance with the termination provisions set out at Clause 17 of the DPS Agreement.

1.10 Estimated Value of Contracts to be Awarded.

The Contracting Authority estimates that the aggregate expenditure on the Goods to be covered by the proposed DPS Agreement may amount to some €175,000,000 million in total (excl. VAT) over the Term including any extensions. The Contracting Authority estimates that the aggregate expenditure value of Contracts to be awarded under the DPS may amount to approximately €25,000,000 (excl. VAT) on average per annum.

Applicants must understand that these figures are estimates only based on current and future expected usage. There is no guaranteed level of expenditure under this DPS Agreement and the DPS Clients shall be under no obligation to purchase any minimum value of Goods under this DPS.

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 Application to Participate in the DPS and, if successful, in future Stage 2 Invite to Tender. SMEs that believe the scope of this Application is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Contracts that may result from this Application and therefore increase their social and economic benefits.

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

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 DPS, 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.

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 Goods Contract.

No contractual rights in relation to any DPS Client will exist unless and until a formal Goods Contract has been executed by or on behalf of the DPS Client. Any notification of preferred bidder status by the Contracting Authority / a DPS Client shall not give rise to any enforceable rights by the 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 Goods Contract under a Stage 2 Invite to Tender 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 Goods under the DPS Agreement or any Goods 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.

- 2.1.5 The Contracting Authority would refer Applicants in particular to the provisions of Regulation (EU) 2022/1031 on the access of third country economic operators, goods and services to the Union’s public procurement and concession markets and procedures supporting negotiations on access of Union economic operators, goods and services to the public procurement and concession markets of third countries (International Procurement Instrument – IPI), and to their obligation to comply therewith.

In particular, Applicants should note in Article 6 of Regulation (EU) 2022/1031, the obligations for a Contracting Authority in the context of a procurement procedure where the EU Commission has adopted an IPI measure.

2.2 Compliant Applications

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

- seeking written (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. 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 statement (Appendix 2) required under paragraph 2.4, below;

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

(g) To complete and submit with their Application the DPS Applicant Response Document ("ARD"), included in this RFATP and available to download from www.etenders.gov.ie.

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 Goods 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. The Goods Contract at Appendix 6 is a template which may be revised or amended at the sole discretion of the Contracting Authority at any stage throughout the Term of the DPS. Any such updated amended Goods Contract shall be appended to the RFT at Stage 2 Invite to Tender and by tendering for a Stage 2 Invite to Tender a DPS Member agrees to enter into any such amended Goods Contract.
- 2.3.2 Applicants are required to confirm their acceptance of the DPS Agreement and the Goods Contract Template in the Applicant's Statement at Appendix 2. Applicants may not amend the DPS Agreement or the Goods 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 Goods 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 (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 Stage 2 Invites to Tender Commencement Date (as defined in Clause 2.6.2) has passed. Applicants should take into account the fact that upload speeds vary.

Tenderers must note that in the electronic tenderbox, there is a current file size limit of 250MB for each single file uploaded, with a maximum total limit of 2GB for all documentation (combined) in the Tender submitted.

In order to submit a Tender to the electronic tenderbox, Tenderers must ensure that they follow the necessary steps on the eTenders platform to ensure that their tender has been submitted properly, which includes ensuring that the “Submit” button has been clicked. In the event that Tenderers need to modify or change any aspect of their Tender before the Tender Deadline, the Tender in its entirety will need to be re-submitted. Tenderers should be aware that the “Submit” button will be disabled automatically at the Tender Deadline.

2.6.2 Stage 2 Invites to Tender Commencement Date

Subject to paragraph 2.8.1 of this RFATP, the earliest date for the commencement of Stage 2 Invites to Tender by DPS Clients will be **2pm on Monday 15th September 2025** (the “Stage 2 Invites to Tender Commencement Date”). Applicants are reminded that Applications will continue to be accepted in line with Clause 1.6, once the DPS has been established. Only applicants admitted to the DPS on this date will receive an invite to tender. New approved applicants after this date will begin to receive new invites to tender only after they have been admitted to the DPS.

- 2.6.3 Applications must be submitted in English.

- 2.6.4 Each Applicant is limited to submitting one Application per Lot in its own capacity and one Application per Lot as part of a consortium/ group of undertakings under this RFATP for admittance to the DPS. Lots for this DPS are set out at 1.4 and at Appendix 1 (Requirements and Specifications) 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 Microsoft Office applications e.g., MS Word, MS Excel, etc. or a PDF Reader. **Applicants should ensure that all supporting documents to be included as part of their application are uploaded on to eTenders as one zipped folder.** 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. Subject to paragraph 2.8.1 of this RFATP. For the avoidance of doubt, Applicants may not contact potential DPS Clients directly regarding any aspect of this Competition.
- 2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on the Electronic Platform 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 Stage 2 Invites to Tender Commencement Date, to update or amend the information contained in this document and/or to extend the Stage 2 Invites to Tender Commencement Date. 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 “Expression of Interest” 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 Stage 2 Invites to Tender Commencement Date in paragraph 2.6.2 and 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 Stage 2 Invites to Tender Commencement Date, 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. 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
 - (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 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 Stage 2 Invite to Tenders conducted under the DPS.

- 2.10.2 All prices quoted in any subsequent Stage 2 Invite to Tender 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 Any currency variations occurring over the term of any Goods Contract shall be borne by the Applicant.
- 2.10.4 Payments for Goods supplied pursuant to this RFATP shall be made subject to and in accordance with the Goods Contract at Appendix 6 to this RFATP and the terms of any subsequent RFT.

2.11 Environmental, Social and Labour Law

- 2.11.1 In the performance of any Goods 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 are provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the Regulations.
- 2.11.2 Applicants shall be required to include an undertaking to comply fully with the provisions of Council Directive 2001/23/EC of 12 March 2001 on the approximation of the laws of the Member States relating to the safeguarding of employees' rights in the event of transfers of undertakings, business or parts of undertakings or business and as implemented in Irish law by Statutory Instrument No. 131 of 2003, the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 and to indemnify the Contracting Authority for any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligations under the said Directive and Statutory Instrument.
- 2.11.3 The Protection of Employees (Temporary Agency Work) Act 2012 (the "2012 Act") provides that an Agency Worker (as defined in the 2012 Act) is entitled to the same basic working and employment conditions as those which apply to employees recruited directly by the Hirer (as defined in the 2012 Act) to do the same or a similar job. Where the provision of the Goods will involve the provision to the Contracting Authority of Agency Workers (within the meaning of the 2012 Act), Tenderers should ensure that they consider their obligations under the 2012 Act when pricing their Tender. The Contracting Authority shall have no liability for any increase in salaries that may be payable as a result of the application of the 2012 Act to the provision of the Goods.

2.12 Publicity

No publicity regarding this DPS or any DPS Admission, Stage 2 Invite to Tender, or Goods 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. The Contracting Authority will, in its absolute discretion, decide on the appropriate course of action, which may in appropriate circumstances include eliminating the Applicant from this Competition or a Stage 2 Invite to Tender or terminating any DPS Agreement and / or Goods 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 and the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, information provided by them during this Competition may be liable to be disclosed.

- 2.16.2 Applicants are asked to consider if any of the information supplied by them in their Application should not be disclosed because of its confidentiality or commercial sensitivity. If Applicants consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Applicants must, when providing such information, clearly identify 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 request under the above legislation without further notice to or consultation with the Applicant. The Contracting Authority will, where possible, consult with Applicants about confidential or commercially sensitive information so identified before making a decision on a request received. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

2.17 Tax Clearance

It will be a condition of admission to the DPS and any Goods Contract resulting from a Stage 2 Invite to Tender 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 for further information. Prior to the award of any DPS Admission or Goods Contract arising out of a Stage 2 Invite to Tender, 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 Stage 2 Invite to Tender or terminating any DPS Agreement or Goods 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 Goods Contract awarded pursuant to a Stage 2 Invite to Tender, insurances of the type and to the level specified in each Stage 2 Invite to Tender. Applicants should note that they are not obliged to have insurance 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	€13m
Public Liability	€6.5m
Product Liability	€6.5m

- 2.21.2 By signing the Applicant's Statement at Appendix 2, Applicants confirm, that if awarded a Goods Contract arising from a Stage 2 Invite to Tender pursuant to the DPS Agreement, (i) they will, from the Effective Date of the Goods Contract (as defined in the Goods 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 Goods Contract.
- 2.21.3 The successful Applicant will, during the term of the Goods 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: 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) 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 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 (Declaration as to Personal Circumstances);

- (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.
- (iv) information concerning the Applicant, and any proposed Subcontractors, for the purposes of Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the legal person is established; and
- (v) information concerning the origin of goods, if any, for the purposes of assessing compliance with Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

If an Applicant does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) 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 and (iii) that it does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576) and (iv) that the origin of goods, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same) then it shall be not be admitted to the DPS.

If an Applicant does not, upon request by the Contracting Authority, provide evidence which is considered by the Contracting Authority as sufficient to demonstrate (i) the fulfilment by any Subcontractor on whose capacity the Prime Contractor relies of the Selection Criteria (or any one of them) in accordance with this RFATP and (ii) the absence of Exclusion Grounds in respect of any Subcontractor, or the reliability of any Subcontractor despite the existence of a relevant Exclusion Ground and (iii) that any proposed Subcontractor on whose capacity the Applicant relies (where the value of that subcontract exceeds 10% of the value of the Goods Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576) then, it shall be excluded from further participation in this Competition unless it replaces the Subcontractor with one which meets all relevant requirements of this RFATP.

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 Goods 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 Stage 2 Invite to Tender, the DPS Member must instead identify such Subcontractors when they become known, for example, upon submission of a tender response at Stage 2 Invite to Tender.

The Contractor and Subcontractors shall have the use of sufficient appropriate resources to satisfy the supply of Goods to meet the requirements of all DPS Clients for the duration of any Goods 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 and shall not be admitted to the DPS.

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.

The Contracting Authority may require Applicants to submit outstanding supporting documents at any stage of the process no later than 5 calendar days from the time of the request, unless notified otherwise in writing, via the Electronic Platform. However, where the Applicant is unable, for a valid reason, to provide the documentation specified below, 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.

Applicants must complete 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 Stage 2 Invites to Tender Commencement Date.

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.

3.2.1 Financial & Economic Standing

TABLE – Financial & Economic Standing Minimum Requirements

Financial & Economic Standing Requirements		
	Requirement	Qualifying Threshold
Insurances	Details of the level of Insurances in place in accordance with that stipulated in Section 2.21	Pass / Fail
Tax Compliance	Applicants must supply a Tax Clearance Certificate or Tax Clearance Access Number and Tax Reference Number issued by the Irish Revenue Commissioner to facilitate online verification of their tax status by the Contracting Authority as detailed in section 2.17. Applicants must complete the self-declaration (A5) in the Applicant Response Document (“ARD”), at Attachment 1 to this RFATP, providing information regarding their tax compliance.	Pass / Fail
Financial Capacity	Applicants must confirm details of trading levels for previous three (3) years from an Auditor/Accountant. The firm must be in existence for at least 6 months. Three (3) years Audited accounts must be provided to support the statement. In line with current legislation where a company has an annual turnover of less than €12 Million then audited accounts are not necessary. In these instances, a statement of accounts from the company’s accountants will suffice. In the case of an applicant being a grouping, this condition may be satisfied by the group members as a whole, or by reliance on the lead applicant. Where group members are relying on the lead applicant’s financial capacity, self-declaration / evidence will only be required of the lead.	Pass / Fail

3.2.2 - Technical and Professional Ability

Technical & Professional Ability Requirements		
	Requirement	Qualifying Threshold
Company information & Capacity	Applicants are required to provide specific company details with their applications and to provide an overview of their organisation and the Goods provided that are relevant to the Goods required by this RFATP. Applicants must confirm their capacity and capability to deliver the Goods in line with the specification of requirements at Appendix 1 to this RFATP. To demonstrate this requirement, applicants must respond by confirming in the ARD (Applicant Response Document) they have access to the above listed requirements	Pass / Fail
Quality Assurance Measures	Applicants must provide a description of their approach to Quality Management across the whole organisation including any external accreditation in Quality Management or Assurance e.g. ISO 9001 or equivalent. Please address how this system is adhered to in daily work practices. In addition, applicants may, if they so wish, submit any other quality awards of high standards, quality assurance and environmental management in support of their proposal.	Pass / Fail

Contract References	Applicants must demonstrate in a clear and comprehensive manner that they have the level of experience and competence to deliver the contracts to be procured under the DPS. Applicants must submit in their application details of three (3) contract references delivered to primary or post primary schools and which must be of a similar scope, nature and complexity to the supply of the Goods required in Appendix 1 described in Appendix 1 (Requirements and Specifications) of this RFATP. Applicants should ensure that permission is sought from referees for the use of any references associated with this DPS application. The Contracting Authority may contact the referees provided for verification purposes without any prior notice being given to the Applicant.	Pass / Fail
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Environmental Requirements	Applicants must demonstrate in a clear and comprehensive manner how they propose to deliver and manage the Contract from an environmental and sustainable perspective setting out details of any environmentally friendly or sustainable initiatives they propose to adopt in the provision of the Goods. This response must include, but not be limited to: Examples of sustainability measures for example include: warehouse/premises energy optimisation projects completed; waste management; transport and logistics measures; off-setting of carbon emissions; Corporate Social Responsibility policies etc.; sustainable purchasing; green screening of suppliers; minimisation of waste; collection and recycling of packaging material.	Pass/Fail
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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 together with their Application:
- (i) a Declaration of Personal Circumstances 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 ten (10) 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

SECTION 1 – OVERVIEW OF DYNAMIC PURCHASING SYSTEM AND PROCESS FOR AWARD OF CONTRACTS AT STAGE 2 INVITE TO TENDER.

1.1 (A) Schoolbooks Dynamic Purchasing System

The Contracting Authority is seeking to establish a Dynamic Purchasing System (DPS) for the supply of Schoolbooks to Education and Training Boards (ETBs) under the Free Books Scheme.

1.2 (B) Education and Training Boards (ETBs)

The Education and Training Boards (ETBs) are statutory authorities which have responsibility for education and training, youth work and a range of other functions. Formerly known as Vocational Education Committees (VECs) ETBs manage and operate post primary schools, further education colleges, multi-faith community national schools and a range of adult, further education and training centres delivering education and training programmes.

1.2 (C) The Education Procurement Service (EPS)

The Education Procurement Service (the “EPS”) is a central procurement body (CPB) within the Department of Education tasked with sourcing goods and services on behalf of the public service. It operates as a shared service for the DoE, its agencies, the school’s sector, Education and Training Boards and the Higher Education Sector.

EPS is one of the four sector specific procurement functions comprising Education, Health, Defence and Local Government. They operate together with the Office of Government Procurement (OGP) under the national procurement model as part of the Government’s Public Service Reform agenda. Further information is available at [EPS | Education Procurement Service - Education](#)

1.3 Aims and Objectives

The DPS is designed to assist the Education and Training Boards (ETBs) with the process of procuring Schoolbooks. It will seek to encourage volume discounts thereby providing reductions in administrative and transaction costs, for multi-faith community national schools and post primary schools, further education colleges if applicable and schoolbook suppliers, across sustainable and environmentally friendly delivery solutions.

There will be a robust contract management process, which will focus in particular on the delivery of value for money.

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) and previous experience (technical and professional ability).

The DPS lends itself to the dynamic nature of the supply of goods, 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.

Suppliers of Schoolbooks who wish to participate in the DPS are invited to respond to this RFATP. Applications will be evaluated in response to this RFATP. Those successful Applicants included in the DPS will be invited to participate in “Stage 2 Invite to Tender” 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 are set out at paragraph 1.6 below.

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 Stage 2 Invite to Tender 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 Stage 2 Invite to Tender, (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 DPS will operate

On each occasion that the Contracting Authority / DPS Client(s) proposes to award a Goods Contract by way of a Stage 2 Invite to Tender, 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 Stage 2 Invite to Tender shall provide further particulars of the supply of the Goods required by the DPS Clients and the methodology for evaluating bids.

The EPS will establish and administer the DPS Agreement and will support and co-ordinate with the Education and Training Boards in managing any Stage 2 Invite to Tender with the DPS Clients.

1.7 Contracts to be awarded under the DPS

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

1.8 Subcontractors

Where an Applicant is relying on the capacity of Subcontractors for the purposes of fulfilling any of the Selection Criteria in part 3.2 above: (i) each such Subcontractor must complete and submit a separate eESPD 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.

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 part 3 of the RFATP but intends relying on Subcontractors to deliver a share of the Goods Contract, the Applicant must **in so far as known** identify such Subcontractor(s) in their eESPD in 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 Stage 2 Invite to Tender, the DPS Member must instead identify such Subcontractors when they become known, for example, upon submission of a Stage 2 Invite to Tender.

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

SECTION 2 – REQUIREMENTS AND SPECIFICATIONS

The DPS Member shall supply the Goods as those outlined below.

Full specifications and requirements, including pricing requirements for the Goods required will be set out at Stage 2 in any future Stage 2 Invite to Tenders.

GOODS

The term “Schoolbooks” is used throughout this document to encompass all relevant textbooks and workbooks identified by schools as necessary for completion of the curriculum for each subject. It also includes necessary additional texts such as novels and plays for English.

Supply may include, but is not limited to the following

- Storage (including secure storage)
- Delivery (including secure delivery)
- Direct mailing door to door distribution
- Preparing for delivery by An Post and other delivery providers
- Packaged, sealed and labelled accordingly
- Covering of Books
- Barcoding Service
- Sorting schoolbooks into packs for students

POTENTIAL AWARD CRITERIA & REQUIREMENTS FOR FUTURE STAGE 2 INVITE TO TENDERS

DPS Clients shall specify their own requirements and award criteria in future Stage 2 Invite to Tenders conducted under the DPS. The following tables provide details of award criteria and technical requirements that may be applied by DPS Clients (and which DPS Members may be required to demonstrate they fulfil) in future Stage 2 Invite to Tenders and are included in this Appendix 1 to provide Applicants with an overview of potential award criteria and requirements in future Stage 2 Invite to Tenders.

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 award criteria and requirements below at this Stage 1 of the Competition, which will instead be required in response to future Stage 2 Invite to Tenders conducted under the DPS.

Stage 2 Invite to Tenders will be evaluated on the basis of Qualitative/Cost assessment to determine the Most Economically Advantageous Tender (“MEAT”).

Goods Contracts over €50,000

DPS Clients will use the following award criteria range in awarding Goods Contracts under the DPS.

Award Criteria	Weighting (Range)
Order, Supply & Delivery	20% - 35%
Customer Service & Contract Management	20% - 35%
Social, Sustainability & Environmental Criteria	10% - 20%
Ultimate Cost	20% - 40%

Goods Contracts under €50,000

DPS Clients may use some or all the following award criteria in awarding Goods Contracts under the DPS.

Award Criteria	Weighting (Range)
Order, Supply & Delivery	0% - 40%
Customer Service & Contract Management	0% - 40%
Social, Sustainability & Environmental Criteria	0% - 40%
Ultimate Cost	60% - 90%

Appendix 2: Applicant's Statement

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

TO: The Education and Training Boards (the "Contracting Authority").

RE: Request to Participate in the DPS for the supply of Schoolbooks, to the Education and Training Boards (ETBs).

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 Goods and associated 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, the DPS Agreement, Goods Contract and Confidentiality Agreement appended to the RFATP, and agree if awarded any Goods Contract pursuant to the DPS Agreement, to execute any Goods Contract and Confidentiality Agreement awarded under a Stage 2 Invite to Tender.
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 Goods and associated 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 Stage 2 Invite to Tender, we shall comply with the terms and conditions of the Goods Contract as set out in the Stage 2 Invite to Tender RFT.
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 Stage 2 Invite to Tender.
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 Contracting Authority, the Evaluation Team and the supplier of the www.etenders.gov.ie website, for the purposes of our participation in this Competition or that we otherwise have a legal basis for providing such Personal Data to the Contracting Authority for the purposes of our participation in this Competition and that we will provide evidence of such consent and / or legal basis to the Contracting Authority upon request.
10. We do not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
11. The origin of goods connected to our Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
12. The subcontractor(s) on whose capacity we rely as part of our Tender (where the value of that subcontract exceeds 10% of the value of the Services Contract) does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

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

Appendix 3: Electronic European Single Procurement Document (eESPD)

The Electronic European Single Procurement Document (eESPD) is available to download separately from 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 the DPS for the supply of Schoolbooks, to the Education and Training Boards (ETBs).

NAME: [Click here and insert name]

ADDRESS: [Click here and insert address]

I, [Click here and insert name of Declarant], of [Click here and insert name of entity] do solemnly and sincerely declare that:

1. I am a [insert role of Declarant] of [Click here and insert name of entity] and am authorised by [Click here and insert name of entity] to make this declaration which relates to a tender (“the Tender”) submitted by [Click here and insert name of entity] in response to an RFATP dated 13th August 2025 titled DPS for the Supply of Schoolbooks published by Education and Training Boards (“the Contracting Authority”).
2. Neither [Click here and insert name of entity] nor any person who is a member of the administrative, management or supervisory body of [Click here and insert name of entity] nor any person who has powers of representation, decision or control in [Click here and insert name of entity] has:
 - (a) Ever 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) Ever 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 the law of the state in [Click here and insert name of entity] is established.
 - (c) Ever 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) Ever 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) Ever 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) Ever 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.

3. [Click here and insert name of entity]
 - (a) Is not in breach and has not breached its obligations relating to the payment of taxes or social security contributions.
 - (b) Has carried out the preparation of the Tender independently.
4. [Click here and insert name of entity]
 - (a) 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 goods provided, that have been established by EU law, national law, collective agreements or by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).
 - (b) 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.
 - (c) Is not guilty of grave professional misconduct.
 - (d) Has not entered into agreements with other economic operators aimed at distorting competition.
 - (e) Is not aware of any conflict of interest due to its participation in the DPS.
 - (f) Has not had any prior involvement in the preparation of the DPS.
 - (g) Has not shown significant or persistent deficiencies in the performance of a substantive requirement under a prior public contract, a prior contract with a contracting entity, or a prior concession contract, which led to early termination of that prior contract, damages, or other comparable sanctions.
 - (h) 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 or is not able 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 (Statutory Instrument 284 of 2016).
 - (i) 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.
5. [Click here and insert name of entity] does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

6. The origin of goods connected to the Tender, if any, are not subject to the prohibitions set out in Regulation (EU) No 833/2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).
7. Any subcontractor, supplier, or other entity on whose capacity [Click here and insert name of entity] relies as part of the Tender does not come within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same).

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 DPS or future tenders, and I make this solemn declaration conscientiously believing the same to be true and by virtue of the Statutory Declarations Act, 1938. This declaration is made for the benefit of the Contracting Authority.

Signature of Declarant

Declared before me by _____ who is personally known to me

(or who is identified to me by _____ who is personally known to me) or*

at _____ this _____ day of _____ 20____

(signed)

Practising Solicitor/Commissioner for Oaths

**Please include such other form of identification used to identify the Declarant as permitted by the Statutory Declarations Act, 1938 (as amended)*

Appendix 5: Dynamic Purchasing System Agreement

Dynamic Purchasing System Agreement for the supply of Schoolbooks to the Education and Training Boards (ETBs).

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

(“the DPS Agreement”)

BETWEEN:

The Education Training Board (ETBs) whose offices are located at _____
 (“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 Applicants to Participate in a Dynamic Purchasing System for the supply of Schoolbooks, to the Education Training Board (ETBs).*” (“the RFATP”) the Contracting Authority invited Applicants to participate in a DPS agreement for the supply of the Goods described in Appendix 1 (Requirements and Specifications) of the RFATP (the “Goods”). References to the RFATP shall include any clarifications in relation to the RFATP issued by the Contracting Authority via the messaging facility on www.etenders.gov.ie (the “Electronic Platform”) between **[insert date]** and **[insert date]** (the “RFATP Clarifications”). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this DPS Agreement.
2. The DPS Member submitted a response to the RFATP dated **[insert date of Application]** (“the Application”). References to the Application shall include any clarifications issued in writing via the Electronic Platform by the DPS Member to the Contracting Authority between **[insert date]** and **[insert date]** (the “Application Clarifications”). The Application (including the Application Clarifications) is hereby incorporated by reference into this DPS Agreement.
3. The DPS Member was appointed to the DPS as a result of the evaluation of its application in accordance with the RFATP.

IT IS HEREBY AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

“Commencement Date” means _____;

“Contract” means a Goods 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” means the date as defined at paragraph 1.8 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 Goods Contract is inconsistent or conflicts with any term or condition of this DPS Agreement, the relevant provision of the Goods 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 Goods Contract during the DPS Term. The DPS Client(s) may at its or their sole discretion choose not to enter into any Goods Contract pursuant to this DPS Agreement.
- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any Goods 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 Goods 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 on the fifth anniversary of the Establishment Date of the DPS as defined at Clause 1.6 of the RFATP subject unless terminated earlier in accordance with this DPS Agreement or extended subject to compliance with Regulation 34(27) of the Regulations.
- 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 Goods and in the analysis and reporting of spend data including the preparation and publishing of reports. Reporting obligations to the Contracting Authority are outlined in Annex 1 of this agreement.

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. GOODS CONTRACT

- 4.1 This DPS Agreement relates to the provision of the Goods.
- 4.2 Where the DPS Member is awarded a Goods Contract further to the procedure set out in accordance with Clauses 5 and 6, it shall provide the Goods to the DPS Client(s) in accordance with the Goods Contract. Subject to the provisions of this DPS Agreement and to the satisfaction of any pre-conditions to the award of a Goods Contract, the successful DPS Member shall be required to enter into a Goods Contract with the DPS Client. In so far as any Goods Contract(s) awarded under this DPS Agreement is in place and for the duration of such Goods Contract(s), the provisions of this DPS Agreement shall continue in force in relation to such Goods Contract(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 Goods 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 "Stage 2 Invite to Tender").

5.1.1 The RFT shall set out:

- the scope and term of the Goods Contract to be awarded.
- the specific DPS Client participating in each Stage 2 Invite to 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 Goods 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 Goods Contract;
- the type of service(s) required by the DPS Client(s);
- the Pricing Matrix that will apply to the relevant Stage 2 Invite to Tender
- any additional conditions (if any) that will apply to the Goods Contract to be awarded in addition to the terms and conditions of the Goods 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 Goods 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 Stage 2 Invite to Tender

The award criteria for Stage 2 Invite to Tender shall include all of the following criteria:

Stage 2 Invite to Tenders will be evaluated on the basis of a Qualitative/Cost assessment to determine the Most Economically Advantageous Tender (“MEAT”)

For Contracts over €50,000, the Award Criteria shall include all of the following criteria:

Award Criteria	Weighting (Range)
Order, Supply & Delivery	20% - 35%
Customer Service & Contract Management	20% - 35%
Social, Sustainability & Environmental Criteria	10% - 20%
Ultimate Cost	20% - 40%

For Contracts under €50,000, the Award Criteria shall include some or all of the following criteria:

Award Criteria	Weighting (Range)
Order, Supply & Delivery	0% - 40%
Customer Service & Contract Management	0% - 40%
Social, Sustainability & Environmental Criteria	0% - 40%
Ultimate Cost	60% - 90%

- 6.2 The DPS Client will require the DPS Member to whom it has decided to award a Goods 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 Contracting Authority may proceed to offer the Goods 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 Goods Contract has been executed by or on behalf of the DPS Client.
- 6.4 The Contracting Authority/DPS Client(s) may cancel a Stage 2 Invite to Tender at any time prior to a Goods 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

This DPS Agreement and any Goods 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

The DPS Member shall comply with all applicable laws relating to the discharge of its obligations under this DPS Agreement and any and all Goods 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 Goods 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

Without prejudice to the generality of Clause 8, 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

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

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

13. CONFIDENTIALITY

- 13.1 All communications between the Contracting Authority or any DPS Client(s) and the DPS Member must be treated as being strictly confidential. The DPS Member undertakes to comply with all reasonable directions of the Contracting Authority and any DPS Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement(s) executed by the DPS Member pursuant to Clause 13.2 below. All of the DPS Member’s employees and personnel, including Subcontractors and their employees and personnel, who provide the Goods 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).

17 TERMINATION

- 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 Stage 2 Invite to Tender or Goods 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

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 Goods Contract. In the event of any breach of this Clause 15, the Contracting Authority and the DPS Client(s) may terminate this DPS Agreement and any existing Goods Contract(s) respectively and recover from the DPS Member any loss resulting from any such termination.

16. COSTS AND EXPENSES OF DPS AGREEMENT

All costs and expenses incurred by the DPS Member relating to its participation in this DPS Agreement and in any Stage 2 Invite to 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.

- 17.1 This DPS Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving three (3) months 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 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 Goods 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.

17.2.9 In circumstances where the DPS Member (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);

17.3 Subject to Clause 17.2.2, the termination of a Goods 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

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 Goods 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 [insert Contracting Authority contact] 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.

20. KEY PERSONNEL

Not Used

21. FORCE MAJEURE AND CONTINGENCY PLAN

- 21.1 In the event of any failure, interruption or delay in the performance of the Parties' obligations (or of any of them) resulting from any Force Majeure Event not reasonably

within the control of the Party concerned ("the Affected Party"), the Affected Party shall promptly notify the other Party in writing specifying:

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

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

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

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

SIGNED by _____, being an Officer so authorised by the CONTRACTING AUTHORITY in the presence of: _____ Witness	SIGNED by _____, being an Officer so authorised by the DPS MEMBER in the presence of: _____ Witness
--	---

Annex 1 – Management Provisions

DPS Members will be required to deliver copies of DPS Client quarterly reports and invoice details for each Goods Contract awarded pursuant to Stage 2 Invites to Tender to the Contracting Authority, on request. DPS Members will be required to provide the Contracting Authority with a copy of any Goods Contract awarded to it pursuant to the DPS. DPS Members may be required to provide information to the Contracting Authority from time to time on request. This may be either provision of existing information given in a different format, or provision of new information.

Appendix 6: Goods Contract

[Insert name of Contracting Authority]

and

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

AGREEMENT

Relating to the Supply of Goods pursuant to

Request for Applicants to Participate in a Dynamic Purchasing System for the Supply of Schoolbooks to the
Education and Training Boards (ETBs).

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

DPS Client of [Address] ("the Client");

and

[DPS Member's full legal name], of [Address:] ("the Contractor")

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

WHEREAS:

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

IT IS HEREBY AGREED AS FOLLOWS:

1. This Agreement ("Agreement") consists of the following documents, and in the case of conflict of wording, in the following order of priority:
 - i. The within terms and conditions and the Schedules A to C attached hereto;
 - ii. The DPS Agreement;

- ii. The RFATP;
 - iii. The RFT;
 - iv. The Response
2. The Contractor shall sell, and the Client shall purchase in accordance with this Agreement the goods described in Schedule B (the “Goods”). Schedule B details the nature, quantity, quality and time of delivery and functional specifications of the Goods in accordance with the RFATP, the RFT, and the Response.
 3. Subject to the terms and conditions set out in Schedule A 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] and [insert email of contract person] the Contractor’s Contact is [Contractor contact name] of [Contractor contact address] and [insert email of contact person].
 5. This Agreement shall take effect on 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 1.8 of the RFATP, if the Agreement has not already expired or otherwise terminated, subject to any extension of the Term pursuant to clause 1.8 of the RFATP.
- Delete and replace with “Not Used” if not applicable:*
6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning 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.

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 shall act with due care, skill and diligence in the supply of Goods and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and subcontractors. The Contractor shall require its agents and subcontractors to exercise due care, skill and diligence in the supply of the Goods and generally in the carrying out of obligations allocated by the Contractor to its agents and subcontractors under this Agreement.
- B. The Contractor shall:
 - 1. supply the Goods in accordance with the specification (Schedule B), the RFATP, the RFT, the Client's reasonable directions and the terms of this Agreement;
 - 2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
 - 3. comply with all local security and health and safety arrangements as notified to it by the Client; and
 - 4. supply the Goods 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, 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 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 hereby assumes liability for its subcontractors and shall ensure that its subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B (4) above, to the extent that it or they are retained by the Contractor. Subject to clause 15, the Contractor shall notify the Client as soon as possible of any changes to the name and contact details 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. 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 Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement ("OGP") and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
- G. In the case of public procurement procedures which are subject to an IPI measure within the meaning of Regulation (EU) 2022/1031, the Contractor shall comply with the following obligations:
 - i. not to subcontract more than 50% of the total value of the contract to economic operators originating in a third country which is subject to an IPI measure;
 - ii. for contracts whose subject matter covers the supply of goods, to ensure for the duration of the contract that goods supplied or provided in the execution of the contract and originating in the third country which is subject to the IPI measure represent no more than 50% of the total value of the contract, irrespective of whether such goods are supplied or provided directly by the successful tenderer or by a subcontractor;
 - iii. to provide to the Client, upon request, adequate evidence corresponding to point (i) or (ii) above;
 - iv. to pay a proportionate charge, in the event of non-observance of the obligations referred to at point (i) or (ii) above, of between 10% and 30% of the total value of the contract.

2. THE GOODS

- A. The Contractor shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified Schedule B or otherwise agreed in writing between the Parties.
- B. The Goods ordered under this Agreement shall be delivered to any location specified by the Client, in Ireland, without limit to the number of locations, in the quantities and by the dates specified in the orders, unless otherwise stated. Any extension of the delivery time shall not constitute a general waiver or acquiescence on the part of the Client. All such Goods shall be delivered free of encumbrances or retention of title clauses or similar provision. The Charges quoted shall be based on the understanding that the Goods are to be delivered carriage paid to the various locations as specified in the order, along with the necessary delivery documentation. Pending such delivery, the Goods shall remain at the risk of the Contractor.
- C. Unless otherwise stated in Schedule B:
 - 1. Where the Goods are delivered by the Contractor, the point of delivery shall be when the Goods are at the Client's premises as notified to the Contractor.
 - 2. Delivery shall include the unloading, stacking or installation of the Goods by the Contractor's staff, agents or carriers at such place as the Client or a duly authorised person shall reasonably direct.
 - 3. The Goods shall be packed and marked in a proper manner and in accordance with the Client's instructions and any statutory requirements and any requirements of the carriers and manufacturers. In particular the Goods shall be marked with the contract number (or appropriate reference identifier) and the net, gross and tare weights. The name of the contents shall be clearly marked on each container and all containers of

hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

4. Unless expressly agreed to the contrary, the Client shall not be obliged to accept delivery by instalments. If, however, the Client does specify or agree to delivery by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of the Client, entitle the Client to terminate the whole of any unfulfilled part of the Agreement without further liability to the Client.
 5. The Client shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. The risk in any over-delivered Goods shall remain with the Contractor.
 6. The Client shall be under no obligation to accept or pay for any Goods supplied earlier than the date for delivery stated in the Specification.
- D.** Any Contractor pre-printed terms and conditions produced, signed or stamped by either Party and for whatever purpose during the Term are hereby disallowed.

E. *Select either E or F and replace with "Not Used" if not applicable:*

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

F. *Select either E or F and replace with "Not Used" if not applicable:*

Without prejudice to any general right to damages under this Agreement where the Contractor does not deliver the ordered amount within delivery dates or lead times in accordance with this Agreement, the Client may, at his discretion, deduct [insert amount] per week/day, or part thereof, for each week/day of late delivery of the value of the entire relevant invoice or order as liquidated damages up to a maximum amount of [insert amount]. 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.

3. INSPECTION OF GOODS

- A.** The Client or its authorised representative may inspect (to include a call for advance samples) or test the Goods either completed or in the process of manufacture, during normal business hours on reasonable notice at the Contractor's premises (including the premises of any subcontractor or agent) and the Contractor shall provide all reasonable assistance in relation to any such inspection or test free of charge. A failure to make a complaint at the time of any such inspection or test and / or the approval given during or after such inspection or test shall

not constitute a waiver by the Client of any rights or remedies in respect of the Goods and the Client reserves the right to reject the Goods in accordance with clause 3B.

- B.** The Client may by written notice to the Contractor reject any of the Goods which fail to conform to the approved sample or fail to meet the specification. Such notice shall be given within a reasonable time after delivery to the Client of such Goods. If the Client rejects any of the Goods pursuant to this clause the Client may (without prejudice to other rights and remedies) either:
1. treat the Agreement as terminated by the Contractor's breach and obtain a refund (if payment for the Goods has already been made) from the Contractor in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Client in obtaining other Goods in replacement provided that the Client uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods.
- or
2. have such Goods promptly, and in any event within [insert number] calendar days, either repaired by the Contractor or replaced by the Contractor with Goods which conform in all respects with the approved sample or with the specification and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.
- C.** Rejected Goods shall be removed by the Contractor from the Client within [insert number] calendar days from the date of the notification to the Contractor of their rejection. In the event of failure by the Contractor to remove Goods within [insert number] calendar days of such notification, the Client may dispose of such Goods as he sees fit and pending such removal, the Goods will remain with the Client at the risk of the Contractor. Any costs incurred by the Client relating to such disposal shall at the option of the Client be borne by the Contractor.
- D.** For the avoidance of doubt, the Client will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 3B.
- E.** The issue by the Client of a receipt note for the Goods shall not constitute any acknowledgement of the condition, quantity or nature of those Goods, or the Client's acceptance of them.
- F.** The Contractor hereby guarantees the Goods for [insert period] from the date of delivery (the "Guarantee Period") against faulty materials or workmanship. The Client shall within such Guarantee Period, or within 14 calendar days thereafter, give notice in writing to the Contractor of any defect in any of the Goods as may have arisen during such Guarantee Period under proper and normal use. The Contractor shall (without prejudice to any other rights and remedies which the Client may have) promptly remedy such defects (whether by repair or replacement as the Client shall elect) free of charge, which replaced or repaired Goods shall also have the benefit of this clause for the Guarantee Period.

4. RISK AND TITLE

- A.** Title shall pass to the Client on payment for the Goods.

5. PAYMENT

- A. Subject to the provisions of this clause 5 the Client shall pay and discharge the Charges (plus any applicable VAT), in the manner specified at Schedule C. Invoicing arrangements shall be on such terms as may be agreed between the Parties.
- B. Discharge of the Charges is subject to:
 - 1. Compliance by the Contractor with the provisions of this Agreement including but not limited to any milestones, compliance schedules and/or operational protocols in place pursuant to clause 11.A. from time to time;
 - 2. The furnishing by the Contractor of a valid invoice and such supporting documentation as may be required by the Client from time to time. Any Contractor pre-printed terms and conditions are hereby disallowed;
 - 3. Invoices being submitted to the Client's Contact (as set out in this Agreement or such other alternative contact as may be agreed between the Parties). All and any queries relating to the invoice and/or the Goods for any billing period (including whether or not Goods have been accepted, rejected, satisfactorily repaired or replaced) must be raised by the Client's Contact within 14 calendar days of receipt of the 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 Contractor having provided its current Tax Clearance Certificate to the Client. 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 Client reserves the right to deduct that sum from any sum then due, or which at any later time may become due to the Contractor under the Agreement or under any other agreement or contract with the Client. Any overpayment by either Party, whether of the Charges or of VAT or otherwise, shall be a sum of money recoverable by the Party who made the overpayment from the Party in receipt of the overpayment.
- E. Where indicated in the Specification, the Charges shall be deemed to be inclusive of any and all of the cost of instruction of the Client's personnel in the use and maintenance of the Goods and such instructions shall be in accordance with the requirements detailed in the Specification.
- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act 1997 of any Professional Services Withholding Tax payable. Any and all taxes applicable to the supply of the Goods will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

6. WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- A. The Contractor acknowledges, warrants and represents that:
1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to supply the Goods hereunder;
 2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
 3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
 4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the supply of the Goods (to include manufacture and distribution process) 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. *Not Used*
 7. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Tenderer" dated [Insert Date] remains unchanged.
 8. the Client shall be under no obligation to purchase any minimum number or value of Goods.
- B. The Contractor shall be and undertakes to be responsible for and to take due precautions for the safe custody of any Goods on his premises which are the property of the Contractor and shall insure the same against any form of loss or damage and the Contractor so acknowledges and confirms.
- C. The Contractor confirms and undertakes that the Goods supplied will, at the time of delivery (and for the Guarantee Period), correspond to the description given by the Contractor in accordance with the Response (to include any samples furnished thereunder) and the specification (Schedule B) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in the Submission. None of the provisions of the Sale of Goods Acts 1893 and the Sale of Goods and Supply of Services Act, 1980 shall be excluded or limited under this Agreement.
- D. The Contractor undertakes to ensure that all and any necessary consents and/or licences are obtained and in place for the purposes of this Agreement. The Contractor hereby indemnifies the Client and shall keep and hold the Client harmless from and in respect of all and any losses (whether direct, indirect or consequential), liability, damages, claims, costs or expenses which arise by reason of any breach of third-party intellectual property rights in so far as any such rights are used for the purposes of this Agreement.
- E. The Contractor undertakes that it shall retain and maintain for the Term insurances for the nature and amount specified in the RFT. The Contractor undertakes to advise the Client forthwith of any material change to its insured status, to produce proof of current premiums paid upon written request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 6.E;

- F. The Contractor undertakes to notify the Client immediately of any material change to the status of the Contractor with regard to the warranties, acknowledgements, and representations as set out in clause 6A and to comply with all reasonable directions of the Client with regard to same.

7. 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 negligent, act or negligent 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 of Schedule A. The terms of this clause 7A shall survive termination of this Agreement for any reason.
- B. Save in respect of fraud (including fraudulent misrepresentation), personal injury or death or in respect of the Contractor's indemnity under clause 6(D), neither Party will be liable for any indirect losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) of any kind whatsoever and howsoever arising even if such Party has been advised of their possibility.
- C. Should the Client find itself obliged to order elsewhere in consequence of the failure of the Contractor to deliver Goods of approved quality, the Client shall be entitled to recover from the Contractor any excess cost which may be payable by the Client.
- D. Save in respect of fraud, personal injury or death or in respect of the Contractor's indemnity under clause 6D (Intellectual Property) or (INSERT ANY ADDITIONAL EXCLUSION e.g. data breaches, for which no limit applies), the limit of the Contractor's aggregate liability to the Client under this Agreement whatsoever and howsoever arising shall not under any circumstances exceed [INSERT AMOUNT].
- E. If for any reason the Client is reasonably of the view that the performance of the Contractor does not comply with the standards set out in this Agreement (including the RFAPT, RFT and Response), 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 Goods with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the Goods as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 7F shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.
- F. 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.

8. CONFIDENTIALITY

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from participation in this Agreement (“Confidential Information”) and shall not disclose same to any third party except:-
1. To its professional advisers subject to the provisions of this clause 8; or
 2. as may be required by law; or
 3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 8; or
 4. in the case of the Client by request of any person or body or authority whose request the Client considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the confidentiality agreement as exhibited at Appendix 6 to the RFT (“the Confidentiality Agreement”).

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

1. in the receiving Party’s possession (with full right to disclose) before receiving it from the other Party; or
 2. which is or becomes public knowledge other than by breach of this clause; or
 3. is independently developed by the disclosing Party without access to or use of the Confidential Information; or
 4. is lawfully received by the disclosing Party from a third party (with full right to disclose).
- C. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. The Client will consult the Contractor about this confidential or commercially sensitive information before making a decision on any request received under the above legislation. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations
- D. The terms of this clause 8 shall survive expiry, completion or termination for whatever reason of this Agreement.

9. FORCE MAJEURE

- A. A ‘Force Majeure Event’ means an event and/or circumstances not within the reasonable control of the Affected Party (as defined in clause 9B below) which has the effect of delaying or preventing that Party from complying with its obligations under this Agreement including but not limited to acts of God, war, out-break of disease, (excluding Covid-19 and any related variants), 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's (or subcontractor's or agent's) places of business.

- B. In the event of any failure, interruption or delay in the performance of either Party's obligations (or of any of them) resulting from any Force Majeure Event, that Party ("the Affected Party") shall promptly notify the other Party in writing specifying:

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

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

- C. If the Force Majeure Event continues for [insert number] calendar days either Party may terminate at 14 days' notice.
- D. In circumstances where the Contractor is the Affected Party, the Client shall be relieved of any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

10. TERMINATION

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

- C. The Client shall have the right, in addition to any other rights which it has at law, to terminate this Agreement immediately and without liability for compensation or damages in circumstances where the Client becomes aware:
- i) that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Contractor;
 - ii) that the Contractor (or its subcontractor(s), if any) falls within the category of prohibited economic operators identified in Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same);
 - iii) that the contract has been subject to a substantial modification which would have required a new procurement procedure in accordance with Regulation 72 of the Regulations;
 - iv) that the contract should not have been awarded to the Contractor in view of a serious infringement of the obligations under the Treaties governing the European Union or the Regulations that has been declared by the Court of Justice of the European Union in a procedure under Article 258 of the Treaty on the Functioning of the European Union (TFEU).
- 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. On completion or termination of this Agreement, howsoever arising, the Contractor shall immediately return all Confidential Information, records, papers, materials, media and other property of the Client which is in its possession.

11. CONTRACT MANAGEMENT

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

- D. The Contractor shall be required to hold for the Term insurances of the nature and amount as set out in the RFT and shall immediately advise the Client of any material change to its insured status. The Contractor shall produce proof of current premiums paid upon request and where required produce valid certificates of insurance for inspection. The Contractor shall carry out all directions of the Client with regard to compliance with this clause 11D.
- E. 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.

12. DISPUTES

- A. In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.
- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to the Chairman of the Chartered Institute of Arbitrators, Irish Branch 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.
- 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.
- H. If, and to the extent that, any Dispute has not been settled pursuant to mediation, either Party may apply to the Irish courts at any time thereafter.

13. GOVERNING LAW, CHOICE OF JURISDICTION AND EXECUTION

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

14. NOTICES

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email.
- 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 working day following transmission.

15. ASSIGNMENT AND SUBCONTRACT

- A. The Client may, at any time, assign, or otherwise transfer the whole or any part of this Agreement to any Minister or public sector body, entity, or office. Any such assignment, novation or transfer will be done at no additional cost to the Client.
- B. Subject to each Party's obligations at law, any assignment, novation, or transfer to a third party of the Contractors rights or obligations under this Agreement (the "Transfer") requires the prior written consent of the Client. Prior to any such Transfer, the transferee will be obliged to sign an undertaking to comply with all obligations under this Agreement. Any attempted Transfer not complied with in the manner prescribed herein shall be null and void.
- C. 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. For the purposes of Regulation (EU) No 833/2014 of 31 July 2014 (as amended by EU Regulation 2022/576 or any subsequent amendments to same), the Client may require information from the Contractor in relation to the status of the proposed subcontractor(s) including, but not limited to, in respect of natural persons, copies of identity documents and, in respect of legal persons, a certificate or extract from the commercial register or other competent authority of the country in which the person is established.

16. ENTIRE AGREEMENT

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

17. SEVERABILITY

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

18. WAIVER

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

19. NON-EXCLUSIVITY

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

20. MEDIA

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

21. CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

- A. The Contractor confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any subcontractor nor agent as the case may be has any conflicts in relation to the Goods and its obligations undertaken under this Agreement. The Contractor hereby undertakes to notify the Client immediately should any conflict or potential conflict of interest come to its attention during the currency of this Agreement and to comply with the Client's directions in respect thereof. In the event of such notification, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages.
- B. Any registrable interest involving the Contractor (and any subcontractor or agent as the case may be) and the Client, the Ceann Comhairle (Speaker), or any member of the Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Client immediately upon such information becoming known to the Contractor (subcontractor or agent as the case may be) and the Contractor shall comply with the Client's directions in respect thereof to the satisfaction of the Client. In the event of such disclosure, the Client shall have the right (in addition to any other rights which it has at law) to terminate this Agreement immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (as amended).
- C. The Contractor shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 21C or the commission of any offence by the Contractor, any subcontractor, agent or employee under the Criminal Justice (Corruption Offences) Act 2018 shall entitle the Client to terminate this Agreement immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation.

22. ACCESS TO PREMISES

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

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

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

23. NON-SOLICITATION

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

24. CHANGE CONTROL PROCEDURE

- A. Subject to their obligations at law, 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 by the Party proposing the change. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the supply of the Goods and the Charges (where known).
- 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 proposed change within twenty (20) calendar days or such other period agreed between the Parties.
- F. On approval of the change, this Agreement and/or the Schedules shall be updated and revised as appropriate and in writing.
- G. In the event that either Party rejects the change, the change(s) shall not take place and the Parties shall continue to perform their obligations under this Agreement.
- H. Unless otherwise agreed between the Parties, any costs incurred in preparing the Change Control Notice shall be borne by the Party proposing the change. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the operation of the Change Control Procedure.

25. DATA PROTECTION AND SECURITY

The Contractor shall not process any Personal Data on behalf of the Client as part of the supply of Goods.

In so far as any data is processed by the Contractor on behalf of the Client the following terms shall have the meanings respectively ascribed to them:

‘Data’ means all information, regardless of form or characteristics or the media on which it may be recorded, that is used, generated, developed, transmitted, stored or otherwise processed as part of the supply of the Goods and includes any Personal Data, metadata, derived data and traffic 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;

- A. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
- B. 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 D 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.
- C. 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. For the avoidance of doubt, this Agreement shall, together with any additional instructions agreed in writing, constitute the written instructions of the Client to process the Personal Data for the purpose of the supply of the Goods;
 - (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 unless required to do so by European Union or Member State law to which the Data Processor is subject. In such a case, the Data Processor shall inform the Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest;
- (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 and shall provide assistance to the Client in relation to any such request (including, where directed by the Client, by allowing Data Subjects to have access to their Personal Data).
- F. The Contractor shall, unless prohibited by European Union or Member State law to which the processor is subject, promptly notify the Client if it receives any complaint, correspondence, notice, order of the Court or request of any regulatory or government body relating to the Personal Data and/or the Parties' 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.
- G. 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.
- H. 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.
- I. 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.

- J. The Contractor shall permit the Client, (upon the provision of reasonable notice and no more than once in any [INSERT] month period) 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 supply of the Goods. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review. The Contractor shall, upon request, also provide evidence of any relevant internal or independent audits/self-assessments performed periodically by or on behalf of the Contractor. In relation to any audit requested by the Client:
- (i) the Client shall first consider the contents of the most recent independent audit performed on behalf of the Contractor;
 - (ii) the Parties shall agree the nature and scope of any such audit which shall be set out in an audit plan;
 - (iii) each Party agrees to bear their own costs
 - (iv) the Client agrees to appoint auditors that are suitably qualified and are not a direct competitor of the Contractor.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 r.
- L. The Contractor shall: -
- a. 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;
 - b. ensure that a back-up copy of any and all such Personal Data is made regularly and in accordance with the instructions of the Client and that copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
 - c. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. The Client consents to the Contractor appointing such sub-processors identified in the Response and set out in Schedule D. During the Term of the Agreement, if the Contractor proposes any changes to its sub-processor(s), the Contractor must inform the Client at least 30 days in advance. The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding any replacement sub-processor. The Client shall have absolute discretion as to the suitability of any proposed replacement sub-processor. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 25 as between the Client and the Contractor. The Contractor shall, if called upon to do so, make available to the Client, copies of such sub-processing agreements in order to evidence compliance with this clause. The Contractor shall remain fully liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

- N. All the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.
- O. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

26. ADDITIONAL CONDITION(S)

[Delete and replace with 'not used' if not applicable:

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

Schedule B: Goods

[Insert when completing contract]

Schedule C: Charges

[Insert when completing contract]

Schedule D: 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
4. Approved Third Party Processors

Appendix 7: Confidentiality Agreement

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

The Insert Name of DPS Client, of [insert address] (hereinafter “the Client”) of the one part;
and

[Insert DPS Member’s legal name] [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 Applications to Participate in a Dynamic Purchasing System dated [insert date] entitled *Request for Applications to Participate in a Dynamic Purchasing System for the supply of Schoolbooks to the Education and Training Boards (ETBs)* [insert title] (the “RFT”) the Contracting Authority invited tenders (“Applications”) for the provision of the Goods described in Appendix 1 (Requirements and Specifications) to the RFATP (the “Goods”). The DPS Member submitted an Application to the RFATP dated the [insert date of Tender].

The Contractor and the Contracting Party 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 Goods Contract awarded thereunder (if any) (“the Goods 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 Client.

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

1. The Contractor acknowledges that Confidential Information may be provided to them by the Client 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 Client, the supply of Goods under the Goods 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 Goods 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 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 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

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 Client 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 Client 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 Goods Contract) for whatever reason to furnish to the Client, as applicable, all Confidential Information or at the written direction of the Client to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority the 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 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 Client and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the Goods Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Client as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Client 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.

SIGNED for and on behalf of the Contracting Authority _____ (Being a duly authorised officer)	SIGNED for and on behalf of the Contractor _____
Witness	Witness

End of Document