



**Oifig um Sholáthar Rialtais**  
**Office of Government Procurement**

**Request for Applicants to Participate  
in a  
Dynamic Purchasing System  
for the Provision of Creative Campaign Services  
to Public Sector Bodies in Ireland**

**Tender Procedure: Restricted Procedure**

**Publication Date: 10/10/2025**

**OGP Ref: MMP080F**

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## Part 1: Introduction

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- 1.1 The Minister for Public Expenditure Infrastructure Public Service Reform and Digitalisation (the “Contracting Authority”) is issuing this Request for Applicants to Participate (“RFATP”) in a Dynamic Purchasing System (“DPS”) as a central purchasing body (“CPB”). The Office of Government Procurement (the “OGP”) is an office within the Department of Public Expenditure Infrastructure Public Service Reform and Digitalisation 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 provision of the services described in Appendix 1 to this RFATP (the “Services”).
- 1.4 In summary, the Services shall comprise delivery of creative solutions to achieve the communications objectives of Public Sector Bodies. Services may include, but are not limited to:
  - a) Provision of strategic, evidence-based, creative concepts and recommendations to support client campaign objectives;
  - b) Planning and management of integrated campaigns to ensure consistent and quality messaging across multiple traditional, digital, mobile, social media and other emerging technologies;
  - c) Design, development, copy writing and production of creative concepts, content and advertising materials for use across all channels and platforms;
  - d) Post campaign analysis and performance reporting.

DPS Members may be required to liaise with other client third party agencies, suppliers and service providers to deliver a seamless communications solution on behalf of DPS Clients.

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

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

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

The Contracting Authority invites Applications from economic operators (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 a tender proposal nor pricing at this Stage 1 of the Competition (which will instead be required in response to future Stage 2 mini-competitions conducted under the DPS). All Applicants that meet the Compliance and Selection Criteria will be admitted to the DPS provided they enter into the DPS Agreement (at Appendix 5 to this RFATP) with the Contracting Authority.

Economic operators may apply for admission to the DPS, or re-apply in the case of Applicants who failed to satisfy the Compliance or Selection Criteria, at any point throughout the entire Term (as defined in paragraph 1.9 below) of the DPS.

### **Stage 2 – Award of Contracts:**

All Applicants that enter into a DPS Agreement with the Contracting Authority in Stage 1 (each a “DPS Member”) will be invited to future Stage 2 competition(s) (“Mini-Competitions”) to submit a tender based on the requirements set out in the Stage 2 request for tenders (“RFT”). Mini-Competition(s) will be conducted in accordance with the procedures set out at clauses 5 and 6 of the DPS Agreement. After the assessment of the tenders received in response to the RFT the 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 Description of Category

This public procurement competition consists of a single Category, the scope of which includes the provision of Creative Campaign Services for Public Sector Bodies in Ireland.

It is envisaged the DPS will be available to all clients outlined below 1.8.

## 1.7 Overview of Application Process

The DPS will be hosted on the eTenders web platform [www.etenders.gov.ie](http://www.etenders.gov.ie) (the “Electronic Platform”). All communications arising out of or in connection with the DPS will be by electronic means. No hard copy documents will be issued or accepted by the OGP 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.

1. Applicants must register with E-tenders and/or login to the Electronic Platform.
2. Applicants must review in full and comply with all requirements for this Competition set out in the RFATP and any published DPS documents for this Competition.
3. Applicants must complete and upload the electronic European Single Procurement Document (“eESPD”) to the Electronic Platform.
4. Applicants must complete the DPS Applicant Response Document (“ARD”) attached to this RFATP and available to download from the Electronic Platform, in response to the Selection Criteria as detailed in sections 3.2 of Part 3 of this RFATP, and upload it to the Electronic Platform by the Application Deadline. Applicants are **not** required to submit a tender proposal nor pricing in response to the Appendix 1 requirements at this Stage 1. The tender proposal and pricing will instead be required to be submitted in response to future Stage 2 Mini Competitions conducted under the DPS.
5. Applicants that fulfil the Compliance and Selection Criteria in this RFATP will be sent confirmation 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.
6. 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.
7. Unsuccessful Applicants may re-apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.9 below) of the DPS.
8. Economic Operators that did not submit an Application in response to this RFATP by the application deadline specified in paragraph 2.6 of this RFATP may apply for admittance onto the DPS at any stage throughout the Term (as defined in paragraph 1.9 below) of the DPS.
9. It is envisaged that all successful DPS Members will be invited to all future Mini-Competitions conducted under the DPS.
10. Future Mini-Competitions 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.

## 1.8 DPS Clients

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

1. Ministers of the Government of Ireland, Central Government Departments, Offices and non-commercial Agencies and Organisations which have a formal reporting and legal relationship to Central Government Departments, including all local authorities in Ireland (themselves including regional assemblies, local enterprise boards and library bodies)
2. Contracting authorities in the Irish health sector including but not limited to the Health Service Executive (HSE) and provided that such entities are contracting authorities within the meaning of Regulation 2 of the Regulations
3. Contracting authorities which are Third Level Educational Institutions (including universities, institutes of technology and members of the Education Procurement Service)
4. Contracting authorities which are primary, post-primary, special and secondary schools as well as Education and Training Boards (ETBs) and ETB schools
5. An Garda Síochána (Police)
6. The Irish Prison Service
7. The Defence Forces

## 1.9 Term

Any DPS that may result from this Competition will, subject to paragraph 1.10 below, be for a period of validity of up to 4 years ("the Term").

### 1.10 Termination of DPS

Applicant's attention is drawn 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.

### 1.11 Estimated Value of Contracts to be Awarded

The Contracting Authority estimates that the aggregate expenditure on the Services to be covered by the proposed DPS Agreement may amount to some **€30,000,000** (excl. VAT) over the Term. Applicants must understand that the figure is an estimate only based on current and future expected usage.

It is envisaged that any individual contract to be awarded at Mini Competition stage shall have a minimum estimated value of **€140,000** (excl. VAT).

#### 1.12 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 Mini-Competitions. SMEs that believe the scope of this Application is beyond their technical or business capacity are encouraged, subject to paragraph 2.5, to explore the possibilities of forming relationships with other SMEs or with larger enterprises. Through such relationships they can participate and contribute to the successful implementation of any Contracts that may result from this Application and therefore increase their social and economic benefits.

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

## Part 2: Instructions to Applicants

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### 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 Contract.

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

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

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

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

**2.1.3** This RFATP supersedes and replaces any and all previous documentation, communications and correspondence between the Contracting Authority and

Applicants, and Applicants should place no reliance on such previous documentation and correspondence.

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

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

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

## **2.2 Compliant Applications**

**2.2.1** If an Applicant fails to comply in any respect with the requirements of this paragraph 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 may be accessed in the Competition workspace at [www.etenders.gov.ie](http://www.etenders.gov.ie). Alternatively,

Applicants may submit an eESPD which has already been used in a previous procurement procedure PROVIDED THAT they confirm that:

- i. the information contained in it continues to be correct; and
- ii. that they satisfy the Selection Criteria for this DPS as set out at part 3.2 below;

- (b) To submit all documentation which this RFATP requires to be submitted;
- (c) To follow the format of this RFATP and respond to each element in the order as set out in this RFATP;
- (d) To conform to and comply with all instructions and requirements set out in this RFATP;
- (e) To submit the Applicant's Statement (Appendix 2) required under paragraph 2.4, below;
- (f) Not to alter or edit this RFATP in any way; and
- (g) To complete and submit with their Application the DPS Applicant Response Document ("ARD") attached to this RFATP and available to download from [www.etenders.gov.ie](http://www.etenders.gov.ie), in line with instructions provided in that document.

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

## 2.3 DPS Agreement and Contract

- 2.3.1 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 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 contract shall be appended to the RFT at Mini-Competition stage and by tendering for a Mini-Competition a DPS Member agrees to enter into any such amended Contract.
- 2.3.2 Applicants are required to confirm their acceptance of the DPS Agreement and the Contract in the Applicant's Statement at Appendix 2. Applicants may not amend the DPS Agreement or the Contract.

## 2.4 Acceptance of RFATP Requirements

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

## 2.5 Consortia and Prime / Subcontractors

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

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

## 2.6 Application Submission Requirements

**2.6.1** Applications must be submitted via the 'electronic tenderbox' available on [www.etenders.gov.ie](http://www.etenders.gov.ie). Only Applications submitted to the electronic tenderbox will be accepted. Applications submitted by any other means (including but not limited to: by email, fax, post, hand delivery etc.) will NOT be accepted.

Applicants must ensure that they give themselves sufficient time to upload and submit all required Application documentation before the initial Application Deadline (as defined in paragraph 2.6.2). Applicants should take into account the fact that upload speeds vary.

Applicants 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 an Application to the electronic tenderbox, Applicants must ensure that they follow the necessary steps on the eTenders platform to ensure that their Application has been submitted properly, which includes ensuring that the “Submit” button has been clicked. In the event that Applicants need to modify or change any aspect of their Application before the initial Application Deadline, the Application in its entirety will need to be re-submitted.

Applicants should be aware that the “Submit” button will be disabled automatically at the Application Deadline.

#### 2.6.2 Application Deadline

Subject to paragraph 2.8.1 of this RFATP, Applications must be received not later than **14.00 hours on 10/11/2025** (the “Application Deadline”).

#### 2.6.3 Applications must be submitted in English.

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

#### 2.6.5 All parts of the Applications must be submitted in soft copy to the Electronic Platform and must be compiled such that they can be read immediately using Microsoft Office applications e.g. MS Word, MS Excel, etc. or a PDF Reader. The Contracting Authority is not responsible for corruption in electronic documents. Applicants must ensure electronic documents are not corrupt.

### 2.7 Queries and Clarifications

#### 2.7.1 All queries relating to any aspect of this Competition or of this RFATP must be directed to the messaging facility on the Electronic Platform [www.etenders.gov.ie](http://www.etenders.gov.ie). Subject to paragraph 2.8.1 of this RFATP, queries must be submitted by no later than **14.00 hours on 03/11/2025**. For the avoidance of doubt, Applicants may not contact potential DPS Clients regarding any aspect of this Competition.

#### 2.7.2 All responses to queries will be issued by the Contracting Authority via the messaging facility on the Electronic Platform [www.etenders.gov.ie](http://www.etenders.gov.ie) Where appropriate, queries may be amalgamated. Applicants should note that the Contracting Authority will not respond to individual Applicants privately.

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

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

## **2.8 Applications for Admittance to DPS and Applicant Costs**

- 2.8.1 Notwithstanding the Application Deadline in paragraph 2.6.2 and deadline for submission of clarification queries in paragraph 2.7.1, both unsuccessful Applicants that submit an Application but fail to fulfil the Compliance and Selection criteria in this RFATP, and economic operators that did not submit an Application in response to this RFATP by the Application Deadline may raise clarification queries relating to any aspect of this Competition or of this RFATP and apply / re-apply and submit an Application in response to this RFATP at any stage throughout the Term of the DPS. 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 a DPS will however be required to submit pricing in response to future Mini-Competitions conducted under the DPS.
- 2.10.2 All prices quoted in any subsequent Mini-Competitions must be all-inclusive (i.e. including but not being limited to shipping, packaging, delivery, ancillary costs and all other costs/expenses), be expressed in Euro only and exclusive of VAT. The VAT rate(s) where applicable should be indicated separately.
- 2.10.3 *Not Used*
- 2.10.4 Any currency variations occurring over the term of any Contract shall be borne by the Applicant.
- 2.10.5 Payments for Services provided pursuant to this RFATP shall be made subject to and in accordance with the Contract at Appendix 6 to this RFATP and the terms of any subsequent RFT.
- 2.10.6 *Not Used*

## 2.11 Environmental, Social and Labour Law

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

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

## **2.12 Publicity**

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

## **2.13 Registrable Interest**

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

## **2.14 Anti-Competitive Conduct**

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

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

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

## 2.16 Freedom of Information

- 2.16.1 Applicants should be aware that, under the Freedom of Information Act 2014, information provided by them during this Competition may be liable to be disclosed.
- 2.16.2 Applicants are asked to consider if any of the information supplied by them in their Application should not be disclosed because of its confidentiality or commercial sensitivity. If Applicants consider that certain information is not to be disclosed because of its confidentiality or commercial sensitivity, Applicants must, when providing such information, clearly identify such information and specify the reasons for its confidentiality or commercial sensitivity. If Applicants do not identify information as confidential or commercially sensitive, it is liable to be released in response to a Freedom of Information request without further notice to or consultation with the Applicant. The Contracting Authority will, where possible, consult with Applicants about confidential or commercially sensitive information so identified before making a decision on a request received under the Freedom of Information Act. The Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

## 2.17 Tax Clearance

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

## 2.18 Conflicts of Interest

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

eliminating an Applicant from this Competition or any Mini-Competition or terminating any DPS Agreement or Contract entered into by an Applicant.

## 2.19 Withdrawal from participation in this DPS

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

## 2.20 Site Visit

*Not Used*

## 2.21 Insurance

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

| Type of Insurance      | Indemnity Limit                                                                                                                                         |
|------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------|
| Employer's Liability   | €13,000,000 for any one claim or series of claims arising out of a single occurrence and unlimited in the period of insurance. <i>See Note 1 below.</i> |
| Public Liability       | €6,500,000 limit for any one claim or series of claims arising out of a single occurrence per period of insurance. <i>See Note 1 below.</i>             |
| Product Liability      | €6,500,000 limit for any one claim and in the aggregate per period of insurance.                                                                        |
| Professional Indemnity | Minimum €1,500,000 limit for any one claim per period of insurance. <i>See Note 2 below.</i>                                                            |
| Crime Insurance        | Minimum €250,000 limit any one claim. <i>See Note 3 below.</i>                                                                                          |

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|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------|
| Cyber Liability                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                           | Minimum €1,500,000 limit any one claim and in the aggregate per insurance policy year. <i>See Note 4 below.</i> |
| <p><b>Note 1:</b> Both the employers and public liability policies should include an indemnity to principals clause and these documents should be made available to the DPS Client.</p> <p><b>Note 2:</b> PI limit may be increased for contracts above €1.125M.</p> <p><b>Note 3:</b> Crime policy should include cover for social engineering and Third Party Theft. (Crime coverage protects the company from crimes committed both by the employees and third parties, such as embezzlement, and fraudulent transactions).</p> <p><b>Note 4:</b> Increased Cyber liability limit may be required if there is a particular concern regarding Operational Disruptions and sensitive data on the DPS Client's network. Separate limits for PI and Cyber recommended.</p> |                                                                                                                 |

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

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

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

## Part 3: Selection Criteria

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### 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.

However, notwithstanding anything to the contrary in this part 3.1, the Contracting Authority reserves the right to ask Applicants at any moment during the Competition to submit any or all of the following for the purposes of verification of the status of the Applicant (including the Prime Contractor and any Subcontractor):

- (i) a Declaration in the form attached at Appendix 4;
- (ii) evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;
- (iii) in the case of the Prime Contractor and any Subcontractor on whose capacity the Prime Contractor relies, all or any of the supporting documents specified at paragraph 3.2 below, and the Applicant must provide that documentary evidence no later than five (5) calendar days following that request.

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

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

### 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.

The Contracting Authority may require Applicants to submit 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”)**, attached to this RFATP and available to download from the Electronic Platform, in line with instructions provided in that document, and upload it to the Electronic Platform by the Application Deadline.

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

### 3.2.1 - Financial and Economic Standing

#### Evaluation – Pass / Fail

Applicants must declare by way of eESPD that the average annual turnover of the Applicant in each of the last 3 financial reporting years prior to the application date is equal to or exceeds €600,000 (excl. VAT). Alternatively, if the date of establishment of the Applicant was more recent, the Applicant must declare by way of eESPD that their average annual turnover in each of the financial reporting years prior to the application date since the Applicant has been established is equal to or exceeds €600,000 (excl. VAT). In the case of the Applicant being a consortium, this financial criterion may be fulfilled by the consortium members as a whole.

Prior to and as a condition of the award of any Contract the Applicant will upon request provide the Contracting Authority with documentary evidence demonstrating that they fulfil this criterion. Documentary evidence may include financial accounts (or audited financial accounts where the Applicant's accounts are audited) or an accountant's letter/certificate confirming that the Applicant fulfils this criterion.

In order to facilitate Applicant evaluation under this criterion, **Applicants must submit Section 5 of the Applicant Response Document (MMP080F ARD)**, completed in line with instructions provided in that document.

### 3.2.2 – Technical and Professional Ability

#### 3.2.2 (a) Previous Experience

#### Evaluation – Pass / Fail

Applicants must demonstrate in a clear and comprehensive manner that they have sufficient creative campaign services experience.

To demonstrate this, Applicants must submit in the Applicant Response Document (ARD) details of **four (4) reference contracts** relating to services provided to either public sector and/or private sector clients, **delivered within the last four (4) years** prior to the application date. Each of the four reference contracts must be of a similar nature, scope and complexity to the Services sought in this RFATP. In particular,

- a) **One (1)** reference contract must be for a behaviour change campaign;
- b) **One (1)** reference contract must demonstrate a commitment to inclusive and

- accessible campaign delivery by applying universal design principles to ensure accessibility for all users, regardless of ability, background, or circumstance;
- c) **One (1)** reference contract must be for an integrated campaign comprising both traditional creative and digital creative concept and content development across a range of platforms; and
  - d) **One (1)** reference contract must demonstrate a fast turnaround from brief to delivery (5 days turnaround).

Additionally, **at least one (1)** of the above reference contracts **must** demonstrate compliance with the requirements of the Official Languages Acts 2003 (Section 10) and 2021 (Amendment) for public-facing services and campaigns in Ireland.

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

In order to facilitate Applicant evaluation under this criterion, **Applicants must submit Section 6 of the Applicant Response Document (MMP080F ARD)**, completed in line with instructions provided in that document.

### **3.2.2 (b) Quality Assurance**

#### **Evaluation – Pass / Fail**

Applicants must declare by way of eESPD that they have policies and procedures in place for each of the following to meet the Quality Assurance requirement. Applicants will either pass OR fail this qualification criterion. Copies of these policies and procedures may be requested.

- Quality assurance (including systematic review of all content to ensure alignment with the campaign brief(s) provided by the Client, or third parties appointed by the Client);
- Client management;
- Financial management;
- IT Systems management (including cyber security);
- Business continuity;
- Corporate social responsibility (including environmental sustainability and social inclusion practice and governance).

In order to facilitate Applicant evaluation under this criterion, **Applicants must submit Section 7 of the Applicant Response Document (MMP080F ARD)**, completed in line with instructions provided in that document.

### 3.3 Presentation of Proposals

*Not Used*

### 3.4 Notification and Admittance to the DPS

- 3.4.1 The Contracting Authority will notify Applicants of its decision in relation to the establishment of the DPS and/or of the outcome of their Application to participate in the DPS.
- 3.4.2 Admittance to the DPS will be conditional upon the successful Applicant(s) (including the Prime Contractor and any Subcontractors) submitting (to the extent not already provided) within five (5) calendar days of request by the Contracting Authority:
- (i) a Declaration in the form attached at Appendix 4;
  - (ii) if applicable, evidence to the effect that measures taken by the entity concerned are sufficient to demonstrate its reliability despite the existence of a relevant Exclusion Ground;
  - (iii) all or any of the evidence and supporting documents specified at paragraphs 3.1 and 3.2 above.

### 3.5 DPS Agreement

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

# Appendix 1: Requirements and Specifications

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## SECTION 1 – OVERVIEW OF DYNAMIC PURCHASING SYSTEM AND PROCESS FOR AWARD OF CONTRACTS AT MINI COMPETITION STAGE 2.

### 1.1 Background to the Dynamic Purchasing System

The Contracting Authority is establishing a Dynamic Purchasing System (DPS) for the provision of Creative Campaign Services to Public Sector Bodies in Ireland.

### 1.2 The Office of Government Procurement (OGP)

As part of the Public Service Reform Plan, the Government established the OGP in 2014 to drive a new consolidated and integrated approach to public procurement in Ireland. Enhanced procurement capability will improve the value for money from the Irish public sector's considerable procurement spend and will make a significant contribution to enabling the State to deliver much needed services more efficiently and cost effectively.

### 1.3 Aims and Objectives

The Dynamic Purchasing System (DPS) is designed to facilitate easy access for creative agencies to public sector competitions, without the need to submit a full commercial proposal. Admission to the DPS will be made on the basis of a creative agency's capacity, as evidenced by a combination of turnover (financial and economic standing) and previous relevant experience (technical and professional ability).

The DPS lends itself to the dynamic nature of the creative campaign services industry, allowing newly formed agencies to apply, or re-apply, for admission to the DPS at any stage during its Term.

### 1.4 Overview of how the Procurement Process will operate

Providers of Creative Campaign Services (agencies) who wish to participate in the DPS are invited to respond to this RFATP. The OGP will evaluate the Applications in response to this RFATP. Those agencies included in the DPS will be invited to participate in Mini-Competitions over the lifetime of the DPS.

This Appendix 1 provides a general overview of potential requirements under the DPS. Full specifications and requirements for DPS Clients will be set out in future Mini-Competitions conducted under the DPS at Stage 2. Applicants are reminded that while they are required to submit a response to and fulfil the Compliance and Selection Criteria in Part 3 of the RFATP, Applicants are **not** required to submit a tender proposal nor pricing in response to the RFATP at this Stage 1 of the Competition, which will instead be required in response to future Mini-Competitions, (Stage 2) conducted under the DPS.

### 1.5 DPS Clients

Paragraph 1.8 of Part 1 of the RFATP lists the entities that are DPS Clients. The Contracting Authority reserves the right at any time during the Term of the DPS to increase or decrease the list of eligible DPS Clients subject to its obligations at law.

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

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

The OGP will establish and administer the DPS Agreement on behalf of DPS Clients. It will be permitted to run aggregated Mini Competitions under this DPS Agreement.

### 1.7 Contracts awarded under the DPS

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

It is envisaged that any individual contract to be awarded at Mini Competition stage shall have a minimum estimated value of **€140,000** (excl. VAT).

### 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 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 Mini-Competition stage, the DPS Member must instead identify such Subcontractors when they become known, for example, upon submission of a tender at Mini-Competition stage.

Subcontractors nominated and relied upon by the DPS Member to fulfil any Contract may not be changed during the Term of the Contract 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 Contractor and Subcontractors shall have the use of sufficient appropriate resources to satisfy the delivery of Services to meet the requirements of all DPS Clients for the duration of any Contract awarded under the DPS.

### **1.9 Use of Artificial Intelligence**

The Contracting Authority is aware that Large Language Models and Generative Artificial Intelligence (collectively “AI Tools”) are in widespread use. In that context, when responding to this RFATP Applicants are required to declare in **Section 9 of the Applicant Response Document (MMP080F ARD)**, if and where AI Tools have been used to draft, develop, inform or augment any part of their Application.

While the use of AI Tools in responding to this RFATP is not prohibited, it is necessary that Applicants maintain control of and responsibility for their Application and that they confirm as much to the Contracting Authority.

It should be noted that the Contracting Authority will assess Responses to this RFATP based on the information provided by the Applicant regardless of how the Response was generated. Any declarations made on the use, or non-use, of AI Tools will not influence the evaluation process or outcome. However, should the Contracting Authority determine that any declaration made in this regard by the Applicant is incomplete or has been incorrectly or inaccurately completed, then the Applicant’s Response may, subject to the provisions in Part 2 – Instructions to Applicants, be deemed to be non-compliant and will not be evaluated.

## SECTION 2 – REQUIREMENTS AND SPECIFICATIONS

### CREATIVE CAMPAIGN SERVICES

It is intended that the DPS will cover Creative Campaign Services required by DPS Clients whether on an individual or aggregated basis.

“Creative Campaign Services” in this context shall include delivery of creative solutions to achieve the communications objectives of DPS Clients. Services may include, but are not limited to:

- a) Provision of strategic, evidence-based, creative concepts and recommendations to support client campaign objectives;
- b) Planning and management of integrated campaigns to ensure consistent and quality messaging across multiple traditional, digital, mobile, social media and other emerging technologies;
- c) Target audience identification and analysis;
- d) Communication channel strategy and planning;
- e) Provision of expertise in awareness raising campaigns;
- f) Provision of expertise in behaviour change communications;
- g) Design, development, copywriting and production of creative concepts, content and advertising materials for use across all channels and platforms;
- h) Quality assurance and systematic review of all content to ensure alignment with the campaign brief(s) provided by the Client (or third parties appointed by the Client), including mechanisms for timely updates, feedback incorporation, and confirmation of Client satisfaction at key project milestones;
- i) Social media content management;
- j) Brand identity design and development;
- k) Pre-testing of creative concepts and proposed communications solutions, where required;
- l) Liaising, as required, with DPS Clients’ in-house communications personnel, partner organisations, service providers and other third party suppliers to ensure campaigns are fully aligned, offer effective resource allocation, provide value for money, are cohesive and client-centred;
- m) Compliance at all times with the requirements of the Official Languages Acts 2003 (Section 10) and 2021 (Amendment) for public-facing services and campaigns in Ireland;
- n) Provision of a detailed budget breakdown for all projects prior to commencement of any work;
- o) Provision of clear billing schedules and forecasting plans (including expected timelines, formats and budget allocations);
- p) Timely invoicing (including transparent cost breakdowns);
- q) Timely, accurate reporting of work-in-progress vs budget to the Contracting Authority and/or DPS Client;

- r) Post-campaign analysis and performance reporting (i.e. evaluation of campaign effectiveness).

The services must be designed and delivered in a manner which:

- Ensures that the contractor and the DPS Client work together in a collaborative and responsive manner, prioritising the needs, preferences, and feedback of the Client and target audiences throughout all stages of campaign development and delivery;
- Ensures that all content (visual, written, digital, and interactive) is accessible to people with disabilities, older persons, and those with limited literacy or digital skills;
- Complies with Universal Design and Inclusion Principles ([Universal Design and Inclusion | NSAI](#)), or equivalent;
- Complies with the WCAG 2.1 Level AA accessibility standard for digital content in accordance with Irish and EU law (<https://www.w3.org/WAI/WCAG2AA-Conformance>), as updated from time to time, or equivalent;
- Reflects the diversity of Irish society in its messaging, imagery, and delivery channels, as set out in the Public Sector Duty, page 59 ([Implementing the Public Sector Equality and Human... | IHREC - English](#));
- Includes mechanisms for user testing, feedback collection, and continuous improvement to ensure campaigns remain responsive and inclusive.

Out of Scope: This DPS does not include:

- Media strategy, planning and buying
- Media monitoring managed services
- Web development and design

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

## **AGGREGATION OF REQUIREMENTS**

In certain circumstances, Aggregated Mini Competitions may be required under the DPS Agreement. In such cases, the Creative Campaign Services requirements of two or more DPS Clients may be aggregated to, e.g. ensure value for money for the State and the attainment of economies of scale.

In the event that an Aggregated Mini Competition is run under the DPS, a lead Contracting Authority will be identified along with all other participating DPS Clients (also Contracting Authorities). For the avoidance of doubt, each participating DPS Client will enter into a Services Contract with the Successful Tenderer.

## **COSTS UNDER AGGREGATED MINI COMPETITIONS**

One of the key requirements in Aggregated Mini Competitions is that the Successful Tenderer (Contractor) must invoice all participating DPS Clients individually.

The lead Contracting Authority will identify the DPS Client that is responsible for the payment in respect of each assignment/campaign. Each individual DPS Client will issue Purchase Orders and discharge payment for the services received by them (see Appendix 6, Clause 3 for Contract Provisions dealing with Payment and Invoicing).

**In the event of a dispute over payment, the interested parties (the Contractor and the DPS Client) should notify the lead Contracting Authority in accordance with the provisions of the Services Contract.**

## **AWARD CRITERIA FOR FUTURE MINI COMPETITIONS**

The DPS Client shall specify their own requirements and award criteria (including sub-criteria) in future Mini Competitions conducted under the DPS. The following are examples of requirements and award criteria that may be applied by DPS Clients (and which DPS Members may be required to demonstrate they fulfil) in future Mini Competitions, and are included in this Appendix 1 to provide Applicants with an overview of future potential requirements and criteria in future Mini-Competitions 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 in response to the requirements and criteria below nor pricing at this Stage 1 of the Competition, which will instead be required in response to future Stage 2 Mini-Competitions conducted under the DPS.

| <b>No.</b>   | <b>AWARD CRITERIA</b>                                                                                                         | <b>WEIGHTING RANGE</b> |
|--------------|-------------------------------------------------------------------------------------------------------------------------------|------------------------|
| 1.           | Quality and Balance of the Team Proposed                                                                                      | 0% - 65%               |
| 2.           | Response to the Campaign Brief                                                                                                | 0% - 65%               |
| 3.           | Service Management and Delivery (including Account Management)                                                                | 0% - 65%               |
| 4.           | Proposals on the incorporation of Social Considerations (diversity and/or social inclusion) into the delivery of the services | 0% - 15%               |
| 5.           | Price                                                                                                                         | 35% - 65%              |
| <b>TOTAL</b> |                                                                                                                               | <b>100%</b>            |

The Contracting Authority is seeking to promote social considerations, including diversity and wider social inclusion, through this DPS arrangement. Accordingly the DPS Client may, at its discretion, include “Proposals on the incorporation of Social Considerations” as an award criterion in future Stage 2 Mini-Competitions conducted under the DPS.

Social considerations may refer to a DPS Member’s approach to social inclusion and diversity, including but not limited to:

- proposal to reach Irish society in all its diversity via the services delivered
- proposal to target communications to specific hard-to-reach/vulnerable groups via the services delivered

In this context, social inclusion shall be defined as set out in the Government of Ireland “Roadmap for Social Inclusion 2020-2025”<sup>1</sup> (<https://www.gov.ie/en/press-release/0b2e3d-minister-doherty-publishes-roadmap-for-social-inclusion-2020-2025/>), which states:

*“Social Inclusion is achieved when people have access to sufficient income, resources and services to enable them to play an active part in their communities and participate in activities that are considered the norm for people in society generally.”*

Diversity shall include measures to prevent discrimination, promote equality of opportunity and protect the human rights of all persons across various dimensions, including but not limited to:

- Nationality
- Culture (including membership of minority groups)
- Language
- Ability (including level of literacy and media literacy)
- Age
- Gender
- Sexual orientation
- Financial circumstances

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<sup>1</sup>Which may be amended from time to time.

## Appendix 2: Applicant's Statement

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**TO:** The Minister for Public Expenditure Infrastructure Public Service Reform and Digitalisation (the “Contracting Authority”).

**RE:** Request to Participate in the DPS for the Provision of Creative Campaign Services to Public Sector Bodies in Ireland.

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 Services Contract we hereby agree and declare the following:

1. We understand the nature and extent of the Services required to be delivered as described in the Requirements and Specifications at Appendix 1 to the RFATP.
2. We accept all of the Terms and Conditions of:
  - a) the RFATP;
  - b) the DPS Agreement and agree that, if offered appointment to the DPS, we will execute the DPS Agreement at Appendix 5 of the RFATP and the Confidentiality Agreement at Appendix 7 of the RFATP;
  - c) the Services Contract and agree if awarded any contract pursuant to the DPS Agreement to execute the Services Contract at Appendix 6 to the RFATP.
3. We accept all the Selection Criteria as set out in Part 3 of the RFATP.
4. We agree to provide the Services in accordance with the RFATP, our Application, the RFT and our response to RFT if awarded any Services Contract pursuant to a DPS Agreement.
5. We agree that, if awarded any contract pursuant to a DPS Agreement that we shall, in the performance of such contract, comply with all applicable obligations in the field of environmental, social and labour law.
6. We confirm that we have complied with all requirements as set out at Part 2 of the RFATP.
7. Not Used.
8. We shall, if awarded any Services Contract pursuant to a DPS Agreement, have in place on the Effective Date of the Services Contract all insurances (if any) as required by paragraph 2.21.1 of the RFATP and as required by the RFT.
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 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 or services connected to our Application, 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. Any subcontractor, supplier or other entity on whose capacity we rely as part of our Application 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).

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

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

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The Electronic European Single Procurement Document which may be accessed in the Competition workspace at [www.etenders.gov.ie](http://www.etenders.gov.ie) and must (in accordance with paragraph 3.1 of the RFATP) be submitted with the Applicant's Application in response to this RFATP.

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

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Re: Request to Participate in a Dynamic Purchasing System for the Provision of Creative Campaign Services to Public Sector Bodies in Ireland.

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

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

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

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

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

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

|                                                                                                                                                                           |                                                     |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------|
| <hr/>                                                                                                                                                                     | <hr/>                                               |
| <b>Signature of Declarant</b>                                                                                                                                             | <b>Name of Declarant in print or block capitals</b> |
| Declared before me by _____ who is personally known to me<br>(or who is identified to me by _____ who is personally known to me)<br>at _____ this _____ day of _____ 20__ |                                                     |
| <hr/> (signed)<br><b>Practising Solicitor/Commissioner for Oaths</b>                                                                                                      |                                                     |

## Appendix 5: Dynamic Purchasing System Agreement

### Dynamic Purchasing Agreement for the provision of Creative Campaign Services to Public Sector Bodies in Ireland

THIS DYNAMIC PURCHASING AGREEMENT IS MADE ON THE \_\_\_\_ DAY OF \_\_\_\_\_ 20\_\_

("the DPS Agreement")

#### BETWEEN:

The Minister for Public Expenditure Infrastructure Public Service Reform and Digitalisation 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 Applications to Participate in a Dynamic Purchasing System for the provision of Creative Campaign Services to the Public Sector Bodies in Ireland*" ("the RFATP") the Contracting Authority invited Applicants to participate in a DPS agreement for the provision of the Services described in Appendix 1 of the RFATP (the "Services"). References to the RFATP shall include any clarifications in relation to the RFATP issued by the Contracting Authority via the messaging facility on [www.etenders.gov.ie](http://www.etenders.gov.ie) (the "Electronic Platform") between **[insert date]** and **[insert date]** (the "RFATP Clarifications"). The RFATP (including the RFATP Clarifications) is hereby incorporated by reference into this DPS Agreement.
2. The DPS Member submitted a response to the RFATP dated **[insert date of Application]** ("the Application"). References to the Application shall include any clarifications issued in writing via the Electronic Platform by the DPS Member to the Contracting Authority between **[insert date]** and **[insert date]** (the "Application Clarifications"). The Application (including the Application Clarifications) is hereby incorporated by reference into this DPS Agreement.
3. The DPS Member was appointed to the DPS as a result of the evaluation of its Application in accordance with the RFATP.

#### IT IS HEREBY AGREED AS FOLLOWS:

## 1. DEFINITIONS AND INTERPRETATION

**“Aggregated Mini Competition”** means a procurement competition run by a Central Government Department, duly authorised, for and on behalf of one or more Public Service Bodies (“PSBs”) as more particularly set out in the RFT, if applicable.

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

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

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

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

**“Month”** means a calendar month;

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

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

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

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

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

- 2.1 In consideration of payment by the Contracting Authority of the sum of €2.00, the receipt of which is hereby acknowledged by the DPS Member, the DPS Member accepts its appointment under the provisions of this DPS Agreement and agrees to comply with the terms of this DPS Agreement.
- 2.2 This DPS Agreement does not entitle the DPS Member to be consulted in respect of, or awarded any Contract during the DPS Term. The DPS Client(s) may at its or their sole discretion choose not to enter into any Contract pursuant to this DPS Agreement.
- 2.3 The Contracting Authority does not give any guarantee and/or warrant the actual value of any Services and/or number of Contracts (if any) which may be procured in connection with this DPS Agreement and the Parties acknowledge that the DPS Client(s) are not bound to enter into any Contract or other arrangement with the DPS Member as a result of entering into this DPS Agreement. Without prejudice to the foregoing the DPS Member hereby acknowledges that the Contracting Authority intends (but shall be under no obligation) to promote the DPS Agreement and to encourage use of the DPS Agreement by the DPS Client(s) and the DPS Member may be required to provide reasonable assistance in this respect.
- 2.4 This DPS Agreement does not confer exclusivity on any DPS Member. The DPS Clients may at their sole discretion opt to carry out a separate contract award procedure for contracts falling within the scope of this DPS Agreement. In this event, the DPS Client(s) shall observe all obligations at law and shall not afford any advantage to the DPS Member.
- 2.5 This DPS Agreement shall take effect on the Commencement Date and expire five (5) years thereafter ("the DPS Term") unless terminated earlier in accordance with this DPS Agreement or extended pursuant to clause 2.6 subject to compliance with regulation 34(27) of the Regulations.
- 2.6 "Not Used"
- 2.7 The DPS Member agrees that any information relating to this DPS Agreement and/or the performance of this DPS Agreement may be passed by the DPS Clients to the Contracting Authority and that the Contracting Authority may use this information in relation to the provision of the Services and in the analysis and reporting of spend data including the preparation and publishing of reports.

## **3. DPS AGREEMENT MANAGEMENT**

- 3.1 The DPS Member hereby agrees and undertakes to comply with the DPS Agreement management provisions as set out in Annex 1 to this DPS Agreement or as may be

notified in writing via the Electronic Platform by the Contracting Authority to the DPS Member from time to time.

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

#### **4. CONTRACT**

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

#### **5. PROCEDURE FOR AWARD OF CONTRACTS**

- 5.1 On each occasion that a DPS Client or group of DPS Clients propose(s) to award a Contract under this DPS Agreement, the DPS Client shall issue by electronic means a Request for Tenders ("RFT") to all DPS Members in accordance with the following procedure (a "Mini-Competition").
- 5.1.1 The RFT shall set out:
- the scope and term of the Contract to be awarded;
  - the specific DPS Client participating in each Mini-Competition;

- the relevant Award Criteria;
- the deadline (date and time) for the receipt of responses to the RFT (each a “Response”) taking into account the complexity of the Contract and the time needed to prepare an appropriate Response. Responses received after the deadline will not be considered;
- the types and levels of insurance required for the Contract;
- the type of service(s) required by the DPS Client(s);
- the Pricing Matrix that will apply to the relevant Mini-Competition
- any additional conditions (if any) that will apply to the Contract to be awarded in addition to the terms and conditions of the Contract at Appendix 6 of the RFATP.

5.1.2 All Responses to the RFT must be submitted via the Electronic Platform only. Responses received in any other manner including e-mail or hardcopy will not be considered. The Response submitted by the DPS Members will remain confidential until the deadline for submission of the Response.

5.1.3 Any clarifications issued by the Contracting Authority or the DPS Client, as applicable, in relation to a RFT will be communicated via the Electronic Platform only.

5.1.4 The DPS Client may award a Contract following an evaluation of the Responses based on the award criteria set out in Clause 6.1 below

5.1.5 The DPS Client reserves the right to issue or seek written clarifications via the Electronic Platform.

## 6. MANDATORY REQUIREMENT AND AWARD CRITERIA

### 6.1 Award Criteria for Mini-Competitions

The award criteria for Mini-Competition shall be:

Most Economically Advantageous Tender (“MEAT”)

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

| No. | AWARD CRITERIA                                                                                                                | WEIGHTING RANGE |
|-----|-------------------------------------------------------------------------------------------------------------------------------|-----------------|
| 1.  | Quality and Balance of the Team Proposed                                                                                      | 0% - 65%        |
| 2.  | Response to the Campaign Brief                                                                                                | 0% - 65%        |
| 3.  | Service Management and Delivery (including Account Management)                                                                | 0% - 65%        |
| 4.  | Proposals on the incorporation of Social Considerations (diversity and/or social inclusion) into the delivery of the services | 0% - 15%        |

|              |       |             |
|--------------|-------|-------------|
| 5.           | Price | 35% - 65%   |
| <b>TOTAL</b> |       | <b>100%</b> |

- 6.2 Where the DPS Member cannot provide up-to-date evidence as required in clause 3.2 of this DPS Agreement to demonstrate that each entity concerned meets the compliance and selection requirements specified at paragraphs 3.1 and 3.2 of the RFATP, then the DPS Client may proceed to offer the Contract to the next highest-ranked DPS Member.
- 6.3 No enforceable commitment of any kind, contractual or otherwise will exist unless and until a formal written Contract has been executed by or on behalf of the DPS Client.
- 6.4 The DPS Client(s) may cancel a Mini-Competition at any time prior to a Contract being executed by the DPS Client. Any notification of preferred bidder status by the DPS Client shall not give rise to any enforceable rights by the DPS Member.

## **7. APPLICABLE LAW AND JURISDICTION**

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

## **8. COMPLIANCE WITH LAWS**

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

## **9 TAX CLEARANCE**

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

## **10. ANTI COMPETITIVE CONDUCT**

- 10.1 Without prejudice to the generality of clause 8.1, the DPS Member shall comply with the Competition Act 2002 (as amended, the "2002 Act"). The 2002 Act makes it a

criminal offence for Applicants to collude on prices or terms in a public procurement competition.

## **11. CONFLICTS OF INTEREST**

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

## **12. REGISTERABLE INTEREST**

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

## **13. CONFIDENTIALITY**

- 13.1 All communications between the Contracting Authority or any DPS Client(s) and the DPS Member must be treated as being strictly confidential. The DPS Member undertakes to comply with all reasonable directions of the Contracting Authority and any DPS Client with regard to the use and application of all and any confidential information and shall comply with the Confidentiality Agreement(s) executed by the DPS Member pursuant to clause 13.2 below. All of the DPS Member’s employees and personnel, including Subcontractors and their employees and personnel, who provide the Services may be required, at the absolute discretion of the Contracting Authority and/or the DPS Client(s), to sign a confidentiality agreement in a format as determined by the Contracting Authority and/or the DPS Client(s).
- 13.2 The DPS Member shall execute a Confidentiality Agreement in the form set out at Appendix 7 to the RFATP.

- 13.3 No publicity regarding this DPS Agreement or any Mini-Competition or Contract pursuant to this DPS Agreement is permitted unless and until the Contracting Authority and any relevant DPS Client(s) has given their prior written consent to the relevant communication.

## **14 NOTICES**

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

## **15. GIFTS**

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

## **16. COSTS AND EXPENSES OF DPS AGREEMENT**

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

## **17 TERMINATION**

- 17.1 This DPS Agreement may be terminated by the Contracting Authority, without liability for compensation or damages, by serving 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 as set out in Annex 1 to this DPS Agreement shall be deemed to be a serious breach of this DPS Agreement;
- 17.2.2 if the DPS Member commits any serious breach or a series of breaches of any Contract awarded pursuant to this DPS Agreement and fails to remedy such breach(es) to the reasonable satisfaction of the Contracting Authority and the DPS Client(s), within 30 days after a receipt of a request in writing via the Electronic Platform from the Contracting Authority or any DPS Client.
- 17.2.3 if the DPS Member becomes insolvent, becomes bankrupt, is wound up, enters into examinership, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
- 17.2.4 in circumstances where the Contracting Authority becomes aware that any of the exclusion grounds listed in Regulation 57 of the European Union (Award of Public Authority Contracts) Regulations 2016 (SI 284 of 2016) apply to the DPS Member;
- 17.2.5 In circumstances where the DPS Member fails to provide up-to-date evidence when requested to do so by the Contracting Authority in accordance with clause 3.2 of this DPS Agreement to demonstrate to the satisfaction of the Contracting Authority that they meet the compliance and selection requirements specified at Part 3 of the RFATP;
- 17.2.6 In circumstances where the DPS Member changes the Subcontractor(s) nominated and relied upon by the DPS Member in their Application for admission to the DPS but fails to demonstrate to the satisfaction of the Contracting Authority, including by way of submitting updated documentary evidence as required in clause 3.2 of this DPS Agreement, that by changing Subcontractor the DPS Member continues to fulfil the compliance and selection requirements specified at Part 3 of the RFATP;

- 17.2.7 in circumstances where the Contracting Authority becomes aware of any conflict of interest on the part of the DPS Member which cannot, in the opinion of the Contracting Authority, be removed by other means; and
- 17.2.8 in circumstances where the Contracting Authority becomes aware of any registrable interest on the part of the DPS Member.
- 17.3 Subject to clause 17.2.2, the termination of a Contract awarded under this DPS Agreement does not affect the validity of this DPS Agreement.
- 17.4 Termination of this DPS Agreement shall not affect any antecedent and accrued rights, obligations or liabilities of either Party, nor shall it affect any provision of this DPS Agreement which is expressly or by implication intended to come into or continue in force on or after such termination.

## **18. FREEDOM OF INFORMATION**

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

## **19. DISPUTE RESOLUTION**

- 19.1 In the event of any dispute arising out of or relating to this Agreement (the "Dispute"), the Parties shall first seek settlement of the Dispute as set out below.
- 19.2 The Dispute shall be referred as soon as practicable to [insert DPS Member senior contact] within the DPS Member and to [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

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

## 21. FORCE MAJEURE AND CONTINGENCY PLAN

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

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

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

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

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

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

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

|                      |                      |
|----------------------|----------------------|
| <hr/> <b>Witness</b> | <hr/> <b>Witness</b> |
|----------------------|----------------------|

**Reporting to OGP**

The DPS Member will be required to provide OGP with spend data broken down by DPS Client. This data will be required on a quarterly basis (Quarterly Reports) in the format outlined below:

**Sample Quarterly Report Format:**

|                     |                                                  |                     |                          |                                               |
|---------------------|--------------------------------------------------|---------------------|--------------------------|-----------------------------------------------|
| <b>Period:</b>      | Quarter 1 202X                                   |                     |                          |                                               |
| <b>Client Name:</b> | <b>Campaign Name:</b>                            | <b>Agency Fees:</b> | <b>Production Costs:</b> | <b>Overall campaign spend for the period:</b> |
| <b>Client A</b>     | Campaign 1                                       | €                   | €                        | €                                             |
|                     | Campaign 2                                       | €                   | €                        | €                                             |
|                     | Campaign 3                                       | €                   | €                        | €                                             |
|                     | <b><i>Total client spend for the period:</i></b> |                     |                          | <b>€</b>                                      |
| <b>Client B</b>     | Campaign 1                                       | €                   | €                        | €                                             |
|                     | Campaign 2                                       | €                   | €                        | €                                             |
|                     | <b><i>Total client spend for the period:</i></b> |                     |                          | <b>€</b>                                      |
| <b>Client C</b>     | Campaign 1                                       | €                   | €                        | €                                             |
|                     | Campaign 2                                       | €                   | €                        | €                                             |
|                     | <b><i>Total client spend for the period:</i></b> |                     |                          | <b>€</b>                                      |

Additionally, the DPS Member may be required to provide management information to the OGP from time to time by way of bespoke reports upon request. This shall be either the provision of existing information to be provided by the DPS Member in a different format, or the provision of new management information.

The DPS Member may be required to deliver copies of DPS Client-specific reports for each contract awarded pursuant to Mini-Competitions to OGP, on request.

The DPS Member may be required to provide the OGP with a copy of any Contract awarded to it pursuant to the DPS.

## Appendix 6 - Services Contract

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[Insert name of Contracting Authority]

and

[Insert successful Tenderer's full legal name]

### **AGREEMENT**

Relating to the provision of Services pursuant to  
Request for Tenders for the provision of [Insert type of services required]

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

[Insert name of Client] of [address] ("the Client");

and

[Contractor's full legal name], of [address:] ("the Contractor")

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

**WHEREAS:**

- A. By Request for Tender entitled "[redacted]" advertised in the supplement to the Official Journal of the European Union, OJEU Notice Number [redacted] of [redacted] ("the RFT") the Contracting Authority invited economic operators to participate in a Dynamic Purchasing System Agreement for the provision of the Services described in Appendix 1 of the RFATP (the "Services"). References to the RFATP shall include any clarifications issued by the Contracting Authority via the messaging facility on [www.etenders.gov.ie](http://www.etenders.gov.ie) (the "Electronic Platform") between [insert date] and [insert date] (the "RFATP Clarifications"). The RFATP (including the RRFATP Clarifications) is hereby incorporated by reference into this Agreement.
- B. The Contractor submitted a response to the RFATP dated [insert date of Application] ("the Application"). References to the Application shall include any clarifications issued by the Contractor in writing via the Electronic Platform to the Contracting Authority between [insert date] and [insert date] (the "Application Clarifications"). The Application (including the Application Clarifications) is hereby incorporated by reference into this Agreement.
- C. The Contracting Authority and the Contractor entered into a Dynamic Purchasing System Agreement on [insert date of DPS Agreement] (the "DPS Agreement"). The DPS Agreement is incorporated by reference into this Agreement.
- D. In accordance with the DPS Agreement, by way of Request for Tenders dated [insert date of RFT] ("the RFT"), the Contracting Authority invited responses from all DPS Members for the provision of the Services set out in the RFT. References to the RFT shall include any clarifications issued by the Contracting Authority 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 consists of the following documents, and in the case of conflict of wording, in the following order of priority:
  - i. This Agreement and Schedules A to E attached hereto;
  - ii. The Dynamic Purchasing Agreement;
  - iii. The RFATP;
  - iv. The RFT;
  - v. The Application;
  - vi. The Tender Response.
2. The Contractor agrees to provide the Services described in Schedule B (the “Services”) to the Client in accordance with this Agreement (“Agreement”). Schedule B details the nature, quantity, quality, time of delivery, key personnel and functional specifications of the Services in accordance with the RFT, the RFT, the Submission and the Response (“the Specification”).
3. Subject to the terms and conditions of this Agreement, the Client agrees to pay to the Contractor the charges as stipulated in Schedule C (“the Charges”). The Charges are exclusive of VAT which shall be due at the rate applicable on the date of the VAT invoice.
4. For the purposes of this Agreement, the Client’s Contact is [insert contact name] of [insert contact address]; the Contractor’s Contact is [Contractor contact name: to be completed on signing] of [Contractor contact address: to be completed on signing].
5. This Agreement shall take effect on the date of this Agreement (“the Effective Date”) and shall expire on [insert date], unless it is otherwise terminated in accordance with the provisions of this Agreement or otherwise lawfully terminated or otherwise lawfully extended as agreed between the Parties (“the Term”).

*Delete and replace with “Not Used” if not applicable:*

The Client reserves the right to extend the Term for a period or periods of up to [Insert number] months with a maximum of [Insert number] such extensions permitted subject to its obligations at law.
6. Unless otherwise specified herein, a defined term used in this Agreement shall have the same meaning as assigned to it in the RFT.
7. Headings are included for ease of reference only and shall not affect the construction of this Agreement.
8. Unless the context requires otherwise, words in the singular may include the plural and vice versa.
9. References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended, unless specifically indicated otherwise.
10. In the event that any ambiguity or question of intent or interpretation arises in relation to this Agreement, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favouring or disfavouring any Party by virtue of the authorship of any of the provisions of this Agreement.

SIGNED for and on behalf of the Client

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

Witness

SIGNED for and on behalf of the Contractor

\_\_\_\_\_

Witness

### 1. Contractor's Obligations

- A. The Contractor undertakes to act with due care, skill and diligence in the provision of the Services and generally in the carrying out of its obligations under this Agreement and in the appointment, monitoring and retention of its agents and Subcontractors. The Contractor shall require its agents and Subcontractors to exercise due care, skill and diligence in the provision of the Services and generally in the carrying out of obligations allocated by the Contractor to its agents and Subcontractors under this Agreement.
- B. In consideration of the payment of the Charges and subject to clause 3 the Contractor shall:
1. provide the Services in accordance with the Specification, the RFT, the Client's directions and the terms of this Agreement;
  2. comply with and implement any policies, guidelines and/or any project governance protocols issued by the Client from time to time and notified to the Contractor in writing;
  3. comply with all local security and health and safety arrangements as notified to it by the Client; and
  4. provide the Services in accordance with good industry practice and comply with all applicable laws including but not limited to all obligations in the field of environmental, social and labour law that apply at the place where the Services are provided, that have been established by EU law, national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (the "Regulations"). The Contractor shall be responsible for compliance with all statutory requirements of an employer and without prejudice to the generality of the foregoing shall be solely responsible in law for the employment, remuneration, taxes, immigration and work permits of all personnel retained for the purposes of complying with this Agreement.
- C. The Contractor is deemed to be the prime contractor under this Agreement and the Contractor assumes full responsibility for the discharge of all obligations under this Agreement and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Contractor as prime contractor under the Submission hereby assumes liability for its Subcontractors and shall ensure that its Subcontractors shall comply in all respects with the relevant terms of this Agreement, including but not limited to clause 1B(4), to the extent that it or they are retained by the Contractor. Subject to clause 14, the Contractor shall notify the Client as soon as possible of any changes to the name, contact details and legal representatives of its Subcontractors.
- D. Without prejudice to clause 1C, where the Client becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any

- Subcontractor, the Client reserves the right to require the Contractor to immediately replace such Subcontractor and the Contractor shall comply with such requirement. The Contractor shall include in every sub-contract a right for the Contractor to terminate the sub-contract where any of the exclusion grounds apply to the Subcontractor and a requirement that the Subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.
- E. During this Agreement the Contractor shall be an independent contractor and not the employee of the Client. Neither Party shall have any authority to bind or commit the other. Nothing herein shall be deemed or construed to create a joint venture, partnership, and/or fiduciary or other relationship between the Parties for any purpose. The officers, employees or agents of the Contractor are not and shall not hold themselves out to be (and shall not be held out by the Contractor as being) servants or agents of the Client for any purposes whatsoever.
  - F. The Client acknowledges that the Contractor may from time to time be dependent on the Client to facilitate the Contractor in the carrying out of its duties under this Agreement. The Client agrees to use its reasonable endeavours to so facilitate the Contractor within the timescales and in the manner agreed by it in writing in accordance with clause 10.
  - G. The Contractor agrees that any information relating to this Agreement and / or the performance of this Agreement may be passed by the Client to the Office of Government Procurement (“OGP”) and that the OGP may use this information in the analysis and reporting of spend data including the preparation and publishing of reports.
  - H. The Contractor shall comply with all applicable obligations arising pursuant to the European Communities (Protection of Employees’ Rights on Transfer of Undertakings) Regulations 2003 (S.I. No. 131 of 2003) and Council Directive 2001/23/EC (together the “TUPE Regulations”) and failure to so comply shall constitute a serious breach of this Agreement. The Contractor shall indemnify, save harmless and keep the Client indemnified from and against any claim arising or loss or costs incurred as a result of its failure or incapacity to fulfil its obligation under the said TUPE Regulations.

## 2. Key Personnel

The Contractor undertakes and acknowledges that it is responsible for ensuring that all key personnel as specified in the Submission (“Key Personnel”), assigned by it to provide the Services shall be available for the Term of this Agreement. The Contractor acknowledges that the Key Personnel are essential to the proper provision of the Services to the Client. In the event that any of the Key Personnel assigned by the Contractor to provide the Services under this Agreement becomes unable to provide the Services for whatever reason then, the Contractor acknowledges and undertakes that it shall immediately notify the Client in writing of the inability of any Key Personnel and replace that person with a person of equivalent experience and expertise (“Replacement Personnel”). The Contractor shall provide to the Client such details as the Client may reasonably require in writing regarding

any Replacement Personnel. The Client shall have absolute discretion as to the suitability of any proposed Replacement Personnel.

### 3. Payment

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

- F. The Charges shall be discharged as provided for in this clause subject to the retention by the Client in accordance with section 523 of the Taxes Consolidation Act 1997 of any Professional Services Withholding Tax payable to the Contractor. Any and all taxes applicable to the provision of the Services will be the sole responsibility of the Contractor and the Contractor so acknowledges and confirms.

#### 4. Warranties, Representations and Undertakings

- A. The Contractor acknowledges, warrants, represents and undertakes that:
1. it has the authority and right under law to enter into, and to carry out its obligations and responsibilities under this Agreement and to provide the Services hereunder;
  2. it is entering into this Agreement with a full understanding of its material terms and risks and is capable of assuming those risks;
  3. it is entering into this Agreement with a full understanding of its obligations with regard to taxation, employment, social and environmental protection and is capable of assuming and fulfilling those obligations;
  4. it has acquainted itself with and shall comply with all legal requirements or such other laws, recommendations, guidance or practices as may affect the provision of the Services as they apply to the Contractor;
  5. it has taken all and any action necessary to ensure that it has the power to execute and enter into this Agreement;
  6. the status of the Contractor, as declared in the "Declaration as to Personal Circumstances of Applicant" dated [date], which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Contractor, remains unchanged;
  7. it owns, has obtained or is able to obtain, valid licences for all Intellectual Property Rights (as defined in clause 6 below) that are necessary for the performance of its obligations under this Agreement and for the Client to obtain the benefit of the Services for its business purposes;
  8. *Delete and replace with "Not Used" if not applicable:*  
it has inspected the Client's premises, lands and facilities before submitting its Submission and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under this Agreement;
  9. the Client shall be under no obligation to purchase any minimum number or value of Services; and
  10. it retains and shall 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 4A.10.

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

## 5. Remedies

***Prior to publication please ensure to insert amounts/figures where applicable.***

***When finished, delete these instructions.***

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

particular Services with which it is dissatisfied together with the reasons for such dissatisfaction. Payment of the Retention Amount will be made upon replacement and/or remedy of the said Services as identified by the Client or resolution of outstanding queries. The Client shall hold the Retention Amount on behalf of the Contractor but without any obligation to invest. The terms of this clause 5F shall be without prejudice to and not be in substitution for any remedy of the Client under this Agreement.

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

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

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

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

Where the Liquidated Damages Threshold is met or exceeded (being that delivery continues not to be performed after the Liquidated Damages Threshold is met), the Client shall be entitled to:

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

## 6. Intellectual Property

- A. Intellectual Property Rights (“IPR”) means all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and

registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

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

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

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

## 7. Confidentiality

- A. Each of the Parties to this Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in this Agreement ("Confidential Information") and shall not disclose same to any third party except to:-
- 1. its professional advisers subject to the provisions of this clause 7; or
  - 2. as may be required by law; or
  - 3. as may be necessary to give effect to the terms of this Agreement subject to the provisions of this clause 7; or
  - 4. in the case of the Client by request of any person or body or authority whose request the Client or persons associated with the Client (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- B. The Contractor undertakes to comply with all reasonable directions of the Client with regard to the use and application of all and any of its Confidential Information and shall comply with the Confidentiality Agreement between the Contractor and the Client dated [insert date] and entered into pursuant to clause 13.2 of the DPS Agreement ("the Confidentiality Agreement").
- The obligations in this clause 7 will not apply to any Confidential Information:
- 1. in the receiving Party's possession (with full right to disclose) before receiving it from the other Party; or
  - 2. which is or becomes public knowledge other than by breach of this clause; or
  - 3. is independently developed by the disclosing Party without access to or use of the Confidential Information.

is lawfully received by the disclosing Party from a third party (with full right to disclose).

- C. The Contractor acknowledges that the security of the State and its information is of paramount importance to the Client. Accordingly the Contractor confirms that it will, if requested by the Client, from time to time, submit full personal details (including those of Subcontractors) who are assigned to provide the Services (or any part thereof) under this Agreement. The Contractor further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Contractor shall comply with all reasonable directions of the Client arising therefrom.
- D. In circumstances where the Client is subject to the provisions of the Freedom of Information Act 2014 or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014, then in the event of the Client receiving a request for information related to this Agreement, the Client shall consult with the Contractor in respect of the request. The Contractor shall 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.
- E. The terms of this clause 7 shall survive expiry, completion or termination for whatever reason of this Agreement.

## 8. Force Majeure

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

always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

- C. If the Force Majeure Event continues for [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 from any obligation to make payments under this Agreement save to the extent that payments are properly due and payable for obligations actually fulfilled by the Contractor in accordance with the terms and conditions of this Agreement.

## 9. Termination

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

- E If requested by the Client, the Contractor shall, promptly furnish such anonymised information relating to the terms and conditions of the employment of all persons providing the Services as may be required by the Client (“Employment Information”). The Contractor agrees that the Client may release the Employment Information to third parties for the purposes of any procurement competition for the provision of the Services upon expiry of the Term or earlier termination of this Agreement for whatever cause.

## 10. Contract Management

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

## 11. Disputes

- A. In the event of any dispute arising out of or relating to this Agreement (the “Dispute”), the Parties shall first seek settlement of the Dispute as set out below.
- B. The Dispute shall be referred as soon as practicable to [insert Contractor contact] within the Contractor and to [insert Client contact] within the Client respectively.
- C. If the Dispute has not been resolved within fifteen (15) Business Days (or such longer period as may be agreed in writing by the Parties) of being referred to the nominated representatives, then either Party may refer the Dispute to an independent mediator, the identity of whom shall be agreed in advance by the Parties.

- D. If the Parties are unable to agree on a mediator or if the mediator agreed upon is unable or unwilling to act, either Party may within twenty-one (21) days from the date of the proposal to appoint a Mediator or within twenty-one (21) days of notice to either Party that the mediator is unable to act, apply to the Mediator's institute of Ireland to appoint a mediator.
- E. Any submissions made to and discussions involving the mediator, of whatever nature, shall be treated in strict confidence and without prejudice to the rights and/or liabilities of the Parties in any legal proceedings and, for the avoidance of doubt, are agreed to be without prejudice and legally privileged. The Parties shall make written submissions to the mediator within ten (10) Business Days of his/her appointment.
- F. The Parties shall share equally the cost of the mediator. The costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by that Party.
- G. For the avoidance of doubt, the obligations of the Parties under this Agreement shall not cease, or be suspended or delayed by the reference of a dispute to mediation. The Contractor shall comply fully with the requirements of the Agreement at all times.

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

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

## **13. Notices**

- A. Any notice or other written communication to be given under this Agreement shall either be delivered personally or sent by registered post or email. The Parties will from time to time agree primary and alternative contact persons and details for the purposes of this clause 13.
- B. All notices shall be deemed to have been served as follows:
  - 1. if personally delivered, at the time of delivery;
  - 2. if posted by registered post, at the expiration of 48 hours after the envelope containing the same was delivered into the custody of the postal authorities (and not returned undelivered); and
  - 3. if communicated by email, on the next calendar day following transmission.

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

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

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

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

#### **16. Severability**

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

#### **17. Waiver**

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

#### **18. Non-exclusivity**

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

#### **19. Media**

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

## 20. Conflicts, Registrable Interests and Corrupt Gifts

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

## 21. Access to Premises

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

## 22. Equipment

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

## 23. Non Solicitation

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

## 24. Change Control Procedure

- A. At any time during the Term of this Agreement, either Party may propose a change or changes to any part or parts of this Agreement.
- B. The change control procedures set out in this Schedule will apply to all changes irrespective of whether the Contractor or the Client proposes the change.
- C. A change control notice ("Change Control Notice") shall be prepared for all change requests. The Change Control Notice will provide an outline description of the change requested, the rationale for the change, the effect that the change will have on the Services (where known) and an estimate of the effort and cost required to prepare an impact assessment ("Impact Assessment").
- D. All Change Control Notices proposing changes to this Agreement must be submitted for review to the other Party's Contact.

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

## 25. Data Protection and Security

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

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

“Data Controller” has the meaning given under the Data Protection Laws;

“Data Processor” has the meaning given under the Data Protection Laws;

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

“Data Subject” has the meaning given under the Data Protection Laws;

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

“Personal Data” has the meaning given under Data Protection Laws;

“Processing” has the meaning given under the Data Protection Laws;

- B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.

- C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Data which is Personal Data. Schedule E sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.

- D. Without prejudice to the generality of clause 25B, the Contractor shall, in relation to any Personal Data processed in connection with the performance by the Contractor of its obligations under this Agreement:-

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

(2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the

data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

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

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

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

- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless

the Contractor is required by the laws of any member of the European Union or by the laws of the European Union applicable to the Contractor to store the Personal Data.

- I. The Contractor shall permit the Client, the Office of the Data Protection Commission or other supervisory authority for data protection in Ireland, and/ or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the Services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 25 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
  - (1) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
  - (2) ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
  - (3) in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. (IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR – DELETE IF NOT IN USE)

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

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

the Client consents to the Contractor appointing [insert third-party processor] as a third-party processor of Personal Data under this Agreement. The Contractor confirms that it has entered or (as the case may be) will enter into a written agreement incorporating terms which are substantially similar to those set out in this clause 25 as between the Client and the Contractor, the Contractor shall remain fully

liable for all acts or omissions of any third-party processor appointed by it pursuant to this clause 25.

- N. Save for clauses 25B, 25C, 25D(4) and 25E, all the obligations on the Contractor in this clause 25 relating to the processing of Personal Data shall apply to the processing of all Data.
- O. The provisions of this clause 25 shall survive termination and or expiry of this Agreement for any reason.

## 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: Services: The Specification

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[Insert when completing contract]

## Schedule C: Charges

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[Insert when completing contract]

## **Schedule D: Service Levels**

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

**[complete when completing the contract]**

**Processing, Personal Data and Data Subjects**

**1. Processing by the Contractor**

**1.1 Subject matter of processing**

**1.2 Nature of processing**

**1.3 Purpose of processing**

**1.4 Duration of the processing**

**2. Types of personal data**

**3. Categories of data subject**

## Appendix 7 Confidentiality Agreement

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

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

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

### WHEREAS

- A. By Request for Applications to Participate in a Dynamic Purchasing System dated [insert date] entitled “*Request for Applications to Participate in a Dynamic Purchasing System for the provision of Creative Campaign Services to Public Sector Bodies in Ireland*” (the “RFATP”) the Contracting Authority invited applications (“Applications”) to participate in a DPS for the supply of the goods described in Appendix 1 to the RFATP (the “Goods”). The Contractor submitted an Application to the RFATP dated the [insert date of Tender].

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

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

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

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

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

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

PROVIDED ALWAYS that the Contractor shall ensure that all such persons and bodies are made aware, prior to disclosure, of the confidential nature of the Confidential Information and that they owe a duty of confidence to the Contracting Authority and the DPS Clients; and shall use all reasonable endeavours to ensure that such persons and bodies comply with the provisions of this Agreement.
5. The obligations in this Agreement will not apply to any Confidential Information:
  - i in the Contractor’s possession (with full right to disclose) before receiving it from the Contracting Authority or the DPS Client, as applicable; or
  - ii which is or becomes public knowledge other than by breach of this clause; or
  - iii is independently developed by the Contractor without access to or use of the Confidential Information; or
  - iv is lawfully received from a third party (with full right to disclose).
6. The Contractor undertakes:
  - 6.1 to comply with all directions of the Contracting Authority and the DPS Clients with regard to the use and application of all and any Confidential Information (including personal data as defined in the Data Protection Law);
  - 6.2 to comply with all directions as to local security arrangements deemed reasonably necessary by the Contracting Authority and / or any DPS Client including, if required, completion of documentation under the Official Secrets Act 1963 and comply with any vetting requirements of the Contracting Authority and / or any DPS Client including by police authorities;
  - 6.3 upon termination of the Competition (or the DPS Agreement or the Contract) for whatever reason to furnish to the Contracting Authority and / or the DPS Client, as applicable, all Confidential Information or at the written direction of the Contracting Authority and / or the DPS Client to destroy in a secure manner all (or such part or parts thereof as may be identified by the Contracting Authority and / or the DPS Client) Confidential Information in its possession and shall erase any Confidential Information held by the Contractor in electronic form. The Contractor will upon request furnish a certificate to that effect should the Contracting Authority and / or the DPS Client so request in writing. For the avoidance of doubt “document”

includes documents stored on a computer storage medium and data in digital form whether legible or not

7. The Contractor shall not obtain any proprietary interest or any other interest whatsoever in the Confidential Information furnished to them by the Contracting Authority or any DPS Client and the Contractor so acknowledges and confirms.
8. The Contractor shall, in the performance of the DPS Agreement and any Contract, access only such hardware, software, infrastructure, or any part of the databases, data or ICT system(s) of the Contracting Authority or any DPS Client as may be necessary for the purposes of the Competition (and obligations thereunder or arising therefrom) and only as directed by the Contracting Authority and/or the DPS Client, as applicable, and in the manner agreed in writing between the Parties.
9. The Contractor agrees that this Agreement will continue in force notwithstanding any court order relating to the Competition or termination of the DPS Agreement or termination of the Contract (if awarded) for any reason.
10. The Contractor agrees that this Agreement shall in all aspects be governed by and construed in accordance with the laws of Ireland and the Contractor hereby further agrees that the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with this Agreement.
11.
  - A. In this Agreement, the following terms shall have the meanings respectively ascribed to them:
    - “Data Controller” has the meaning given under the Data Protection Laws;
    - “Data Processor” has the meaning given under the Data Protection Laws;
    - “Data Subject” has the meaning given under the Data Protection Laws;
    - “Data Subject Access Request” means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;
    - “Personal Data” has the meaning given under Data Protection Laws;
    - “Processing” has the meaning given under the Data Protection Laws;
  - B. The Contractor shall comply with all applicable requirements of the Data Protection Laws.
  - C. The Parties acknowledge that for the purposes of the Data Protection Laws, the Client is the Data Controller and the Contractor is the Data Processor in respect of Confidential Information which is Personal Data. Schedule A sets out the scope, nature and purpose of Processing by the Contractor, the duration of the Processing and the types of Personal Data and categories of Data Subject.
  - D. Without prejudice to the generality of clause 10(B), the Contractor shall, in relation to any Confidential Information which is Personal Data:-
    - (1) process that Personal Data only on the written instructions of the Client;
    - (2) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Client, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction

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

- (3) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;
- (4) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Client has been obtained and the following conditions are fulfilled:
  - i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 ( General Data Protection Regulation);
  - ii. the data subject has enforceable rights and effective legal remedies;
  - iii. The Contractor complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and
  - iv. The Contractor complies with reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data.
- E. The Contractor shall promptly notify the Client if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Client's obligations under the Data Protection Laws and provide full co-operation and assistance to the Client in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).
- F. The Contractor shall without undue delay report in writing to the Client any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.
- G. The Contractor shall assist the Client in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.
- H. The Contractor shall at the written direction of the Client, amend, delete or return Personal Data and copies thereof to the Client on termination of this Agreement unless the Contractor is required by the laws of any member of the European Union

or by the laws of the European Union applicable to the Contractor to store the Personal Data.

- I. The Contractor shall permit the Client, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and / or their nominee to conduct audits and or inspections of the Contractor's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Contractor in any way for the provision of the services. The Contractor shall comply with all reasonable directions of the Client arising out of any such inspection, audit or review.
- J. The Contractor shall fully comply with, and implement policies which are communicated or notified to the Contractor by the Client from time to time.
- K. The Contractor shall maintain complete and accurate records and information to demonstrate its compliance with this clause 11 and allow for inspections and contribute to any audits by the Client or the Client's designated auditor.
- L. The Contractor shall:-
  - 1. take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;
  - 2. ensure that a back-up copy of any and all such Personal Data is made [insert frequency] and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and
  - 3. in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense or, at the Client's option, reimburse the Client for any reasonable expenses it incurs in having the Personal Data restored by a third party.
- M. *(IF YOU ARE NOT CONSENTING TO A THIRD PARTY PROCESSOR - DELETE IF NOT IN USE)*

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

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

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

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

|                                                       |                                            |
|-------------------------------------------------------|--------------------------------------------|
| SIGNED for and on behalf of the Contracting Authority | SIGNED for and on behalf of the Contractor |
| <hr/>                                                 | <hr/>                                      |
| (being a duly authorised officer)                     |                                            |
| Witness                                               | Witness                                    |

## **Schedule A to the Confidentiality Agreement: Data Protection**

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*[complete when completing the confidentiality agreement]*

### Processing, Personal Data and Data Subjects

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

**End of Document**

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