# Tender and Schedule

for

|  |  |
| --- | --- |
| *The Project* |  |

using the

**Short Public Works Contract**

Office of Government Procurement

Short Public Works Contract

Document Reference FTS6 v.16

19 July 2023

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Department of Public Expenditure, NDP Delivery and Reform  
Government Buildings  
Upper Merrion Street  
Dublin 2.

# FORM OF TENDER

|  |  |  |
| --- | --- | --- |
| **To** | *The Employer* |  |
|  | *Address of Employer* |  |
|  | *For the attention of*[[1]](#footnote-1) |  |
|  | *Regarding[[2]](#footnote-2)* |  |
| **Date** |  |  |

A Dhaoine Uaisle

We have examined and understand the Conditionsof the *Short Public Works Contract* and the documents listed in the attached Schedule. We offer to complete the Works on the terms of and in conformity with that contract for the lump sum of

|  |  |
| --- | --- |
|  | euro[[3]](#footnote-3) Excluding all VAT[[4]](#footnote-4), |

as adjusted in accordance with the Contract.

If included in the attached Schedule or elsewhere in the attached documents, we also offer to accept appointment as project supervisor for the construction stage on terms required by the Contract if appointed as Contractor for the Works.

In consideration of you providing us with the contract documents, we agree not to withdraw this offer until the latest of:

(a)    [[5]](#footnote-5) days after the end of the last day for submission of this Tender

(b) expiry of at least 21 days written notice to terminate this Tender given by us, which may not

issue prior to the expiry of the period at (a)

Your acceptance of this Tender within that time will result in the Contract being formed between us.

We agree that you are not bound to accept the lowest or any tender you may receive.

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|  |  |
| --- | --- |
| *Signature of authorised person* |  |
| *Name in capitals* |  |
| *Title* |  |

On behalf of

|  |  |
| --- | --- |
| *Tenderer’s name in full* |  |
| *Postal address* |  |

In the presence of

|  |  |
| --- | --- |
| *Name of witness* |  |
| *Signature of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

**TENDER ACCEPTED**

**Signed on behalf of the Employer[[6]](#footnote-6)**

|  |  |
| --- | --- |
| *Signature of an officer authorised to sign contracts on behalf of the Employer* |  |
| *Name in capitals* |  |
| *Title* |  |

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| --- | --- | --- |
| **Date** |  |  |

# SCHEDULE

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
| **Clause** | |  | | |
| 1.1 | Employer’s Representative | |  | |
| Time for Completion | |  | days, starting on the day this Contract comes into effect or as stated in another contract document |

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| 1.3 | Other documents in the Contract |  |

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| --- | --- | --- |
| 1.10 | Performance Bond | is required |
|  |  | The amount of the performance bond is to be 10%[[7]](#footnote-7) of the Price (as stated in the accepted tender) up to issue of the certificate of the date that the Works are substantially complete, and 5%[[8]](#footnote-8) of the Price (as so stated) for the subsequent period stated in the form of bond. |

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| 2.6 | Rate of liquidated damages | € | per day |

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| --- | --- | --- |
| 2.8 | Weather station |  |

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| 3.15 | Defects Certificate issued | Between 12 and 13 months after the date on which the Works are certified substantially complete. |

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| 4.1 | Interim payment | Monthly 90% of the value of Works completed and materials delivered to the Site with title vested in the Employer to the Employer’s satisfaction | |
|  | Percentage of Price to be paid after Employer certifies the Works are substantially complete | | 95% |

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| --- | --- | --- | --- |
| 4.2, 4.3 | Time for payment | 10 | working days after Employer receives invoice for certified sum |

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| --- | --- | --- | --- |
| 10.3 | Minimum indemnity limit for public liability insurance. | € | for any one event. (Limit may be on an annual aggregate basis for products liability, collapse, vibration, subsidence, removal and weakening of supports and sudden and accidental pollution.) |
| Minimum indemnity limit for employer’s liability insurance | € | for any one event |

|  |  |  |  |
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| 10.4 | Maximum levels of excess for | |  |
|  | * insurance of the Works and goods and materials for the Works | € |
|  | * public liability | €6,500[[9]](#footnote-9) |
|  | * employer’s liability | €6,500[[10]](#footnote-10) |

|  |  |  |
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| 12.3 | Percentage of the unpaid portion of the Price to be paid if Employer terminates, clause 12.2 does not apply, and Employer appoints another contractor within 12 months. | 4% |

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| 14 | Project Supervisor | Contractor is to be appointed as Project Supervisor for the Construction Stage. |

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| 15.2, 15.3 | Body to appoint conciliator, if not agreed | The Royal Institute of the Architects of Ireland |
| Person to appoint adjudicator, if not agreed | Chairperson of the Panel of Adjudicators |

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| --- | --- | --- |
| 17.1 | Subject to clause 17.2 of the Conditions, the monetary amount of the Contractor’s liability to the Employer under or arising out of this Contract shall not exceed the amount stated here[[11]](#footnote-11). | €[      ] ([     ] euro) |

|  |  |  |
| --- | --- | --- |
| 18 | Table of Material Categories to apply for Clause 18 Price Variation: | Table 1A ("All Materials" category only) applies |

**NOTE** Shaded text (like this) may be amended

**APPENDIX 3 to Clause 18**

## PART 1: PROPORTIONS OF MATERIALS, FUEL, NON-ADJUSTABLE OVERHEADS, PLANT AND LABOUR

|  |  |
| --- | --- |
| **Element** | **Percentage of Price** |
| Materials |  |
| Fuel |  |
| Non-Adjustable Overheads |  |
| Plant |  |
| Labour |  |
| **Total** | **Must equal 100%** |

## PART 2: PERMITTED INCREASE THRESHOLD

CA Note: Select a percentage figure from the drop-down menu below.

|  |  |
| --- | --- |
| The Permitted Increase Threshold is | 5% |

**APPENDIX 4 to Clause 18**

## INDICES AND WEIGHTINGS FOR MATERIAL AND FUEL CATEGORIES

In respect of the **Material(s)** identified in Table 1A **OR** Table 1B below, the following weightings, indices apply:

***CA NOTE: Complete either Table 1A OR Table 1B, whichever is stated to apply in the Schedule. Clause 18 for Materials.***

**Table 1A: “All Materials” Category only**

|  |  |  |
| --- | --- | --- |
| **Weighting** | **Material Category** | **Index** |
| 1.00 | All Materials [irrespective of the actual constituents of the Works] | The index forthe “All Materials” category contained in Table 3 Detailed Wholesale Price Indices (excluding VAT) for Building and Construction Materials. |

***OR***

**Table 1B: Material Categories**

| **Category No** | **Weighting** | **Material Category1** |
| --- | --- | --- |
| 1 |  | Stone, sand and gravel |
| 2 |  | Cement |
| 3 |  | Ready mixed mortar and concrete |
| 4 |  | Concrete blocks and bricks |
| 5 |  | Other Concrete Products including precast |
| 6 |  | Structural steel and reinforcing metal |
| 7 |  | Rough timber (including plain sawn) |
| 8 |  | Machined, treated engineered timber |
| 9 |  | Bituminous macadam, asphalt and bituminous emulsion*s* |
| 10 |  | Electrical fittings |
| 11 |  | All other materials |
| **Total** | **Must equal 1.0** |  |

## Table 2: Fuel Categories

In respect of the **Fuel** identified below, the following weightings, indices apply:

|  |  |  |  |
| --- | --- | --- | --- |
| **Category Number** | **Weighting** | **Fuel Category** | **Index Figure** |
| 1 |  | Fuel Oil | The index for the category “Fuel Oil” in Table 5, Wholesale Price Indices (excluding VAT) for Energy Products (i.e. Fuels purchased by Manufacturing Industry) |
| 2 |  | Electricity | The index for the category “Electricity” in Table 7 COICOP Division 04 Housing, Water, Electricity, Gas and Other Fuels of the Consumer Price Index, published by the CSO. |
| 3 |  | Gas Oil (other than autodiesel) | The index for the category “Gas Oil (other than autodiesel)” in Table 5 Wholesale Price Indices (excluding VAT) for Energy Products (i.e. Fuels purchased by Manufacturing Industry) for Gas Oil (other than autodiesel) |
| **Totals** | **Must equal 1.00** |  |  |

Short Public Works Contract Conditions

Office of Government Procurement

Short Public Works Contract Document Reference PW-CF6 v1.14 19 July 2023

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Department of Public Expenditure, NDP Delivery and Reform Government Buildings

Upper Merrion Street Dublin 2

CONDITIONS

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CONDITIONS

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| --- | --- | --- |
| 1. | **The Contract** | |
|  | 1.1 | In this Contract   * The **Assigned Certifier** is the person so assigned by the Employer to certify compliance with the relevant requirements under the Building Control Regulations. * The **Building Control Regulations** are the Building Control Regulations 1997-2014 and any amendments thereto to the extent that they apply to the Works. * **Compensation Event** is defined in clause 4.5. * The **Contractor** is as named in the accepted tender. * The **Contractor’s Personnel** are the Contractor’s   + representative and supervisor   + subcontractors and suppliers of any tier and   + employees and other persons working for the Contractor, subcontractors or suppliers of any tier or otherwise assisting the Contractor for the Works. * **Data Protection Law** is all applicable data protection law, including the General Data Protection Regulation (Regulation (EU) 2016/679). * The **Defects Certificate** is a certificate issued by the Employer’s Representative under clause 3.15 and may include a list of parts of the Works that do not comply with this Contract. * The **Employer** is as named in the accepted tender. * The **Employer’s Representative** is named in the Schedule or an architect, engineer, surveyor or other person otherwise notified by the Employer according to clause 5.1. * **Personal Data** shall have the meaning set out in the General Data Protection Regulation in respect of any such personal data processed on behalf of the Employer. * The **Price** is as stated in the accepted tender, as may be adjusted according to this Contract. * The **Site** is the place where the Contractor is to construct the Works and anywhere else this Contract says is part of the Site. * The **Time for Completion** is the period stated in the Schedule or, if not stated there, in another Contract document, in either case as may be extended under clause 2.7. * The **Works** are what the Contractor is to complete and hand over to the Employer, as described in this Contract. |
|  | 1.2 | Unless the context indicates otherwise   * references to clause numbers in the Conditions or the Schedule are to the clauses of the Conditions * words in the singular also mean the plural and the other way around * words in a gender also mean other genders * **person** includes incorporated and unincorporated organisations * references to a **month** are to a calendar month and to a **day** are to a calendar day * references to a **working day** are to a day other than Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997, or Good Friday. * references to **the parties** are to the Employer and the Contractor * references to a law include amendments, replacements and re-enactments * **substantially complete** and **substantial completion** mean that   + the Works have reached a stage of completion that the Employer can take them over and use them and   + if there are any defects, in the Employer’s Representative’s opinion both (a) the Contractor has good reason for not having rectified them already and (b) neither the   defects nor their rectification are likely to prevent the Works from being used conveniently and safely and |

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|  | * any other requirements for substantial completion in this Contract have been met and * the details in the Certificate of Compliance on Completion of the Works or a part thereof have been included on the Register maintained under Part IV of the Building Control Regulations. |
| 1.3 | This Contract is the entire agreement between the parties about the Works and consists of   * these Conditions, the form of tender and acceptance, and the Schedule and * the documents listed in the Schedule as part of this Contract. |
| 1.4 | If there is a discrepancy between these Conditions and other documents in this Contract, these Conditions prevail. If there is a pricing document in this Contract, and there is a discrepancy between the pricing document and other documents in this Contract, the other documents prevail. If a party discovers a discrepancy within or between the documents describing the Works, it must notify the other as soon as practicable, and the Employer’s Representative will resolve the discrepancy by an instruction. |
| 1.5 | This Contract comes into effect when the Employer sends the Contractor written acceptance of the Contractor’s tender for the Works. |
| 1.6 | The Contractor must construct and complete the Works at its own expense, complying with this Contract, the Employer’s Representative’s written instructions and the law. |
| 1.7 | The Contractor may not assign this Contract or any part of it without the Employer’s consent. |
| 1.8 | No rule of legal interpretation applies to the disadvantage of a party on the basis that the party provided this Contract or any of it or that a term of this Contract is for the party’s benefit. |
| 1.9 | The Contractor agrees that:   1. the Contractor shall process Personal Data only in accordance with the Contract and Data Protection Law; 2. the Contractor shall ensure persons authorised by the Contractor to process Personal Data are subject to confidentiality obligations as provided under Data Protection Law; 3. the Contractor must take appropriate technical and organisational security measures as are required to comply with Data Protection Law; 4. the Contractor may engage sub-processors to perform processing on its behalf, provided it gives prior written notice and informs the Employer of any changes concerning the status of such sub-processors and allows the Employer reasonable opportunity to object to such changes; 5. where any sub-processor of the Contractor will be processing Personal Data on behalf of the Employer, the Contractor shall ensure that a written contract exists between the Contractor and the sub-processor containing clauses equivalent to those imposed on the Contractor by the Contract; 6. the Contractor shall delete or return all Personal Data as directed by the Employer’s Representative and not later than when the Contractor completes its contractual duties relating to such data processing; 7. the Contractor shall: (i) make available to the Employer all information necessary to demonstrate compliance with this Clause; and (ii) allow for and assist with audits, including inspections, conducted by or on behalf of the Employer, in order to ensure such compliance, provided however that the Employer shall be entitled, at its discretion, to accept adherence by the Contractor to an approved code of conduct or an approved certification mechanism to aid demonstration by the Contractor that it is compliant; 8. the Contractor shall inform the Employer’s Representative immediately if, in its opinion, it receives an direction which infringes Data Protection Law; 9. the Contractor shall notify the Employer’s Representative within 24 hours of becoming aware of any act or omission [including breach of security] leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure   of or access to Personal Data transmitted, stored or otherwise processed and |

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|  | shall provide co-operation and assistance to the Employer as is required to mitigate the effects of, and comply with applicable reporting obligations in respect of, such act or omission; and  (j) no Personal Data shall be transferred outside the European Economic Area by the Contractor or any of its agents or sub-processors without the prior written consent of the Employer, and the Contractor shall comply with Data Protection Law in respect of Personal Data transfers outside the European Economic Area which the Employer has consented to. |
| 1.10 | If the Schedule says that a performance bond is required, within 7 days after the Employer sends the Contractor written acceptance of the Contractor’s tender, the Contractor must give the Employer the performance bond executed by the Contractor and a surety approved by the Employer, in the amount stated in the Schedule unless they were provided before acceptance of the tender). |
| 1.11 | If the Contractor is more than one person or legal entity, they are jointly and severally liable under this Contract. |

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| **2** | **The Site, starting and completing the Works** | |
|  | 2.1 | The Employer must allow the Contractor to occupy and use the Site within 5 working days after this Contract comes into effect, or any other date stated in this Contract, or (in either case) a later date by which the Contractor has demonstrated to the Employer that the insurances required by this Contract are in effect. The Contractor is not entitled to exclusive use of the Site. The Contractor’s right to occupy and use the Site is solely for the purpose of constructing the Works. Other limitations on the Contractor’s right to occupy and use the Site may be included in this Contract. |
|  | 2.2 | The Employer may arrange for work to be done on the Site by the Employer’s personnel or other contractors. |
|  | 2.3 | The Contractor must start constructing the Works on the Site within 5 working days after the Employer allows the Contractor to occupy and use the Site, or another date agreed between the parties, and must substantially complete the Works within the Time for Completion. |
|  | 2.4 | Within 5 working days after the Contractor notifies the Employer’s Representative that the Works are substantially complete, the Employer’s Representative will give the Contractor a certificate stating the date the Works were substantially complete, or notify the Contractor that the Employer’s Representative does not consider the Works substantially complete, with reasons. The certificate does not relieve the Contractor of any responsibility or liability. The certificate may include a list of work that remains to be done. |
|  | 2.5 | After the Employer’s Representative certifies the date that the Works are substantially complete, the Contractor must complete any outstanding work promptly after the Employer’s Representative so instructs. In doing so (and generally in performing this Contract after substantial completion of the Works) the Contractor must cause as little disruption as possible to occupiers and users of the Works. If the Contractor fails to comply with the instruction promptly and in compliance with this clause, the Employer may do the outstanding work itself, or have it done by others, and the Contractor must pay or allow the Employer’s cost of the work. |
|  | 2.6 | If the Contractor does not substantially complete the Works within the Time for Completion, the Contractor must pay or allow the Employer liquidated damages at the rate in the Schedule from the day after the last day of the Time for Completion until the day that the Works are substantially complete. |
|  | 2.7 | The Employer’s Representative will extend the Time for Completion by an amount corresponding to any delay to the substantial completion of the Works caused by any of the following and not resulting from the Contractor’s or Contractor’s Personnel’s acts or omissions (except as an unavoidable result of complying with this Contract) or the Contractor’s breach of this Contract:   * Compensation Events * loss of or damage to the Works * a weather event * strikes or lock outs not confined to the Contractor’s Personnel |

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|  | * order or other act of a court or other public authority, including a Covid-19 Mandatory Closure * failure or delay of a person other than the Contractor or Contractor’s Personnel to do what this Contract says they will do. |
| 2.8 | A **weather measurement** for a month means each of the following:   * the number of days with rainfall exceeding 10 millimetres * the number of days with minimum air temperature less than 0 degrees Celsius and * the number of days with maximum mean 10 minute wind speed exceeding 15 metres per second as recorded at the weather station named in the Schedule.   A **weather event** is when a weather measurement is recorded at the weather station named in the Schedule for a month during the Time for Completion that is shown to exceed the 90th percentile of past weather measurements for the corresponding month of the year at the same station, as determined by Met Éireann and published most recently before the day 10 days before the final date for submission of tenders for the Works.  If no weather station is named in the Schedule, the Met Éireann station nearest the Site is used. If the station named in the Schedule, or the nearest one, does not record the weather measurements, the station nearest to the Site that records the weather measurement is used.  A weather event also means any other event stated in the Schedule to be a weather event.  An extension of time for a weather event never exceeds the number of days in the relevant month by which the weather measurement exceeds the 90th percentile (as so determined). |
| 2.9 | The Contractor must ensure that goods and materials for the Works selected or designed by the Contractor (including Contractor’s Personnel) are suitable for their intended purpose in the Works and shall provide the certification necessary to comply with the Building Control  Regulations. |

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| **3** | **The Works** | |
|  | 3.1 | The Contractor is responsible for the safety and stability of the Works, and of all operations on the Site connected with the Works, including temporary works. |
|  | 3.2 | The Contractor must construct the Works according to good practice, and must only use goods and materials that are of good quality. |
|  | 3.3 | From when the Employer allows the Contractor access to the Site, the Contractor must   * as far as practicable, secure the Site and keep off the Site persons not entitled to be there * keep the Site in good order and free from unnecessary obstructions * as far as practicable, secure the safety of persons on the Site and protect them and users, owners and nearby areas from hazards and interference resulting from the Works and * as far as practicable, ensure that the Contractor, the Contractor’s Personnel and the Works do not unnecessarily or improperly   + cause a nuisance or inconvenience to the public or users, owners, occupiers of land, roads, or footpaths on or near the Site, or   + interfere with the use of land, roads, or footpaths. |
|  | 3.4 | Until the Employer’s Representative issues the Defects Certificate, if the Employer’s Representative gives the Contractor a written instruction in relation to the Works, the Contractor must implement the instruction. This can include an instruction changing the Works, or an instruction imposing or changing restrictions on how the Works are to be constructed. |
|  | 3.5 | The Employer’s Representative will give the Contractor instructions that are necessary for the Contractor to construct the Works if the Contractor asks for them in writing. Such an instruction must be given in reasonable time, taking into account when the Contractor asked for it and when the Contractor needs it to avoid delay to the Works. |
|  | 3.6 | The Contractor must set out the Works by reference to the points, lines, and levels in this Contract and in written instructions from the Employer’s Representative. Before setting out the Works, the Contractor must make all reasonable efforts to verify the accuracy of these points, lines, and levels. |
|  | 3.7 | Until the Employer’s Representative issues the Defects Certificate, the Contractor must ensure that the Employer, the Employer’s Representative, the Assigned Certifier, and persons  authorised by them, are able to have access to the Site and other places where the Works are |

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|  | being constructed or goods or materials for the Works are being produced, stored, extracted, or prepared, and there to inspect, test, and observe the Works, goods, materials, and activities. The Contractor must give the Employer’s Representative the information the Employer’s Representative requires or requests to do this. |
| 3.8 | The Contractor must inform the Employer’s Representative and the Assigned Certifier in good time before any part of the Works is covered or goods or materials for the Works that are to be inspected are packed or made difficult or impossible to inspect, and in each case give the Employer’s Representative and the Assigned Certifier a proper opportunity to inspect them. |
| 3.9 | Any time until the Employer’s Representative issues the Defects Certificate, the Employer’s Representative may instruct the Contractor to uncover, dismantle, re-cover, or re-erect work; test, inspect, or provide facilities for testing and inspection; or any combination of these. |
| 3.10 | Any time until the Employer’s Representative issues the Defects Certificate, the Employer’s Representative may instruct the Contractor to remove from the Site and replace any Works or goods or materials for the Works that do not comply with this Contract or otherwise to put right (in a manner instructed by the Employer’s Representative) any part of the Works that do not comply with this Contract. If the Contractor fails to comply with the instruction promptly, the Employer may do the work itself, or have it done by others, and the Contractor must pay or allow the Employer’s cost of the work. |
| 3.11 | Until the Works are substantially complete, the Contractor must not remove from the Site any Works, goods or materials for the Works, or plant to be used for the Works, without the Employer’s Representative’s consent |
| 3.12 | The Employer’s Representative may instruct the Contractor to suspend all or part of the Works. The Contractor must, during the suspension, protect, store, and secure the affected Works and maintain the insurances required by this Contract. The Contractor must resume the Works promptly after the Employer’s Representative so instructs. If the suspension did not result from a breach of the Contractor’s obligations and lasts for longer than 3 months, the Contractor may ask the Employer’s Representative for permission to proceed; and if the Employer’s Representative does not give permission within 20 working days of being asked   * if the suspension affected all the Works, the Employer will be considered to have terminated the Contractor’s obligation to complete the Works and * if the suspension affected part of the Works, the Employer will be considered to have given an instruction to omit that part of the Works. |
| 3.13 | If the Contractor discovers fossils, coins, antiquities, monuments, or other items of value or of archaeological or geological interest or human remains on the Site, the Contractor must not disturb them, and must take all necessary steps to preserve them, and promptly notify the Employer’s Representative and comply with the Employer’s Representative’s instructions. As between the parties, these items are the Employer’s property. |
| 3.14 | The Contractor, and not the Employer, is responsible for the suitability and availability of access routes to and through the Site, and any required maintenance and upgrading of them, and charges for their use, except when this Contract states otherwise. The Contractor is also responsible for obtaining and providing all facilities, power, water, and other services it requires to construct the Works, other than those this Contract requires the Employer to provide. |
| 3.15 | In the time stated in the Schedule, the Employer’s Representative will issue to the Contractor the Defects Certificate. But the Employer’s Representative may defer issuing the Defects  Certificate until the Contractor has completed outstanding work, including under clauses 3.9 or  3.10. Neither the Defects Certificate nor its deferral relieves the Contractor of any obligations. |

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| **4** | **The Price and payment** | |
|  | 4.1 | For completing the Works according to this Contract the Employer must pay the Contractor the Price, in instalments as follows:   * interim payments on account as Scheduled, less payments already made and any deductions permitted by this Contract * after the Employer’s Representative certifies the date the Works were substantially complete, the percentage of the Price stated in the Schedule, less (a) payments already made, (b) the value of any remaining work, and (c) other deductions permitted by this Contract * after the Employer’s Representative issues the Defects Certificate, the unpaid balance of the Price, less deductions permitted by this Contract. |
|  | 4.2 | When a payment is to be made, not later than 5 days after the date agreed between the parties to be the payment claim date the Contractor shall give the Employer’s Representative a payment claim notice, in the form of a detailed statement of the amount to be paid. Within 14 days of receiving the payment claim notice, the Employer’s Representative shall issue a response to the payment claim notice, to the Contractor, in the form of a certificate, setting out the amount the Employer’s Representative considers the Contractor should be paid, with reasons for any difference between the amount in the certificate and the Contractor’s statement. If the certificate states that an amount is due to the Contractor, the Contractor shall send an invoice to the Employer for that sum. The Employer shall pay the amount due on the invoice within the period stated in the Schedule. |
|  | 4.3 | The Contractor shall give a penultimate statement within 30 days after the Employer’s Representative certifies the date the Works were substantially complete, and a final statement of all amounts due under this Contract within 30 days after the Employer’s Representative issues the Defects Certificate. The final statement shall be the same as the penultimate statement, except for amounts due for occurrences after the date of the penultimate statement. Within 14 days of receiving a statement, the Employer’s Representative will give the Contractor a certificate setting out the amount the Employer’s Representative considers the Contractor should be paid, with reasons for any difference between the amount in the certificate and the Contractor’s statement. If the certificate states that an amount is due to the Contractor, the Contractor shall send an invoice to the Employer for that sum. The Employer shall pay the amount due on the invoice within the period stated in the Schedule. |
|  | 4.4 | The Price will change only as expressly provided in this Contract. The Contractor’s cost of performing this Contract is all at the Contractor’s risk except to the extent that the Price is to be increased under this Contract. |
|  | 4.5 | In this Contract, **Compensation Event** means any of the following:   * the Employer’s Representative gives the Contractor an instruction   + that changes the Works or constraints in this Contract on how the Works are to be constructed   + to search for defects or their cause under clause 3.9 and no defect is found, and the search was not required because of a failure by the Contractor to comply with this Contract * to suspend work * the Employer’s Representative does not give an instruction when required under clause 3.5 * other contractors working on the Site under clause 2.2 impede the Contractor and this was unforeseeable and not in accordance with this Contract * breach of this Contract by the Employer * the Employer instructs the Contractor to rectify loss or damage at the Employer’s risk * the Contractor encounters on the Site unforeseeable ground conditions or unforeseeable man-made obstructions in the ground * owners of utility apparatus on the Site do not relocate or disconnect their apparatus as stated in this Contract, when the Contractor has complied with their procedures and the procedures in this Contract, and the failure is unforeseeable.   In the above definition, something is **unforeseeable** if an experienced Contractor tendering for  the Works could not have reasonably foreseen it, having inspected the Site and taking into account all the information provided by the Employer. |

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| 4.6 | If a Compensation Event happens, the Employer’s Representative will adjust the Price according to this clause. If the adjustment is an increase the Price can be increased only to the extent that all of the following apply:   * The Compensation Event is not a result of an act or omission of the Contractor or Contractor’s Personnel, or the Contractor’s breach of this Contract. * The Contractor makes all reasonable efforts to avoid and minimise the adverse effects of the Compensation Event. * The Contractor has complied with clause 4.8 in full. * This Contract does not provide otherwise.   The amount of the adjustment will be the amount of an accepted or agreed quotation under clause 4.7, if a quotation is agreed. If there is no agreed quotation, the Employer’s Representative will assess the amount of any adjustment using the rates and prices in this Contract, or on the basis of those rates and prices, if there are any and they are suitable, and if not by assessing the effect of the change on the Contractor’s cost of constructing the Works.  The Contractor’s right to an adjustment under this clause is subject to clause 4.8, but the Employer’s Representative may act on its own initiative. |
| 4.7 | If the Employer’s Representative so requests, the Contractor must give the Employer’s Representative, within 10 working days of receiving the request, a quotation for any change to the Price and the Time for Completion as a result of a proposed instruction. If the Employer’s Representative accepts the quotation, it may issue the instruction, and adjust the Price and the Time for Completion to match the accepted quotation. If the Employer’s Representative does not accept the quotation, or it is not given, and agreement is not reached, the Employer’s Representative may either   * issue the instruction and assess any adjustment to the Time for Completion and the Price under clauses 2.7 and 4.6 respectively or * if the instruction has not yet been given, decide not to proceed with it, unless it is required under clause 3.5. |
| 4.8 | If the Contractor considers that under this Contract there should be an adjustment of the Price, or that it has any other entitlement against the Employer under or in relation to this Contract, the Contractor must give the Employer’s Representative notice of the claim within 10 working days of when the Contractor became, or should have become, aware of it, and full details of the circumstances and the amount claimed within a further 15 working days after giving the notice. If the Contractor does not give the notice and details according to and within the time required by this clause the Contractor is not entitled to an increase in the Price and the Employer is released from all liability to the Contractor in relation to the matter (unless the Contractor’s claim is about an instruction for which the Contractor was requested to and gave a proposal under clause 4.7). |
| 4.9 | If the Employer or the Employer’s Representative considers that under this Contract there should be an adjustment to the Price, it must, as soon as practicable, give notice and full details of the circumstance and the amount claimed to the other and to the Contractor. The Contractor may, within 10 working days after receiving the notice, give a response to the Employer’s Representative and the Employer’s Representative may adjust the Price in accordance with this Contact. |
| 4.10 | If a payment is not made within the time allowed in this Contract, it carries interest at the rate in the European Communities (Late Payment in Commercial Transactions) Regulations 2012. |
| 4.11 | The Contractor’s completed form of tender states whether, and to what extent, the Price includes VAT |
| 4.12 | To the extent that the Price excludes VAT, the Employer must pay the Contractor (or the Revenue Commissioners when required by Law or their practice) any VAT arising on the supply under this Contract in addition to the Price. |
| 4.13 | To the extent that the Price includes VAT,   1. adjustments to the Price shall be on a net-of-VAT basis, and the appropriate sum for VAT shall be added or subtracted and 2. any VAT included in the Price that the Employer is required to pay the   Revenue Commissioners (by Law or their practice) shall be deducted from the Price. |
| 4.14 | So therefore, if the Price includes VAT chargeable at the standard rate only, then the Employer shall pay the Contractor (or the Revenue Commissioners when required by Law or their |

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|  | practice).   * The Price, including the VAT chargeable at the standard rate that is included in the Price and also * Any VAT arising on the supply under this Contract that is chargeable at another rate.   In this Contract ‘standard rate’ means the VAT rate specified in section 46(1)(a) of the Value- Added Tax Consolidation Act, 2010. |
| 4.15 | Amounts in this Contract other than the Price exclude VAT, unless otherwise stated |
| 4.16 | For each payment the Contractor must give the Employer an invoice complying with section 66 of the Value-Added Tax Consolidation Act, 2010 |
| 4.17 | The Price will be adjusted by the amount of any increase or decrease in the Contractor’s cost of performing this Contract as a result of a change in law after the date of this Contract that changes customs or excise duties, requirements for licence to import or export any commodity or PRSI, except for when this Contract says otherwise. |
| 4.18 | The Employer may withhold and deduct any amount on account of tax required by law or the practice of the Revenue Commissioners |
| 4.19 | The Employer may deduct from amounts due to the Contractor any amount that the Employer  considers is due, or likely to become due, to the Employer from the Contractor under this Contract or another contract. |

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| **5** | **Representation and communications** | |
|  | 5.1 | If the Employer’s Representative is not named in the Schedule, the Employer must, promptly after the date of this Contract, appoint the Employer’s Representative and notify the Contractor. The Employer must notify the Contractor of any limitations agreed with the Employer’s Representative on how the Employer’s Representative’s functions under this Contract may be exercised. The Employer may change the Employer’s Representative, and must notify the Contractor. |
|  | 5.2 | The Contractor must appoint a representative, with authority to act on the Contractor’s behalf in all matters concerning the Works. The Contractor must also appoint a competent supervisor of all the Contractor’s activities on the Site, who may be the same person as the Contractor’s representative. The Contractor is considered to be aware of matters (including communications and instructions) of which its representative or supervisor is aware. The Employer’s Representative will send the Contractor’s representative copies of any instructions given to the Contractor’s supervisor. If the Contractor’s representative or supervisor dies, or becomes no longer able to perform her duties, or is no longer available to the Contractor, the Contractor must appoint a replacement. The Contractor must replace its representative or supervisor if the Employer’s Representative so requires because of the representative’s or supervisor’s misconduct, negligence, or incompetence. |
|  | 5.3 | All communications provided for in this Contract must be in English, unless this Contract requires Irish, and in writing. |

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| **6** | **Contractor’s Personnel** | |
|  | 6.1 | The Contractor must ensure that Contractor’s Personnel are suitably qualified, trained, and experienced and are competent to carry out their tasks. The Contractor must ensure that Contractor’s Personnel carry out their tasks in compliance with the Contractor’s obligations under this Contract. The Contractor is liable for acts and omissions of Contractor’s Personnel as if they were acts or omissions of the Contractor. |
|  | 6.2 | The Contractor must remove from the Works and the Site any Contractor’s Personnel that the Employer’s Representative instructs be removed on the basis of their negligence or incompetence or that their presence on the Site is not conducive to safety, health, or good order. |
|  | 6.3 | The Contractor may not subcontract the whole of the Works to one or more subcontractors.  The Contractor may not subcontract part of the Works without the Employer’s Representative’s consent, unless the subcontracting is already provided for in this Contract. |

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| **7** | **Pay and conditions of employment of workers** | |
|  | 7.1 | The Contractor shall prominently exhibit copies of this clause 7 for the information of persons at the Site. In this clause **worker** means a person employed by, or otherwise working for, the |

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|  | Contractor or the Contractor’s Personnel on or adjacent to the Site. |
| 7.2 | The Contractor shall ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any sectoral employment orders, employment regulation orders or registered employment agreements implemented in accordance with the Industrial Relations Acts 1946 to 2015 (including any such agreements registered prior to the Industrial Relations (Amendment) Act 2015, which have not otherwise been superseded). This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 as amended by Directive 2014/67/EU concerning the posting of workers in the framework provision of services), except that the Contractor’s obligation to make pension contributions in accordance with an applicable sectoral employment order, registered employment agreement or employment regulation order under the Industrial Relations Act 1946-2015 does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union. |
| 7.3 | The Contractor must, and must ensure that the employers of all workers, do all of the following:   * pay all wages and other money due to each worker * ensure that workers’ wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid * pay all pension contributions and other amounts due to be paid on behalf of each worker * make all deductions from payments to workers required by law, and pay them on as required by law * keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each worker, deductions from each worker’s pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by persons authorised by the Employer, whenever required by the Employer * produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Employer, whenever required by the Employer * respect the right under law of workers to be members of trade unions * observe, in relation to the employment of workers on the Site, the Safety, Health and Welfare at Work Act 2005 to 2014, and all employment law including the Employment Equality Act 1998 to 2015, the Industrial Relations Acts 1946 to 2015, the National Minimum Wage Act 2000 and 2015 and regulations, codes of practice, legally binding determinations of the Labour Court and sectoral employment orders, employment regulation orders or registered employment agreements determined under those laws. |
| 7.4 | If the Employer so requests, the Contractor must, within 5 working days after the request, give to the Employer a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers, not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same. |
| 7.5 | The Employer may seek information under the above provisions of this clause only for the purpose of ensuring the obligations described in this clause to workers have been properly discharged. All documents and records received under the above provisions of this clause will be returned to the person providing it or destroyed if the Employer is satisfied that the person providing the information has complied with legal obligations to workers. |
| 7.6 | If the Contractor has not complied with this clause, the Employer may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Employer may withhold the estimated amount from any payment due to the Contractor, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time the Defects Certificate is issued, the estimated amount is deducted from the Price. |
| 7.7 | The Contractor must give the Employer’s Representative with each statement under clause  4.2 and 4.3 a certificate that, for the work to which the statement relates, the Contractor has complied in full with this clause. If there is a form for the certificate attached to these  Conditions, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by |

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|  | the time the Defects Certificate is issued, the portion (of the value of work that the Contractor has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price. |
| 7.8 | If the Contractor does not comply with this clause, it must pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance. |
| 7.9 | The Contractor shall ensure that in the event of an official of a trade union representing workers who are affected by a sectoral employment order, employment regulation order or which is a party to a registered employment agreement affecting workers having concerns in relation to the Contractor’s or Contractor’s Personnel’s compliance with the order or agreement, that official will have access to a designated member of the Contractor’s  management who shall engage constructively to resolve all matters on this point. |

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| **8** | **Loss of and damage to the Works** | |
|  | 8.1 | The Employer bears the risk of loss of and damage to the Works resulting from   * war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection or military or usurped power * pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds * contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Contractor or the Contractor’s Personnel * terrorism * use or occupation of the Works by the Employer except (a) as provided for in this Contract or (b) if the loss or damage is caused by the negligence of the Contractor or Contractor’s Personnel, or the Contractor’s breach of this Contract. * design of the Works by the Employer or by others for whom the Employer is responsible.   The Employer also bears the risk of loss of and damage to the Works after the Employer’s Representative issues the certificate of the date they were substantially complete, unless the loss or damage is due to   * the Works not complying with this Contract * an occurrence before substantial completion or * activities of the Contractor or Contractor’s Personnel.   The Contractor bears the risk of loss of and damage to the Works that does not result from an Employer risk listed above. |
|  | 8.2 | The Contractor must promptly put right loss of or damage to the Works and goods or materials for the Works that is at the Contractor’s risk. The Contractor is not entitled to payment for this except any insurance proceeds. If the insurance is insufficient, the Contractor must put the loss and damage right at its own expense. |
|  | 8.3 | If the Works are lost or damaged before the Defects Certificate is issued, and the loss or damage is at the Employer’s risk, the Contractor must put it right if the Employer so instructs in writing. |
|  | 8.4 | Only if the Works involve alteration or extension of existing facilities owned by the Employer, the Employer bears the risk of loss of or damage to those facilities and their contents owned by the Employer caused by fire, storm, tempest, flood, bursting or overflowing of water tanks, apparatus or pipes, explosion, impact, aircraft, riot, civil commotion, or malicious damage. But the Contractor bears the risk of such loss and damage to the extent caused by the negligence  of the Contractor or Contractor's Personnel to the extent (and up to the limit) required to be insured under clause 10.3. |

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| **9** | **Indemnity for claims and damage** | |
|  | 9.1 | The Contractor must indemnify the Employer against   * claims, liability, proceedings, and * loss of and damage to the Employer’s property (except for loss or damage at the Employer’s risk under clause 8.1)) |

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|  | that happen in the course or as a result of the Works.  The Contractor’s indemnity in this clause does not apply to the Employer’s liability under this Contract to the Contractor, nor to the extent that the matter is covered by the Employer’s indemnity in clause 9.2. |
| 9.2 | The Employer must indemnify the Contractor against   liability for death, injury or illness of any person or loss of damage to any physical property that the Contractor incurs in the course of performing this Contract to the extent caused by the negligence of the Employer and  liability for property damage that is the unavoidable result of constructing the Works in accordance with this Contract. |

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| **10** | **Insurance** | |
|  | 10.1 | From the date the Employer allows the Contractor to occupy and use the Site, the Contractor must insure the Works and goods and materials for the Works against loss and damage. The Employer must be named as an insured. The insurance must be for the full reinstatement value of the property insured, including cost of demolition, removal of debris, delivery, Employer’s professional fees, profit, and inflation during the construction and reinstatement periods. The sum insured for professional fees must be at least 15% of the Price. The Contractor must maintain this insurance until the Employer’s Representative certifies the date that the Works were substantially complete, and must extend the insurance to cover loss and damage at the Contractor’s risk until the Defects Certificate is issued. |
|  | 10.2 | The proceeds of the insurance of the Works and goods and materials for the Works (except the portion for the Employer’s professional fees, which must be paid directly to the Employer) must be paid into a bank account in the joint names of the Employer and the Contractor, and paid out to the Contractor in instalments on the basis of the value of the work done and goods and materials delivered to the Site for the reinstatement, following generally clauses 4.1 and 4.2, and also paid out to the Employer for its costs. Any balance in the account after the work is done will be paid to the Employer. |
|  | 10.3 | From the date the Employer allows the Contractor to occupy and use the Site, the Contractor must have public liability and employers liability insurance, with indemnity limits of at least those in the Schedule. The Contractor’s public liability policy must insure the Employer and Contractor as insured, with a cross-liability clause. The Contractor’s employer’s liability policy must indemnify the Employer against the liability for which it indemnifies the Contractor, including costs. The Contractor must maintain these insurances until the Defects Certificate is issued, and after that must have these insurances in place any time the Contractor or Contractor’s Personnel return to the Site in connection with the Works. |
|  | 10.4 | The Contractor must place the insurances required by this Contract with reputable insurers approved by the Employer. The level of excess must be no higher than stated in the Schedule. |
|  | 10.5 | The insurance on which the Employer is to be insured must provide that   the term “insured” applies to each insured person as if a separate policy had been issued to each (without increasing the overall limit of indemnity) and non-compliance by the Contractor or any other insured person does not affect the Employer’s rights. |
|  | 10.6 | The Contractor must comply with the terms of the insurance policies required under this Contract. |
|  | 10.7 | On or before the date of renewal of any insurance policy and in any event within 10 working days of being requested to do so, the Contractor must give the Employer evidence that the insurances required by this Contract are in effect, including copies of policies and receipts for premiums. |
|  | 10.8 | The Contractor must not make any material reduction to the insurance policies required by this Contract unless approved in advance by the Employer. The Contractor must promptly notify the Employer of any cancellation, renewal, non-renewal, or material reduction by the insurer of the terms of any insurance policy required by this Contract. |
|  | 10.9 | If the Contractor fails to maintain any of the insurances in the terms required by this Contract, the Employer may (without affecting its other rights) take out the insurance and pay the premiums, and the Contractor must pay or allow the amount of the premiums to the Employer. |
|  | 10.10 | The Contractor bears the risks allocated to it under this Contract regardless of whether the risk  is, or is required to be, insured. This includes losses and liability falling below insurance excess levels and exceeding indemnity limits. |

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| **11** | **Property** | |
|  | 11.1 | The Contractor must ensure that goods and materials for the Works become the property of the Employer on the earliest of the following   * when they are delivered to the Site, if owned by the Contractor * when they are incorporated in the Works * when the Employer makes any payment for them. |
|  | 11.2 | The Contractor must ensure that the Employer is entitled to use, copy, modify, adapt, and translate for any purpose the documents that the Contractor is to provide to the Employer under this Contract. The Contractor has no liability for the Employer’s use of these documents for any purposes other than those for which they were provided. |
|  | 11.3 | The Contractor must indemnify the Employer against claims, liability, and proceedings resulting from any of the following infringing the property (including intellectual property) rights of any person:   * anything that the Contractor does for the construction of the Works, unless covered by the Employer’s indemnity in clause 11.4 * use by the Employer of the Works and goods, materials, and documents provided by the Contractor for the Works for the purposes for which they were provided. |
|  | 11.4 | The Employer must indemnify the Contractor against claims, liability, and proceedings resulting from any of the following infringing the property (including intellectual property) rights of any person:   * use by the Contractor, in accordance with this Contract, of documents or goods provided by the Employer for the purposes for which they were provided * use or occupation of the Site by the Works that is the unavoidable result of constructing the Works in accordance with this Contract. |

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| **12** | **Termination** | |
|  | 12.1 | The Employer may terminate the Contractor’s obligation to complete the Works on giving written notice to the Contractor. If this happens, the Contractor’s obligation to complete the Works will terminate 10 working days after the notice was given, or a different date stated in the notice, and   * the Contractor must leave the Site in an orderly manner, but must not remove any goods or materials for the Works, or property of the Contractor or Contractor’s Personnel used or to be used for the Works, unless the Employer or Employer’s Representative so instructs * the Contractor must remove from the Site any property of the Contractor or Contractor’s Personnel that the Employer or Employer’s Representative instructs the Contractor to remove * the Contractor must, as soon as practicable, give the Employer a statement of the amount (the **termination value**) due to the Contractor under this Contract and unpaid, including in it the reasonable rental value of any property of the Contractor and Contractor’s Personnel that the Employer or Employer’s Representative has required to be left on the Site to complete the Works, including details * the Employer’s Representative will, within 14 days after receiving the Contractor’s statement of the termination value, issue a certificate stating what the Employer’s Representative considers to be the termination value, with reasons * the Employer may employ others and do anything necessary to complete the Works. |
|  | 12.2 | This clause applies if the Employer has terminated the Contractor’s obligation to complete the Works because   * of a substantial breach by the Contractor of this Contract or * any of the following (or similar event anywhere) occurring in relation to the Contractor —   + a petition being presented to wind it up and not being dismissed within 14 days after presentation   + a meeting of its creditors or members being held for the purpose of considering a resolution to wind it up |

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|  | * entering or proposing to enter an arrangement with or for the benefit of its creditors * a petition being presented to appoint an examiner * a liquidator, examiner, supervisor, receiver, administrative receiver, trustee, encumbrancer, or similar being appointed for it or any of its assets * ceasing or threatening to cease its business * becoming insolvent or unable to pay its debts as they fall due * being an individual, becoming bankrupt or dying or becoming incapable of performing this Contract.   Payment of any money due by the Employer to the Contractor will be postponed, and the Employer is not required to make any further payment to the Contractor until required under this clause.  After the Works have been completed the Employer’s Representative will give the Contractor a certificate of the total of the following (the **termination amount**):   * the Employer’s additional cost of completing the Works compared with the cost the Employer would have incurred if the Works had been completed by the Contractor under this Contract * other costs and losses incurred by the Employer as a result of the termination and its causes and * amounts due to the Employer from the Contractor.   If the Employer does not begin to put in place arrangements to complete the Works within 6 months after the termination, the Employer’s Representative will give the above certificate to the Contractor within 14 days after the 6 month period (based, if necessary, on estimates).  If the certified termination amount is less than the certified termination value, the Contractor may give the Employer an invoice for the difference after receiving the Employer’s Representative’s certificate, and the Employer must pay the amount due within 30 days after receiving the invoice. If the certified termination amount is more than the certified termination value, the Contractor must pay the Employer the difference within 10 working days of receiving the Employer’s Representative’s certificate. |
| 12.3 | This clause applies if the Employer terminates the Contractor’s obligation to complete the Works, only if clause 12.2 does not apply.  The Contractor may give the Employer an invoice for the total of the termination value certified by the Employer’s Representative and the Contractor’s reasonable direct cost of removal from the Site as a result of the termination. If the Employer appoints another contractor to complete the Works within 12 months after the termination, the Contractor’s payment under this clause will also include the percentage of the unpaid portion of the Price stated in the Schedule. The Employer must pay the amount due within 30 days of receiving the Contractor’s invoice. |
| 12.4 | The Employer has no other liability in relation to termination, including no liability for lost profit or contribution to overhead. |

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| **13** | **Ethics in Public Office** |
|  | The Contractor warrants to the Employer that neither the Contractor nor any person on the Contractor’s behalf has committed any offence under the Criminal Justice (Corruption Offences) Act  2018Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 to 2001 in connection with this Contract or the Works, and nor will they commit any such offence. |

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| **14** | **Project Supervisor for the Construction Stage** |
|  | Subject to the Schedule, if the Employer appoints the Contractor as project supervisor for the construction stage of the Works according to the Safety, Health and Welfare at Work (Construction) Regulations 2013 and the Contractor must accept the appointment in writing, in the terms attached to these Conditions or other terms in this Contract, within 5 days after this Contract comes into effect, and before starting work on the Site. If this Contract provides that an individual or body corporate named by the Contractor or in this Contract is to be appointed as project supervisor for the construction stage, the Contractor must ensure that the person accepts the appointment in terms included in this Contract (if any, and if not, in terms required by the Employer) within 5 working days after this Contract comes into effect. If the Employer terminates the employment of the Contractor or  person so named as project supervisor for the construction stage for failure to comply with the obligations of project supervisor, the Contractor must pay the Employer all the Employer’s costs |

resulting from the termination.

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| **15** | **Law, jurisdiction and disputes** | |
|  | 15.1 | Irish law governs this Contract and its interpretation. |
|  | 15.2 | The dispute resolution procedure is as follows:   1. If a dispute arises under this Contract, either party may, by notice to the other, refer the dispute for conciliation. Within 10 working days of the referral of a dispute to conciliation, the parties must jointly appoint a conciliator, and if they fail to do so, or if a person appointed refuses to act or becomes unable to act, the conciliator will be appointed by the president or vice-president of the body stated in the Schedule. If there is a fee for making the appointment, the parties share it equally. If one party pays the entire fee, it is entitled to reimbursement of the other party’s share from the other party on demand. 2. Each party must, within the period set by the conciliator, send to the conciliator and the other party brief details of the dispute stating its contentions about the facts and the parties’ rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance. The parties must promptly make available to the conciliator all information, documents, access to the Site, and appropriate facilities that the conciliator requires to resolve the dispute. 3. The conciliator will consult with the parties in an attempt to resolve the dispute by agreement. The conciliator may meet the parties separately from each other or together and consider documents from one party not sent or shown to the other, conduct investigations in the absence of the parties, make use of specialist knowledge, establish the procedures to be followed in the conciliation and make recommendations to the parties. 4. The conciliator will not be an arbitrator and the Arbitration Act 2010 and the law of arbitration will not apply to the conciliation. 5. If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, or a longer period proposed by the conciliator and agreed by the parties, the conciliation will be taken to have ended. 6. The conciliation will be confidential, and the parties must respect its confidentiality. All   documents provided by a party in connection with a conciliation must be returned when the conciliation ends. |
|  | 15.3 | The parties have recourse to adjudication in accordance with the Construction Contracts Act 2013  Where an adjudicator reaches a decision on a dispute referred under the Construction Contracts Act 2013, that same dispute may not be referred to conciliation under the Contract.  If a dispute between the Parties is referred to adjudication, any conciliation relating to that dispute immediately adjourns. In the event that no decision is reached by the adjudicator, the parties may continue to resolve the dispute under the conciliation. In the event that a decision is reached by the adjudicator, the conciliation for that dispute shall be terminated. |
|  | 15.4 | The parties submit to the jurisdiction of the Irish courts. |

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| **16** | **Covid-19 Mandatory Closure** | |
|  | 16.1 | Covid-19 Definitions |
|  |  | (1) **Covid-19** means Covid-19 or such variant thereof as each is listed in the schedule to the Infectious Diseases Regulations 1981. |
|  |  | (2) **Covid-19 Mandatory Closure** means the closure of the Site due to Covid-19 mandated by law and/or mandated by order of a public authority exercising authority under law, that did not arise as a result of or in connection with an act, omission or breach of law of the Contractor or the Contractor’s Personnel or a breach of the Contract by the Contractor. |
|  |  | (3) **Site Closure Costs** has the meaning set out in the Site Closure Costs Supplement. |

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|  | (4) **Site Closure Costs Supplement** means the document of the same name listed in part 1.3 of the Schedule or, if there is none, the version of the document of the same name published on the Office of Government Procurement website most recently before the day 10 days before the final date for submission of tenders for the Works. |
| 16.2 | Covid-19 General Provisions |
|  | (1) The Contractor’s sole remedies for a Covid-19 Mandatory Closure shall be those stated in sub-clause 2.7 for an extension to the Time for Completion and Site Closure Costs under this clause 16. The provisions of clause 4.8 shall apply in respect of any adjustment to the Price for the Site Closure Costs under this clause 16 in respect of a Covid-19 Mandatory Closure. |
| 16.3 | Covid-19 Costs |
|  | (1) In the event of a Covid-19 Mandatory Closure there shall be added to the Price the Site Closure Costs for the period of the Covid-19 Mandatory Closure. The Employer’s Representative will assess the amount of any adjustment in accordance with the Site Closure Costs Supplement and this Clause 16. |
|  | (2) The Contractor shall only be entitled to Site Closure Costs to the extent that all of the following apply: |
|  | * the Site Closure Costs are not a result of the Contractor’s or Contractor’s Personnel’s act or omission or the Contractor’s breach of the Contract * if the Works are concurrently delayed by more than one cause, and one or more of the causes is not a Covid-19 Mandatory Closure, there shall be no increase to the Price for Site Closure Costs for the period of concurrent delay * the Contractor makes all reasonable efforts to avoid and minimise the adverse effects of the Covid-19 Mandatory Closure * the Contractor has complied with sub-clause 4.8, clause 16 and the Site Closure Costs Supplement in full [including giving notices and details within the time required] and continues to comply with its obligations under the Contract * the Contractor has not claimed or received as part of the Site Closure Costs, any costs in respect of which it is entitled to claim assistance or receive payment under any scheme, relief, benefit or otherwise [including under the Financial Provisions (Covid-19) (2) Act 2020 (Act No. 8 of 2020) or similar Law] * the Contract does not provide otherwise. |
|  | (3) The Contractor warrants that the details that it provides as required by the Site Closure Costs Supplement are a complete and full break-down of the relevant costs, on a transparent and ‘open book’ basis. |
|  | (4) Any adjustment to the Price in accordance with sub-clause 16.3(1) shall be paid as part of the interim payments under the first bullet point of sub-clause 4.1. |

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| **17** | **Limit on Liability** | |
|  | 17.1 | Subject to clause 17.2, the monetary amount of the Contractor’s liability to the Employer under or arising out of this Contract shall not exceed the amount stated in the Schedule, or, where there is no amount stated, an amount equal to the Price (the “**Liability Cap**”). |
|  | 17.2 | The Liability Cap shall not apply to or limit any liability of the Contractor in respect of (and the following shall not be taken into account in any way in any calculation of the Liability Cap):   * fraud or fraudulent misrepresentation, wilful default, gross negligence; * death, injury or illness of any person; * loss of, or damage to, tangible or intangible property (except for the Works); * any liability to which insurance for the Works pursuant to clause 10.1, whether before or after the date upon which the Time for Completion falls, is intended to respond; * liquidated damages pursuant to clause 2.6; |

 any liability which the Contractor cannot lawfully exclude or limit.

|  |  |  |  |
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| **18** | **PRICE VARIATION** | | |
|  | 18.1 | **Definitions** | |
|  |  | For the purpose of this clause definitions are set out in Appendix 1 [as well as elsewhere in the Conditions]. | |
|  | 18.2 | **Contract Sum Adjustment** | |
|  |  | The Price, excluding the amount of Labour, Plant and Non-Adjustable Overheads, shall be subject to adjustment for price fluctuations only in the circumstances set out in this clause 18. | |
|  | 18.3 | **Proportions** | |
|  |  | For the purpose of calculating adjustments to the Price, the proportions of Materials, Fuel, Non- Adjustable Overheads, Labour and Plant in the Price are set out in Appendix 3 [irrespective of the actual proportions of the work]. | |
|  | 18.4 | **Failure to Commence by the Starting Date** | |
|  |  | Where a Recovery Date has been agreed or determined, adjustment of the Price in respect of the Works shall be effected by the Recovery Date Index Figures or the Designated Date Index Figures, whichever results in the most favourable adjustment to the Employer. | |
|  | 18.5 | **Failure to Complete on Time** | |
|  |  | If the Contractor fails to complete the Works by its Time for Completion, adjustment of the Price in respect of the Works after its Time for Completion shall be effected by the Index Figures applicable to the Adjustment Period in which the Date for Time for Completion occurs, or the Adjustment Period, whichever results in the most favourable adjustment to the Employer. | |
|  | 18.6 | **Excluded Amounts** | |
|  |  | The following are not subject to price adjustment (**Excluded Amounts**): | |
|  |  | (a) | Adjustments or parts of adjustments of the Price valued in accordance with sub-clause  4.6 using a quotation that does not use rates and prices in the Contract |
|  |  | (b) | Amounts based on actual costs or current prices |
|  |  | (c) | Credits allowed for old materials arising from the Works |
|  |  | (d) | Amounts for work executed under an agreement containing specific price arrangements |
|  |  | (e) | [In addition to sub-clause 18.5] amounts by which any cost incurred by the Contractor has been increased by a default of the Contractor. |
|  | 18.7 | **Revisions of Index Figures** | |
|  |  | If an Index Figure used for a Material Category or a Fuel Category is subsequently revised by the Central Statistics Office prior to the issue of the final Certificate, any adjustments in accordance with this Clause shall be recalculated on the basis of the revised Index Figures. | |
|  | 18.8 | **Permitted Increases and Permitted Decreases for Material Categories and Fuel Categories** | |
|  |  | 18.8.1 | **Weightings** |
|  |  |  | For the purpose of calculating any adjustments to the amount payable in respect of Materials and Fuel in an Certificate, the weightings of Material Categories and Fuel Categories in the Contract Sum are set out in Part 1A, Part 1B or Part 2 of Appendix 4, as applicable [irrespective of the actual constituents, weightings or proportions of the work]. |
|  |  | 18.8.2 | **Materials and Fuel** |
|  |  |  | Subject to sub-clauses 18.4 and 18.5, the amount payable in respect of a Material Category and/or Fuel Category in a Certificate (other than amounts for price adjustments under this clause 18 or any Excluded Amounts) in respect of an Adjustment Period shall be adjusted for any Permitted Increase or Permitted Decrease in respect of that Material Category or Fuel Category, in accordance with the provisions of this clause 18. The total adjustment to the amount payable in such Certificate in respect of Materials and Fuel shall be equal to the net sum of any Permitted Increases and Permitted Decreases for each Material Category and Fuel Category, which adjustments shall be calculated using the relevant formula set out in Appendix 2. |

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| 18.9 | **Efficiency** |
|  | [In addition to sub-clause 18.4 and 18.5,] increases of the Price will only apply so far as such  increases occur despite the Contractor’s efficient progress and procurement and reasonable efforts to minimise increases. |

*End of Conditions*.

***Appendix 1 to Clause 18***

# DEFINITIONS

|  |  |  |  |
| --- | --- | --- | --- |
|  | ***Term*** |  | ***Meaning*** |
| (a) | Adjustment Index Figure | the appropriate Index Figure for the Adjustment Month **provided however** that, the Index Figure for any Adjustment Month that occurs after the Time for Completion shall be determined in accordance with sub-clause 18.5. | |
| (b) | Adjustment Month | the month during which the middle day of the Adjustment Period occurred (if the Adjustment Period is an even number of days the last day is not to be counted). | |
| (c) | Adjustment Period | the period between the last preceding Certificate and the current Certificate or the final Certificate. | |
| (e) | Designated Date | the date 10 days before the last day for receipt of the Contractor’s tender for the Works, or, if there was none, 10 days before the Employer received the Contractor’s tender for the Works. | |
| (f) | Designated Date Index Figures | the Index Figures for the month and year in which the Designated Date occurs. | |
| (g) | Effective Value | the difference between | |
|  |  | (I) | the amount which is due in any Certificate (before deducting retention) less any amounts for price adjustments and Excluded Amounts |
|  |  | and |  |
|  |  | (II) | the amount included in the last preceding Certificate calculated in accordance with (I) above **provided that** in the case of the first Certificate the Effective Value shall be the amount calculated in accordance with (I) above, |
| excluding VAT | | | |
| (h) | Certificate | a certificate provided by the Employer’s Representative in accordance with sub-clause 4.3 | |
| (i) | Fuel and Fuel Category | any or all of the sources of energy listed in Appendix 4, Part 2 as appropriate. | |
| (j) | Fuel Percentage | the percentage of the Contract Sum that consists of Fuel set out in Appendix 3. | |
| (k) | Index Figures | those index figures compiled by or on behalf of the Central Statistics Office, Ireland (or such other public body as is authorised to perform this function) applicable to each Material or Fuel Category listed in Appendix 4, Part 1A, Part 1B or Part 2, as appropriate | |
| (l) | Material(s) and Material Category | any or all of the materials listed in Appendix 4, Part 1or Part 1B as appropriate. | |
| (m) | Materials Percentage | the percentage of the Contract Sum that consists of Materials set out in Appendix 3, Part 1. | |
| (n) | Non-Adjustable Overheads | the percentage of the Contract Sum that consists of non-adjustable overheads set out in Appendix 3, Part 1. | |
| (o) | Plant | the percentage of the Contract Sum that consists of plant set out in Appendix 3, Part 1. (Plant means any machinery and/or equipment used in the construction of the Works but which does not form part | |

|  |  |  |
| --- | --- | --- |
|  | ***Term*** | ***Meaning*** |
|  |  | of the Works.  Examples include, but are not limited to; large machinery, tools, reusable formwork, trench supports, scaffolding, propping etc.) |
| (p) | Permitted Increase Threshold | means the figure identified as such in Appendix 3, Part 2 |
| (q) | Permitted Increase | means an increase to the Contract Sum permitted where, in respect of a particular Material Category or Fuel Category, the percentage change between the Designated Date Index Figure (or where a Recovery Date has been agreed, the Recovery Date Index Figure) and an Adjustment Index Figure exceeds the Permitted Increase Threshold. The amount of a Permitted Increase is calculated using the formula for Permitted Increases in Appendix 2 |
| (r) | Permitted Decrease | means a decrease to the Contract Sum permitted where, in respect of a particular Material Category or Fuel Category, the percentage decrease between the Designated Date Index Figure (or where a Recovery Date has been agreed, the Recovery Date Index Figure) and an Adjustment Index Figure exceeds ten percent. The amount of a Permitted Decrease is calculated using the formula for Permitted Decreases in Appendix 2. |
| (s) | Recovery Date | the Designated Date adjusted by the period of delay to the Starting Date that results from the actions or omissions of the Contractor after the Contract Date, but prior to the Starting Date (the **Contractor's Period of Delay**) as is agreed by the Parties. If the Parties do not agree the Recovery Date then the Employer may deliver to the Employer’s Representative full and detailed particulars of any claim to a Contractor’s Period of Delay and the Recovery Date shall be the Designated Date adjusted by the Contractor's Period of Delay, if any, that the Employer’s Representative certifies as fair and reasonable. |
| (u) | Recovery Date Index Figures | Where there is a Recovery Date, the Index Figures for the month and year in which the Recovery Date occurs. |
| (v) | Starting Date | the date in the Contract that the Contractor is to start executing the Works in accordance with sub-clause 2.3 |

***Appendix 2 to Clause 18***

***PERMITTED INCREASES AND PERMITTED DECREASES FOR MATERIALS and FUEL***

# Permitted Increase

A Permitted Increase in respect of any Material Category or Fuel Category only arises where ((F1 - D1)/D1) – PIT

> 0

Where ((F1 - D1)/D1) – PIT > 0 for a Material Category or Fuel Category, the formula for calculating a Permitted Increase pursuant to sub-clause 18.8.2 is:

𝑁 = (𝑊 ∗ 𝑌 ∗ 𝐸𝑉 ∗ 𝐸𝑃𝐼)

# Permitted Decrease

A Permitted Decrease in respect of any Material Category or Fuel Category only arises where 0 > ((F1 - D1)/D1) + 0.1)

Where 0 > ((F1 - D1)/D1) + 0.1) for a Material Category or Fuel Category, the formula for calculating a Permitted Decrease pursuant to sub-clause 18.8.2 is:

𝑁 = (𝑊 ∗ 𝑌 ∗ 𝐸𝑉 ∗ 𝐸𝑃𝐷)

*where:*

|  |  |  |
| --- | --- | --- |
| W = | The weighting for the particular Material Category or Fuel Category, as applicable | |
| Y = | The Materials Percentage or the Fuel Percentage, as applicable | |
| EV = | Effective Value | |
| EPI = | Excess Index Figure Increase = ((𝐹1−𝐷1) − 𝑃𝐼𝑇)  𝐷1 | |
| EPD = | Excess Index Figure Decrease = ((𝐹1−𝐷1) + 0.1)  𝐷1 | |
|  | D1 = | Subject to 18.5, the Designated Date Index Figure corresponding to the particular Material Category or Fuel Category or, where a Recovery Date has been agreed or determined, the Recovery Date Index Figure, as applicable |
|  | F1 = | Subject to 18.6, the Adjustment Index Figure for the particular Material Category or Fuel Category. |
|  | PIT = | The Permitted Increase Threshold, (expressed as a decimal) |
| N = | The amount of the Permitted Increase or Permitted Decrease recoverable in relation to price fluctuations in a particular Material Category or Fuel Category in a Certificate. | |

# Appointment of Project Supervisor

(PW-CF6)

**THIS AGREEMENT** is made on  **BETWEEN**

|  |  |  |
| --- | --- | --- |
| 1. | *The Client* |  |
|  | *Whose principal office is at* |  |

and

|  |  |  |
| --- | --- | --- |
| 2. | *The Project Supervisor* |  |
|  | *Whose registered office is at* |  |

## BACKGROUND

1. By a contract (the **Contract**) made on or about [[12]](#footnote-12), the Client, as employer, has

appointed [[13]](#footnote-13) as contractor (the **Contractor**) for

|  |  |  |
| --- | --- | --- |
|  | *Name of Contract* |  |

(the **Works**).

B. This Agreement is collateral to the Contract.

C. Terms defined in the Contract have the same meaning in this Agreement. The terms **competent**

**person** and **relevant statutory provisions** are construed according to section 2 of the Safety,

Health and Welfare at Work Act 2005 and any amendment to it.

## IT IS AGREED AS FOLLOWS:

1. The Client appoints the Project Supervisor as project supervisor for the construction stage according to the Safety, Health and Welfare at Work (Construction) Regulations 2013 and any amendment to them (the **Construction Regulations**) for the project comprising

the Works

and [[14]](#footnote-14)

(the **Project**).

1. The Project Supervisor’s appointment starts on the date of this Agreement and continues for as long as, under the Construction Regulations, the Client is required to have a project supervisor for the construction stage for the Project, unless the appointment is terminated earlier.
2. The Project Supervisor accepts the appointment.
3. The Project Supervisor shall perform all of its duties under the Construction Regulations as project supervisor for the construction stage for the Project.
4. The Project Supervisor represents and warrants to the Client that the Project Supervisor is and will continue to be a competent person to carry out its duties under this Agreement and the Construction Regulations and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Project Supervisor by this Agreement and under the relevant statutory provisions.
5. The Project Supervisor represents and warrants to the Client that the time allowed by the Contract for the completion of the Works is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
6. The Project Supervisor represents and warrants to the Client that the information provided by the Client to the Project Supervisor about the state or condition of the Site (as defined in the Contract) and any premises on it is appropriate and sufficient to enable the Project Supervisor to perform its duties under this Agreement and the Construction Regulations.
7. The Project Supervisor shall ensure that it is insured by insurances in the same terms as the insurances the Contractor is required to have under clause 10.3 of the Conditions of the Contract, and that those insurances comply with all the requirements of the Contract, and are kept in force for the same period as required by the Contract, and include cover for death or injury resulting from the Project Supervisor’s performance or non-performance of its duties under this Agreement and the Construction Regulations.
8. Payment for the Project Supervisor’s service is provided for under the Contract. Accordingly, the Client is not liable under this Agreement for the Project Supervisor’s fees or expenses.
9. If the Project Supervisor breaches its obligations or warranties under this Agreement, or if the Contractor’s duty to complete the Works is terminated under the Contract, the Client may terminate the Project Supervisor’s appointment under this Agreement.
10. Without limiting its obligations under the Construction Regulations, the Project Supervisor shall give the Client all documents it prepares in the course of and for the purpose of performing its duties under this Agreement (**Project Supervisor’s Documents**). If the Project Supervisor’s appointment under this Agreement terminates, the Project Supervisor shall give all Project Supervisor’s Documents to the Client immediately. Ownership of and copyright in the Project Supervisor’s Documents shall become the Client’s when the Project Supervisor delivers them to the Client, or the appointment is terminated, whichever is earlier. The Project Supervisor shall indemnify the Client against any liability resulting from the use or copying of the Project Supervisor’s Documents infringing the property (including intellectual property) rights of any person.
11. This Agreement is governed by and construed according to Irish law. The parties submit to the jurisdiction of the Irish courts in relation to all matters concerning it.

|  |  |
| --- | --- |
| **Given under the Client’s seal** | |
| *Affix Client’s seal* |  |
| *Signatures of persons*  *authorised to authenticate the seal* |  |

|  |  |
| --- | --- |
| OR | |
| **Signed on behalf of the Client** | |
| *Signature of authorised person* |  |
| **In the presence of** |  |
| *Name of witness* |  |
| *Signature of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

|  |  |  |
| --- | --- | --- |
| **Given**[[15]](#footnote-15) **under the Project Supervisor’s common seal** | | |
| *Affix Project Supervisor’s common seal* |  | |
| *Signatures of persons authorised to authenticate the seal* |  | |
| OR | | |
| **Signed and delivered as a Deed by** | | |
| *Name of attorney* |  | |
| *Signature of attorney* |  | |
| *As lawful attorney of the Project Supervisor under a power of attorney dated* | |  |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |
| OR | | |
| **Signed on behalf of** | | |
| *Name of the Project Supervisor* |  | |
| *Signature of authorised person* |  | |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

OR (if the Project Supervisor is an individual)

|  |  |
| --- | --- |
| **Signed and delivered as a Deed by** | |
| *Name of Project Supervisor* |  |
| *Signature of Project Supervisor* |  |
| **In the presence of** |  |
| *Signature of witness* |  |
| *Name of witness* |  |
| *Witness’s occupation* |  |
| *Witness’s address* |  |

OR

|  |  |  |
| --- | --- | --- |
| **Signed by** | |  |
| *Name of Project Supervisor* |  | |
| *Signature of Project Supervisor* |  | |
| **In the presence of** |  | |
| *Name of witness* |  | |
| *Signature of witness* |  | |
| *Witness’s occupation* |  | |
| *Witness’s address* |  | |

**STANDARD TERMS AND CONDITIONS**

for

**Contract for Plant Hire** **(Lot 3)**

**Plant Hire with Operator with PSCS**

**FOR**

**LOCAL AUTHORITIES and the OFFICE OF PUBLIC WORKS (OPW)**

**WHEREAS:**

1. The LGOPC is a central purchasing body within the meaning of the European Union (Award of Public Authority Contracts) Regulations 2016. Certain contracting authorities require the hiring of plant for the period (**Plant Hire Period**). The LGOPC, acting on behalf of the contracting authorities listed in **Schedule 2** (**Purchasers**) has established a Dynamic Purchasing System for Plant Hire (**the DPS**).
2. The Contractor is engaged in the business of supplying plant hire services which meet the Specification (**Plant Hire Services**). The Contractor submitted an Application for Admission (as defined below) in response to the LGOPC’s Request for Applications for Admission to the DPS which was advertised on the Irish Government website portal for public tenders, [www.etenders.gov.ie](http://www.etenders.gov.ie/) and in the Official Journal of the European Union. Following an assessment and evaluation of the Application, the LGOPC admitted the Contractor to the DPS.
3. The **Purchaser** (as defined in the Contract) wishes to appoint the Contractor under the DPS to provide the Services.

**NOW IT IS HEREBY AGREED** as follows: -

##### Definitions and Interpretation

* 1. In these terms and conditions, the following terms shall have the following meanings unless the context otherwise provides:

**“Application for Admission”** means the Contractor’s DPS application for admission submitted via [www.Supplygov.ie](http://www.supplygov.ie/) ;

**“Commencement Date”** means the date upon which the Contract is formally executed by the Contractor with the Purchaser;

**“Contract”** means the agreement entered into by the Purchaser and the Contractor under and pursuant to which the Contractor will provide Services in accordance with these terms and conditions, and to which these terms and conditions are scheduled;

**“Contractors”** means those Contractors (including the Contractor) who have been appointed to the DPS;

**“Defects”** means non-compliance of any service with these terms and conditions including:

* + 1. a failed quality test
    2. Services that fail to comply with the Specification or any applicable law or regulation;

**“Delivery Address”** means the address as stated in the appendix to the Contract;

**“Delivery Date”** means the date or dates stated by the Purchaser in the Contract as the date or dates upon which the Services are to be delivered, such date or dates being consistent with time-scales for delivery previously agreed between the parties;

**“Purchaser(s)”** means such local authorities (within the meaning of Section 2(1) of the Local Government Act, 2001-2014) listed in **Schedule 2** as may wish from time to time to contract for the completion of Plant Hire Services from the DPS Contractors;

**"Operator**": if applicable by reference to the appendix to the Contract, an employee or other individual engaged by the Contractor to operate the Plant in accordance with the Contract, or the Contractor (being an individual).

**"Plant"** means the items listed in these terms and conditions and any substitutions, replacements or renewals made in accordance with the Contract and, if applicable, any Operator, where context allows.

**“Price”** means the sum to be paid by the Purchaser to the Contractor in consideration of the Services provided under any contract pursuant to the DPS under these terms and conditions, in accordance with Clause 8**;**

“**Request for Tender**” means the competition between the DPS Contractors for the provision of the Services.

"**Rental Payment**" means the payment to be made by the Purchaser under the Contract for the hire of the Plant.

"**Rental Rate**" means the rate stated in the appendix to the Contract for hire of the Plant; "**Rental Period**" means the period of hire delimited in the appendix to the Contract;

**“Specification”** means the General Specification relating to the required Plant Hire Service over the period of the DPS (as set out in Section 3), attached as **Schedule 1** hereto;

**“Services”** means Plant Hire Services (including any works or ancillary services) meeting the Specification referred to in **Schedule 1** and any subsequent amendments agreed by the Purchaser in writing, and supplied in accordance with these terms and conditions;

**“Staff”** means all persons (including, without limitation, employees, agents and independent contractors) used or engaged by the Contractor in the provision of Services;

**“The LGOPC”** means the Local Government Operational Procurement Centre (the LGOPC) acting as a Central Purchasing Body (CPB) under the auspices of Kerry County Council;

**“VAT”** means Value Added Tax.

* 1. In these terms and conditions, unless where otherwise specified:
     1. words in the singular include the plural and vice versa;
     2. words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa;
     3. words in any gender shall include all genders;
     4. headings and titles are inserted for convenience only and shall not affect the construction of these terms and conditions;
     5. references to a day mean a calendar day;
     6. references to a working day mean a day that is not a Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997 or Good Friday;
     7. any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned;
     8. references to any statute or statutory provision shall be construed as references to the same as it may have been or may from time to time be amended, modified or re- enacted.
     9. in the event of any ambiguity or discrepancy between these terms and conditions and the Schedules, then these terms and conditions shall prevail;
  2. Certain Rules of Construction disapplied:
     1. These terms and conditions shall be construed without regard to the rule of construction known as “ejusdem generis”.
     2. If any ambiguity or question of intent or interpretation arises, these terms and conditions 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 these terms and conditions.

##### Entire Agreement

* 1. These terms and conditions together with the Contract contain the entire agreement between the parties and contain all the terms that the parties have agreed with respect to its subject matter and supersedes all previous drafts, agreements, representations, arrangements and understandings between the parties.
  2. Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
  3. The Contractor acknowledges that it has not been induced to enter into these terms and conditions by a statement or promise that these terms and conditions does not contain. The Purchaser is not liable in equity, contract or tort or in any other way for a representation that is not set out in these terms and conditions. Nothing in Clause 2 shall have the effect of limiting or restricting any liability of a party arising as a result of fraud.
  4. Each obligation, warranty or representation of the Contractor under these terms and conditions is undertaken or made for the benefit of the Purchaser.

##### Duration

* 1. The Contract shall continue in full force and effect up from the Commencement Date up until the expiry of the Rental Period (the “Contract Period”), unless it is otherwise terminated in accordance with the provisions of these terms and conditions.

##### Scope

* 1. The Contractor is appointed pursuant to these terms and conditions on a non-exclusive basis to provide the Services to the Purchaser and the Contractor accepts such appointment.

##### DPS for Plant Hire Period – Division into Lots

* 1. These terms and conditions pertain to the completion of 'Plant Hire Services - Lot 3. Plant Hire with Operator with PSCS'.

##### Not used

1. **The Contractor’s Obligations**
   1. The Contractor shall provide the Services in compliance with the outlined Specification (**Schedule**

**1**) to the Purchaser, and shall ensure that its Staff shall complete the Services to the Purchaser:

* + 1. in accordance with these terms and conditions and the Contract;
    2. with skill and expertise and in a first class, professional, diligent, expeditious, conscientious and timely manner;
    3. in compliance with all instructions of the Purchaser in relation to the Services; and
    4. in compliance with all requirements and/or obligations of any law, statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures.
  1. The Contractor’s obligations also include, but are not limited to:
     1. open communication with the Purchaser and with any third parties appropriately authorised by the Purchaser so as to facilitate the efficient provision of Services;
     2. maintaining the minimum quality levels of the Services as set out in the Specification appended at **Schedule 1**;
     3. permitting nominated officers of the Purchaser at any time for the duration of the DPS to inspect the manufacturer or production facilities used by the Contractor for the purpose of carrying out quality tests to ensure compliance with the minimum quality levels as set out in the Specification;
     4. notifying the Purchaser in writing of any notice or order by any court, governmental agency, local authority or regulatory agency which may have an impact on the Contractor’s ability to provide the Services as soon as such notice or order is received by the Contractor; and
     5. notifying the Purchaser immediately in respect of any claims arising in connection with these terms and conditions within seven (7) days of such a claim arising.
     6. other than in the exercise of its rights under the Contract, not interfering with the Purchaser's quiet possession and use of the Plant.

##### Pricing

* 1. Pricing shall be in accordance with the provisions set out in **Schedule 1.**
  2. Unless otherwise stated, the Price shall be:
     1. exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a valid VAT invoice); and
     2. payable in euro (€).
  3. The Price shall be inclusive of any and all costs and/or expenses incurred by the Contractor in the provision of the Services.

##### Terms of Payment

* 1. Subject as hereinafter provided, the Contractor shall be entitled to invoice the Purchaser in accordance with the Contract awarded.
  2. Each invoice shall be sent by the Contractor on completion of the relevant Services or at such other interval(s) as otherwise agreed in writing between the Purchaser and the Contractor. Each invoice must:
     1. quote the Purchaser contract number;
     2. quote the purchase order number;
     3. quote the Request for Tender number;
     4. quote the Price; and
     5. contain a detailed narrative describing the Services provided
  3. VAT shall be itemised separately on each invoice. Where appropriate, invoices must show the Contractor’s VAT Number.
  4. The Price for the Services provided pursuant to each individual Contract shall be invoiced to the Purchaser separately.
  5. Unless otherwise agreed by the Contractor and the Purchaser and recorded in the Contract, the Purchaser shall pay the Contractor for the provision of the Services within fifteen 15 days of receipt of the invoice, provided all monies specified on the Contractor’s invoice are properly due and payable in accordance with these terms and conditions and the invoice meets the requirements set out in this Clause 9. The Prompt Payments of Accounts Act 1997 (as amended by the Late Payments in Commercial Transactions Regulations 2002) shall apply to the payment of invoices under these terms and conditions.
  6. The Purchaser may retain or set off against the Price any amount owed to the Purchaser by the Contractor on any account whatsoever.
  7. In the event that the Purchaser determines at any time that the quality of any Services provided by the Contractor are of a standard below that required by these terms and conditions, or that any Services in any other respect are not being rendered in accordance with these terms and conditions, the Purchaser will notify the Contractor accordingly and will be entitled to withhold a proportionate amount (determined at the discretion of the Purchaser) of any future payment due to the Contractor pursuant to these terms and conditions until such time as the matter in question has been remedied to the reasonable satisfaction of the Purchaser. The rights of the Purchaser pursuant to this Clause 9.7 shall be without prejudice to any other rights it may have under these terms and conditions or at law, including the right of termination as provided in Clause 19

##### Time

* 1. The Contractor shall deliver the Services to the Delivery Address on or before the Delivery Date specified in the Contract, unless otherwise agreed to in writing by the Purchaser. The Services to be completed, locations, and the time for completion shall be as specified by the Purchaser in the Contract.
  2. If a Delivery Date cannot be met by the Contractor, the Contractor shall promptly notify the Purchaser. Notwithstanding such notice and unless a substitute delivery date for the Services has been expressly agreed by the Purchaser in writing, the Contractor’s failure to affect the delivery of the Services on the Delivery Date shall entitle the Purchaser, without prejudice to any other remedy it may have, to invoke the remedies set out in Clause [11.2](#_bookmark13) below.
  3. When fulfilling the Contract, the Contractor shall provide a Services docket specific to each delivery with a minimum of the following information indicated on same:
     1. The Contractor’s name and address;
     2. The Contractor’s VAT registration number;
     3. The Purchaser’s order number and reference number from the [www.SupplyGov.ie](http://www.supplygov.ie/) system;
     4. A description of the Service and locations where completed;
  4. The Purchaser may, by notice in writing to the Contractor, extend or shorten the Rental Period.
  5. Expiry of the Rental Period will not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination, including the right to claim damages for breach of the Contract before the date of termination.

##### Acceptance

* 1. Notwithstanding completion of the Services, the Purchaser shall not be deemed to have accepted any Services until:

1. those Services have been inspected and checked to the satisfaction of the Purchaser;
2. immediately before or on delivery of the Services, the Contractor shall either demonstrate how each item of Plant is operated or, subject to the Purchaser's approval, shall provide the Purchaser with a copy of the operating manual for each item of Plant.
   1. Without prejudice to any other remedy that the Purchaser may have if the Services are not supplied in accordance with these terms and conditions, including the Specification or the Contract, where the Contractor has failed to deliver on time or to the correct location in accordance with Clause 10, or where the Purchaser has discovered Defects or a discrepancy in the Services,

and has given the Contractor a reasonable opportunity to investigate and remedy the Defects or shortage, the Purchaser may:

* + 1. require the Contractor, at the Contractor’s expense, to fulfil its obligations in all respects within such period as is specified by the Purchaser; or
    2. require the Contractor to provide the Purchaser with a credit note for any part of the Price which has been paid in respect of such Services; or
    3. purchase substitute Services elsewhere and recover from the Contractor any actual losses, cost and liabilities whatsoever incurred by the Purchaser (including without limitation the costs of any replacement Services); or
    4. terminate the relevant Contract in accordance with the provisions of Clause 19 and require repayment of any part of the agreed contract sum that has been paid in respect of the relevant Services and that the Purchaser shall be entitled to recover from the Contractor actual losses, cost and liabilities howsoever incurred by it (including without limitation the costs of any replacement Services).
  1. If the Contractor delivers Plant, including supplies and an Operator, which is not specified in the appendix to the Contract, the Purchaser may, in its absolute discretion:
     1. refuse to accept delivery, in which case no payment whatsoever will be due to the Contractor for the Plant or
     2. accept delivery of the item delivered in lieu of the specified item, in which case clause
  2. below will apply.

11.4 If the Purchaser accepts delivery of an item of Plant with a higher value than the Plant specified in the appendix to the Contract, the Rental Rate in the appendix to the Contract will nonetheless apply. If the Purchaser accepts delivery of an item of Plant with a lower value than the Plant specified in the appendix to the Contract, or which otherwise does not conform to the Contract, the Rental Payments will be reduced by a proportionate amount specified by the Purchaser.

##### Risk and Title

* 1. During the Rental Period, the Plant remains the Contractor's property, and the Purchaser will have no right, title or interest in or to the Plant except the right to possession and use of the Plant under the Contract.
  2. Nothing in these terms and conditions shall be deemed to give the Contractor any right, title, licence, trade name, trademark, patent, packaging design, intellectual property right or other interest of the Purchaser, unless otherwise agreed between the Contractor and the Purchaser.
  3. Risk of damage or loss of the Services shall, unless otherwise agreed between the Contractor and the Purchaser, remain with the Contractor until their delivery to, and acceptance by, the Purchaser in accordance with the provisions of these terms and conditions and, in particular, Clause 11.1.
  4. The risk of loss, theft, damage or destruction of the Plant remains with the Contractor during the Rental Period.

##### Staff

* 1. The Contractor shall employ sufficient Staff to provide Services who shall be properly trained, skilled and qualified. Failure by the Contractor to meet its obligations under this Clause 13.1 shall be considered a material breach of these terms and conditions for the purposes of Clause [19.2.1.](#_bookmark25)
  2. The Contractor shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act, 2000. For the purposes of Clause [13.2,](#_bookmark14) ‘employee’ means an individual employed by or otherwise working for the Contractor, or any of its sub-contractors, as applicable.

##### Warranties and Indemnities

* 1. The Contractor shall be responsible for and shall indemnify and keep indemnified the Purchaser, its agents, employees, officers, subsidiaries, associated companies, assigns and, where the Purchaser is acting as an agent, the Purchaser’s principal, on demand and in full against any and all losses, costs, judgments, claims or liabilities in respect of:
     1. any death or personal injury to any person;
     2. any loss of or damage to any property (including property belonging to the Purchaser or for which it is responsible);
     3. any breach of statutory duty;
     4. any losses, actions, claims or demands by third parties against the Purchaser, and any costs, charges and expenses (including legal expenses) suffered or incurred by the Purchaser in respect of same; and
     5. any losses, claims, expenses and liability that the Purchaser may suffer as a result of the Purchaser's performance or non-performance of the Contract (excepting the Purchaser's obligation to pay the Rental Payment).

in each case arising directly or indirectly out of, or in connection with any negligent act or omission, or breach of these terms and conditions committed by the Contractor or its employees, agents or sub-contractors.

* 1. The Purchaser undertakes that the Contractor shall be given notice of any third party action or claim described in Clause [14.1](#_bookmark16) above that is made against the Purchaser within seven (7) days and the Contractor shall, subject to the Purchaser being indemnified and secured by the Contractor to its reasonable satisfaction against any costs, liabilities, losses or expenses it may suffer in so doing, have the right to defend any such claims, following consultation with the DPS Purchaser who shall be kept fully informed at all times of all such claims or proceedings arising from such actions or claims, and make settlements thereof at its own discretion in order to settle or oppose any such claims.
  2. The Contractor hereby warrants and undertakes to the Purchaser that:
     1. it has the appropriate skills and technical capacity, legal right and full power and authority to perform its obligations under these terms and conditions;
     2. all Services are and will be fit for the purpose for which they are intended;
     3. all Services will conform to its specification, be of satisfactory quality, safe, and suitable for the purpose for which is normally used and the purpose disclosed by the Purchaser; and
     4. it shall not do anything to prejudice the name or reputation of the Purchaser, or the Purchaser’s business interests.
  3. The Contractor and the Purchaser acknowledge and understand their respective duties of care in respect of the Safety, Health and Welfare at Work Act, 2005 and all regulations made thereunder, including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013.
  4. Any approval, testing or acceptance by the Purchaser in accordance with these terms and conditions shall not, in any way, limit the Contractor’s liability and obligations under these terms and conditions.

##### Insurance

* 1. As and from the Commencement Date, the Contractor shall maintain in force during the Contract Period full and comprehensive insurance policies as set out in **Schedule 1** – **General Specification**.

##### Tax Clearance

* 1. The Contractor shall, and shall ensure that its sub-contractors shall, produce an in-date (not older than 30 days) Notification of Determination to the Purchaser or the principal Contractor, before any contract is awarded. Contractors requiring further information on demonstration of satisfactory level of subcontractor tax compliance and Notifications of Determination under Section 530I of The Taxes Consolidation Act, 1997 (as amended) should contact their local Revenue office. Contact details are available on the Revenue website at [www.revenue.ie.](http://www.revenue.ie/)

##### Confidentiality

* 1. For the purposes of this Clause 17 **“Confidential Information”** means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the **Disclosing Party**) to the other party/another party (the **Receiving Party**) whether before or after the date of these terms and conditions.
  2. Subject to Clause [17.3,](#_bookmark20) during the Contract and at any time after the termination or expiry of these terms and conditions (for any reason) the Receiving Party:
     1. may not use any Confidential Information for any purpose other than in the performance of its obligations or the enjoyment of its rights under these terms and conditions;
     2. may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause [17.3](#_bookmark20); and
     3. shall make every effort to prevent the use or disclosure of Confidential Information.
  3. The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:
     1. it is required by law;
     2. the Receiving Party can demonstrate that it has come into the public domain, otherwise than through a breach of these terms and conditions by the Receiving Party;
     3. it is required by existing contractual obligations (as of the Commencement Date) of which the Disclosing Party is aware;
     4. it is required by any securities exchange or regulatory or governmental body to which it is subject; or
     5. the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-Contractors (a **Recipient**) to the extent that disclosure is reasonably necessary for the purposes of these terms and conditions.
  4. The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party’s obligations of confidentiality under the Contract as if the Recipient was a Party to these terms and conditions.
  5. Upon any termination or expiry of these terms and conditions, each party shall cause all Confidential Information belonging to the other party in whatever medium, to be returned, deleted or destroyed, according to the written instructions of the other party.

##### Conduct Review/Audit

* 1. The Purchaser may review the Contractor’s performance from time to time over the period of the DPS according to the Performance Measurement Table hereunder.
  2. On completion of the Contract, if so requested by the Purchaser, the Contractor shall collate and provide to the Purchaser the information required for the Purchaser to review the Contractor’s performance according to the Performance Measurement Table below. The Purchaser will complete a Performance Evaluation Form using a copy of the document included in **Schedule 3** and shall also record performance against the Performance Measurement Table.
  3. The Contractor is said to have reached Level 1, Level 2 or Level 3, if, during the review for one of the indicators listed in the below table, the number of occurrences of that indicator equals or exceeds the number listed in the column headed “Level 1”, “Level 2”, or “Level 3”.
  4. If the Contractor has reached Level 1, the Purchaser will give the Contractor a written notification and the Contractor must demonstrate to the Purchaser’s satisfaction that it has implemented steps to redress the problem.
  5. If the Contractor has reached Level 2, the Purchaser will exclude that Contractor from any competition under the DPS in which it is due to participate until the Contractor has demonstrated to the Purchaser’s satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, competitions under the DPS may be run without prejudice as if the Contractor was excluded and these terms and conditions had been terminated with the Contractor.
  6. If a Contractor has reached Level 3 and a Purchaser may terminate the Contractor pursuant to Clause 19 below.

**Performance Measurement Table**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Employers Objective** | **Indicator** | **Measurement Period** | **Level 1 (Rule 18.4)** | **Level 2**  **(Rule 18.5)** | **Level 3 (Rule 18.6)** |
|  | | | | | |
| **Health and Safety** | | | | | |
|  | Failure to maintain safety measures as set out in the Safety and Health | Contract | N/A | 2 | 3 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Management of Safety during hire | Plan and/or Contractor’s Safety Statement |  |  |  |  |
| Failure to submit required safety certificates relevant to hired Plant item e.g. GA1, GA2 etc. | Contract | N/A | 2 | 3 |
| Requirement for immediate off hire of plant or driver on foot of committing a breach of the Safety, Health & Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the works | Contract | N/A | 1 | 2 |
| Requirement for immediate off hire of plant or driver on foot of failure to comply with reasonable Direction(s) issued by the PSCS or Purchaser’s Representative or HSA | Contract | N/A | 1 | 2 |
| **Performance** | | | | | |
| General | Failure of the Contractor to comply with its obligations under the Contract, and if applicable, failure to put matters right following issuance of direction by the Purchaser | Contract | 2 | 3 | 5 |
| Failure of the Contractor to proceed regularly and diligently with the execution of the works | Contract | 2 | 3 | 5 |
| Plant reliability | Failure of Plant to be fully operational during the course of the contract period to an extent that impedes works completion | Contract | 2 | 3 | 5 |
| Mobilisation | Failure to mobilise with the nominated plant on the dates as agreed in the appendix to the Contract | Contract | 2 | 3 | 5 |
| Plant Driver/ Operator | Requirement for immediate removal of plant Operator on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Contractor’s obligations under the Contract | Contract | N/A | 1 | 2 |

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| Legal Requirements | Requirement for immediate off hire of plant or driver on foot of committing or causing the Purchaser to commit a serious breach of Legal or Statutory requirements concerning the works | Contract | N/A | 1 | 2 |
| **Quality of Work** | | | | | |
| Workmanship during hire | Failure of the Contractor to execute the works in a proper and workmanlike manner and using good practice | Contract | 2 | 3 | 5 |
| Defects in competed work requiring re-visiting to repair | 180 days | 1 | 2 | 3 |

* 1. The Contractor shall implement such recommendations and comply with any Purchaser’s findings to the extent necessary to ensure that the Services continue to be delivered and the Contractor continues to meet its obligations in accordance with the requirements set out in these terms and conditions.
  2. In addition to the performance review as may be conducted by the Purchasers pursuant to Clause

18.1 above, the performance of the Contractor under these terms and conditions shall be subject to review by the Purchaser, when deemed necessary for the purpose of addressing continued non-performance issues. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for the Purchaser and the Contractor to review performance and other key issues in connection with these terms and conditions. The Purchasers and the Contractor shall be committed to continuously improving the Contractor/Purchaser relationship.

* 1. The Contractor shall implement such recommendations and comply with the Purchaser's findings pursuant to Clause 11 to the extent necessary to ensure that the Services continue to be delivered and the Contractor continues to meet its related obligations in accordance with the requirements set out in these terms and conditions.
  2. The Contractor shall keep and maintain until a minimum of six (6) years after the expiry of the Contract Period, full and proper records and all documents relating to the performance of its obligations under these terms and conditions and shall allow each Purchaser and any auditors of or other advisers to a Purchaser to access at any time and from time to time any of the Contractor’s premises, personnel and such records and documents for the purposes of:
     1. fulfilling any legally enforceable request by any court, tribunal or regulatory body; or
     2. undertaking verifications of the accuracy of the Price in accordance with Clause 8 or identify suspected fraud; or
     3. undertake verification that Services are being (and have been) provided in accordance with these terms and conditions.
  3. Conduct of Audits:
     1. Subject to Clause [18.11.2](#_bookmark21) below, any audit shall be carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the Contractor’s business.
     2. Where a Purchaser has reasonable grounds to believe that the Contractor is not complying with its obligations under these terms and conditions, an audit may be carried out without prior notice.
     3. Any Purchaser, its agents or designees may exercise a right of audit under this Clause

18.11 and shall comply with the Contractor’s reasonable security and access rules and procedures. Persons that a Purchaser may designate include that Purchaser’s, the LGOPC’s independent auditors, representative of governmental or regulatory authorities having jurisdiction under applicable law for the activities relating to these terms and conditions.

* + 1. During any audit, any Purchaser shall ensure that its agents or designees shall treat as confidential any information, data or documents relating to the Contractor to which they may have access.
    2. The Contractor shall provide all assistance reasonably requested by a Purchaser (and its auditors and other advisers) in relation to any audit, including access to the Contractor’s personnel, records and premises.
    3. Each Purchaser shall pay its own cost and expenses for any audit undertaken pursuant to this Clause 18 save where such audit identifies that the Contractor has overcharged a Purchaser by 2% or more of the invoice amount for the Services under audit, or overstated the Contractor’s pricing by more than 2%, in which case the Contractor shall reimburse the Purchaser, for its out of pocket expenses in conducting such audit. This Clause [18.11.6](#_bookmark22) is intended as a fair allocation of audit expenses and not as damages or a penalty.

##### Termination and Substitution

* 1. These terms and conditions may be terminated by any party providing not less than three (3) months’ written notice.
  2. Without prejudice to any other rights or remedies to which it may be entitled, the Purchaser may terminate the Contract without liability to the Contractor by giving written notice to the Contractor to take effect immediately or on the date specified in the said notice if:
     1. the Contractor commits a material breach of any term or condition of these terms and conditions, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Purchaser requiring the Contractor to do so;
     2. the Contractor has reached Level 3 following a review conducted by a Purchaser pursuant to Clause 18;
     3. the Contractor contravenes Clause 20;
     4. the Contractor, being an individual, becomes bankrupt or dying or becoming incapable of performing this agreement, or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of its estate, or a trustee is granted by it on behalf of its creditors, or if the Contractor, being a company, enters into a voluntary or compulsory liquidation (other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the relevant Purchaser), or if a receiver or examiner of any of its assets is appointed, or if the Contractor is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014, or the Contractor takes or suffers any analogous action under any other applicable law;
     5. the Contractor ceases or threatens to cease to carry on business;
     6. being a company, the Contractor is struck off the register of companies;
     7. being a company, a petition being presented to wind it up and not being dismissed within 14 days after presentation
     8. being a company, a meeting of its creditors or members being held for the purpose of considering a resolution to wind it up
     9. being a company, entering or proposing to enter an arrangement with or for the benefit of its creditors
     10. being a company, a petition being presented to appoint an examiner
     11. a Purchaser reasonably believes that any of the events mentioned in **Sub-clauses**

[**19.3.4**](#_bookmark26) **to 19.3.10** inclusive or any analogous event is about to occur in relation to the Contractor in any jurisdiction and notifies the Contractor accordingly;

* + 1. any representation made by the Contractor in connection with these terms and conditions shall in the opinion of a Purchaser prove to be untrue or incorrect in a material respect as of the date when made;
    2. the Contractor has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of these terms and conditions;
    3. a Purchaser has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any employee of any Purchaser with a view towards securing any agreement for the provision of the Services or any other contract. Paying the expenses of normal business meals shall not be prohibited by this provision; or
    4. it is suspected (acting reasonably) that the Contractor has entered into or implemented an agreement or has made or implemented a decision or has engaged in a concerted practice that is prohibited by Section 4(1) of the Competition Acts 2002 to 2014; in which case the Contractor may be reported by a Purchaser to the Competition & Consumer Protection Commission, and a Purchaser may take any other steps permitted by law.
    5. the Purchaser is of the reasonable opinion that the Contractor does not have sufficient capacity or is unavailable to complete the Services.
  1. Should conditions arise which, in the opinion of the Purchaser in its absolute discretion, necessitate the termination of these terms and conditions, the Purchaser may terminate these terms and conditions upon written notice to the Contractor.
  2. Termination of these terms and conditions pursuant to sub-clauses [19.1,](#_bookmark24) 19.2, or 19.3 above shall not relieve or discharge either the Contractor or the Purchaser from any obligations which have accrued prior to such termination.
  3. The Purchaser shall not be liable to the Contractor for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Contractor arising out of or in connection with these terms and conditions or the termination of these terms and conditions or any Contract awarded.
  4. The provisions of Clauses [1)](#_bookmark12) (*definitions and interpretation*) [14)](#_bookmark15)*(warranties and indemnities)*, [15)](#_bookmark17)(*insurance),* [16)](#_bookmark18)*(tax clearance)* [17)](#_bookmark19)*(confidentiality),* [19)](#_bookmark23) (*termination*) [21)](#_bookmark28) (*notices*) 22 (*waiver*)

[26)](#_bookmark31) (*publicity*) [27)](#_bookmark32) (*data protection*) [29)](#_bookmark33) (*freedom of information*) [30)](#_bookmark34) (*governing law*) and [31)](#_bookmark35) (*dispute resolution*) shall survive the termination or expiry of these terms and conditions.

* 1. The events and circumstances listed in this sub-clause are as follows—
     1. the Contractor substantially fails to comply with this agreement
     2. the Purchaser considers that a failure of the Contractor to comply with this contract may create an immediate and serious threat to the environment or to public safety or health
     3. it appears necessary or expedient to the Purchaser in the interest of environmental protection or public safety or health or the discharge of the Purchaser's duties under the law
     4. any of the events or circumstances set out at sub-clause 19.2.1 to 19.2.16 above, or a similar event anywhere, occurs in relation to the Contractor:
  2. If any of the events or circumstances in sub-clause 19.7 occur then the Purchaser may give notice at any time requiring the Contractor to take such steps as the Purchaser considers necessary or expedient to mitigate or avoid the event or circumstances in question. Such steps may include the Purchaser, or a replacement contractor appointed by the Purchaser (a Substitute Contractor), supplying equipment in place of the Plant.
  3. If the Purchaser gives a notice under sub-clause 19.8, payment of any money due by the Purchaser to the Contractor will be postponed, and the Purchaser is not required to make any further payment to the Contractor until after the expiry of the Rental Period, when any liability of the Contractor to the Purchaser under this contract has been established.
  4. The Contractor must co-operate, as instructed by the Purchaser, with any Substitute Contractor.
  5. The Purchaser may from time to time certify the cost incurred by the Purchaser in taking steps under sub-clauses 19.7, 19.8, 19.9 and 19.10, including the additional cost of any Substitute Contractor and associated procurement and administrative expenses. Insofar as the amount of such costs exceeds the amount the Purchaser would have paid had the Purchaser not acted under this clause, the Contractor must reimburse the Purchaser on demand.
  6. When, in the Purchaser's opinion, the events or circumstances in question have passed such that it is no longer necessary for the steps referred to in a notice under this sub-clause to be taken, (and if this contract has not been transferred) the Purchaser may give the Contractor a further notice requiring the Contractor to resume performance of this contract as before or otherwise instructed in the notice.
  7. The Purchaser may, by one or more further notices, amend a notice given under sub-clause 19.8.
  8. If any of the events or circumstances listed in sub-clause 19.7 occurs, the Purchaser may, by notice to the Contractor, transfer the Contractor's rights and obligations under this contract to a Substitute Contractor. Such a notice will take effect on the date it is given, or on such other date as is stated in the notice, to novate the Contractor's rights and obligations under this contract, from and after the date on which the notice takes effect, to the Substitute Contractor.
  9. A Substitute Contractor appointed by the Purchaser may be one of the following:
     1. Another contractor admitted to the DPS
     2. Another contractor who was selected to tender for this contract
     3. If, in the Purchaser's opinion, no suitable contractor within sub-clauses 19.15.1 and

19.15.2 above is available, another contractor the Purchaser considers suitable for transfer of the Contract.

##### Assignment, Transfer and Sub-Contracting

* 1. The Contractor shall not sub-contract, assign or transfer these terms and conditions or any part thereof or the benefit or advantage of these terms and conditions or any part thereof without the prior written consent of the Purchaser.
  2. Where sub-contracting is consented to pursuant to Clause [20.1](#_bookmark27) above, the Contractor shall ensure that the sub-contractor is a reasonable and prudent Contractor, and that the sub-contractor shall carry out its obligations in accordance with the terms of these terms and conditions. Notwithstanding the foregoing, the Contractor acknowledges that it remains liable for the acts and omissions of its employees, servants, agents and sub-contractors as if they were its own acts and omissions.
  3. These terms and conditions shall be binding upon successors and assigns of the Purchaser and the Contractor and the name of a party appearing in these terms and conditions shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

##### Notices

* 1. The address and telephone numbers of the Purchaser and the Contractor for the purpose of the giving of notices under these terms and conditions are as follows:

|  |  |  |  |
| --- | --- | --- | --- |
| ***The Purchaser*** | | ***Contractor*** | |
| **Name:** |  | **Name:** |  |
| **Email:** |  | **Email:** |  |
| **Attention:** |  | **Attention:** |  |

* 1. Any notice required or authorised by these terms and conditions to be given by a party to the other shall be in writing and may be forwarded electronically only to the email address set out at and marked for the attention of the person identified in Clause [21.1](#_bookmark29)
  2. Any notice or other communication shall be deemed to have been duly given when transmitted by electronic means on receipt of ‘read receipt’ or equivalent.
  3. All notices, documents and communications provided under these terms and conditions or Contract shall be in the English language save that nothing in this Clause [21.4](#_bookmark30) shall restrict or prejudice the ability of the Purchaser to comply with its obligations under the Official Languages Act 2003.
  4. Any party may, by notice to the others in compliance with this Clause 21 change the contact details set out at Clause [21.1.](#_bookmark29)

##### Waiver

* 1. Failure or neglect by the Purchaser to enforce at any time any provision of these terms and conditions shall not be construed nor deemed to be a waiver of the Purchaser’s rights hereunder, nor in any way affect the validity of the whole or any part of these terms and conditions, nor prejudice the Purchaser’s rights to take subsequent action.

##### Severability

* 1. If any provision of these terms and conditions is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of these terms and conditions and the remainder of the provision in question shall not be affected thereby.

##### Relationship

* 1. The Contractor shall not be the authorised agent of the Purchaser or have the right or authority either express or implied to create or incur any liability against or on behalf of the Purchaser. In particular, the Contractor shall not hold itself out, nor permit any person to hold it out, as being authorised to bind or pledge the credit of the Purchaser in any way and shall not do any act that might reasonably create the impression that it is so authorised.
  2. It is acknowledged by all parties that the Contractor will at all times be an independent contractor, and nothing in these terms and conditions will be construed (and the Contractor will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between the Purchaser and the Contractor.

##### Force Majeure

* 1. In these terms and conditions, **“Force Majeure”** means an occurrence that is beyond the control of the Contractor, the Purchaser (each an “**Affected Party**”) to the extent that event is not attributable to the fault or negligence of the Affected Party, including, but not limited to, the following: acts of God; war; riot; civil disorder; fire; flood; storm; acts or failures or refusals to act by a central government authority; and other similar occurrences beyond the control of the Affected Party which such the Affected Party is unable to prevent by exercising reasonable diligence but excludes, for the avoidance of doubt, any labour dispute, strike or industrial dispute

affecting the Contractor or any other event which a prudent Contractor of Plant Hire Services could have reasonably foreseen and provided for the cause in question.

* 1. If an Affected Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part, it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
  2. No Affected Party shall in any circumstances be liable to the other(s) for any loss of any kind whatsoever directly or indirectly caused or incurred by the other(s) by reason of any failure or delay by the Affected Party in the performance of its obligations to the extent such failure or delay is due to Force Majeure. Notwithstanding the foregoing, each Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under these terms and conditions. The Affected Party shall resume performance of its obligations under these terms and conditions once the Force Majeure has ended.
  3. In the event that the Force Majeure event is continuing for a period at least one (1) month, then the other person in whose favour the affected obligation was to be performed may terminate the relevant Contract upon fourteen (14) days written notice to the Affected Party.
  4. It is agreed that any failure by the Contractor to perform, or any delay by the Contractor in performing its obligations under these terms and conditions, which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor has a contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise, as a result of circumstances of Force Majeure.

##### Publicity

* 1. The Contractor shall ensure that no publicity relating to the completion of the Services shall take place without the prior written consent of the Purchaser. For the avoidance of doubt, this restriction includes internal publicity and using the Purchaser as a referee.

##### Data Protection

* 1. The Contractor shall comply with its obligations under the Data Protection Acts 1988 and 2003**,** where applicable, as amended from time to time and any Regulations or enactments under them, Directive 95/46/EU and any other EU Regulations, Directives, decisions or guidelines on data protection or data privacy including any subsequent re-enactment, replacement or amendment of each, including, for the avoidance of doubt, the Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 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) and all applicable laws and regulations relating to the processing of personal data, and the equivalent of any of the foregoing in any relevant jurisdiction) and guidance issued by the Data Protection Commissioner (“Applicable Data Protection Legislation”), in the collection and storage of data pursuant to these terms and conditions. In particular, the Contractor shall, where required, register with the Office of the Data Protection Commissioner and shall put in place safeguards sufficient to comply with its obligations under the Applicable Data Protection Legislation and must ensure that all staff are aware of and comply with the obligations imposed by the Applicable Data Protection Legislation.
  2. The Contractor shall indemnify the Purchaser against all claims and proceedings and all liabilities, losses, costs, claims, actions, proceedings, demands by third parties and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage or distress caused to that person as a result of the Contractor’s unauthorised or unlawful processing or the Contractor’s destruction of or damage to any personal data held by the Contractor, its employees or agents or due to any failure by the Contractor to comply with this Clause [27).](#_bookmark32)

##### Conflict of Interest

* 1. The Contractor shall ensure that neither the Contractor nor its Staff shall accept any professional or other commitment or engagement during the term of the Services which conflicts or might reasonably be expected to conflict with the duties and obligations undertaken by the Contractor hereunder (“Conflict of Interest”). The Contractor warrants that it has disclosed to the Purchaser any such Conflict of Interest as may already be in existence on the date hereof. The Contractor undertakes that it shall notify the Purchaser of any actual or potential Conflict of Interest arising during the period of the Contract. In particular, the Contractor shall note its obligations under Section 179 of the Local Government Act 2001 as amended by the Local Government Reform Act 2014. This Code is available for download from the Department of the Environment, Heritage & Local Government website:

[http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad,8776,en.](http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad%2C8776%2Cen.pdf) [pdf](http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownLoad%2C8776%2Cen.pdf)

##### Freedom of Information

* 1. The Purchaser is subject to the provisions of the Freedom of Information Act, 2014. If, for any reason, the Contractor wishes that information provided to the Purchaser is not disclosed because of its commercially sensitive nature, then it is incumbent upon the Contractor, when providing the information, to identify same and specify the reasons for its sensitivity. It shall not be sufficient for the Contractor to furnish the Purchaser with a general statement of confidentiality in respect of all information furnished to the Purchaser.

##### Governing Law

* 1. The governing law provisions are set out at clause 15 of the Contract.

##### Dispute Resolution

* 1. The dispute resolution provisions are set out at clause 15 of the Contract.

##### Health & Safety

* 1. Notwithstanding any of the provisions of these terms and conditions, national Health & Safety legislation will apply to these terms and conditions, as set out in Schedule 1 attached.

### **SCHEDULE 1: GENERAL SPECIFICATION**

**1.1 General**

* + 1. This specification is compiled for the purposes of the Contract. The technical requirements set out in this Schedule 1 (General Specification) are non-specific and apply to Lot 1, Lot 2, and Lot 3 Contracts unless stated otherwise. All Services shall be in compliance with the technical standards as detailed and any further technical requirements as set out in the Requests for Tenders.
    2. The categories of Plant including a breakdown of plant types that are part of this Contract are listed in Schedule 4.

**1.2 Insurances**

* + 1. No Plant will be hired unless satisfactory evidence of insurance is submitted by the Insurance Broker/Company for the Contractor or the Contractor, prior to commencement of the services. Where the insurance policy in question is due to expire prior to the end of the Contract Period, it shall be the responsibility of the Contractor to ensure that, in advance of the expiration date, said policy is renewed, that the Purchaser are so informed.
    2. The following insurances are required to be in place and maintained in force for the Contract Period:

##### Insurance of the Plant

Insured to a value not less than its full replacement value comprehensively against all usual risks of loss, damage or destruction by fire, theft or accident

##### Public Liability Insurance

* + - * €6,500,000 for any one event
      * Maximum Excess: €6,500

The €6,500,000 limit is for any one event. The limit of indemnity under the Public Liability Insurance must be for the full policy limit of €6,500,000. No inner limit reduction is permissible. The maximum permissible excess shall be set out in the Contract or, if no figure is provided, €6,500. The successful Contractor will be required to include the Purchaser as joint insured and must include a non-vitiation clause.

Public Liability Insurance must specifically be extended to include all motorised vehicles to which the Road Traffic Acts do not apply (such as rollers, pavers, off site vehicles, etc.,). Alternatively, such vehicles should be scheduled (by Registration or VIN) in the Motor Policy.

##### Motor Policy Insurance

* + - * €6,500,000 for any one event
      * Maximum Excess: €6,500

Insurances must specifically cover the supply of Plant and Operator.

##### Employers Liability Insurance

* + - * €13,000,000 for any one event
      * Maximum Excess: €6,500

Insurances must also cover the Contractor’s role as Project Supervisor for the Construction Stage (PSCS), as applicable.

Employers Liability Insurance will be required where the item of Plant to be hired is to be operated by anyone other than the registered owner of the Plant (the **Owner**) (where the Owner is an individual – any reference to Owner below means an individual Owner) even for periods of holiday leave, sick leave etc. Any operator of a machine other than its Owner will be deemed to be an employee of the Contractor even if a relation to/of the Owner.

The Employers Liability Insurance shall comply with the following requirements -:

1. Cover must apply to all employees of the Contractor engaged on the Contract
2. The liability for death or injury to employees must be covered on an unlimited basis
3. The cover must indemnify the Purchaser as principal and must include a non-vitiation clause
4. Cover must be extended to cover the Contractor in respect of liability assumed by him under the Contract, i.e. the description of the insured's business must be unambiguous

The Contractor shall be liable for and shall indemnify the Purchaser for and in respect of all and any losses, claims, demands, damages or expenses that the Purchaser may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, willful default or fraud of the Contractor, its employees, sub-contractors or agents, or any of them.

* + 1. Specific indemnity to the Purchaser as Principal is required with a minimum limit of €13m under Employers Liability, €6.5m under Public Liability and €6.5m under Motor Insurance Policy if applicable. In respect of Plant that is hired without Operator, the Purchaser requires evidence of Public Liability insurance cover including liability arising from the use or supply of defective equipment. This cover must be provided either under the Public Liability policy or a separate Products Liability policy, with a minimum limit of €6.5m.
    2. When quoting for the hire and employment of agricultural tractors, trailers and hedge cutters, the Contractors are advised that insurance policies *‘limited to agricultural and forestry use’* do not cover work of a commercial nature and must be extended to permit such work.
    3. The Purchaser will not be responsible for any cost incurred by the Contractor for putting in place the required insurances.
    4. For Lot 3, Insurances must also cover the Contractor’s role as Project Supervisor for the Construction Stage (PSCS).
    5. Each insurance policy must provide that the term 'insured' applies to each insured person as if a separate policy had been issued to each (without increasing the overall level of indemnity) and non-compliance by an insured does not affect the rights of any insured person, and that the insurer waives all rights of subrogation or other action against each insured and indemnified person.
    6. The Contractor must ensure that its insurances cover the acts and omissions of subcontractors, and that subcontractors maintain employer's liability insurance in the same terms as required of the Contractor.
    7. The insurance policies must cover work of a commercial nature and not be limited to agricultural or forestry use.
    8. If the Purchaser or Contractor becomes aware of any loss of or damage to Plant or any accident involving Plant during the Rental Period, it must notify the other as soon as possible.

##### Insurance of Subcontractors

The Contractor shall confirm that their insurance will cover the negligence of any subcontractor(s) employed by them in connection with the Contract. Subcontractors cannot be employed by the Contractor to carry out activities that are specifically excluded from the Contractor’s insurance policies.

##### Exclusions

The only permitted exclusions from the insurance policies required under this contract are war, invasion of foreign enemies, hostilities whether war be declared or not, civil war, rebellion, revolution, insurrection, military or usurped power; contamination by radioactivity or radioactive, toxic, explosive, or other hazardous properties of any explosive nuclear assembly or its components, in each case not caused by the Contractor, subcontractors or its or their personnel; terrorism. The insurance of the Plant may also exclude wear, tear, normal upkeep, normal repair, gradual deterioration, or inventory losses; loss of use or any consequential losses of any nature including penalties for delay, non-completion or non-compliance; failure of information technology; mechanical or electrical breakdown but not including any resulting damage. The public liability insurance may exclude persons under a contract of persons under a contract of service or apprenticeship with the insured; property of the insured or in the insured’s custody or control other than the existing premises and their contents temporarily occupied for the purposes of this contract; defective workmanship or materials but not resulting damage; loss or damage due to design; gradual pollution or contamination; territorial limits; aircraft and waterborne craft; fines, penalties, liquidated damages. The employer's liability insurance may exclude offshore work and liability compulsorily insurable under the Road Traffic Acts (provided that it is covered under the required motor policy).

If the Contractor have specific exclusions noted in their insurance policies which restrict or prohibit their ability to carry out certain works under any plant hire contract (asbestos, working at heights etc.) the Contractor prior to the Commencement Date will be required to either -:

* + - Have the exclusion removed from their insurance policy and employ a competent and appropriately insured specialist subcontractor to carry out the excluded activity and put in place contingency cover on the Contractor’s insurance policy

*or*

* + - Have the specialist subcontractor included with the Contractor as a full joint insured on the subcontractor’s insurance policy and have the Purchaser joint insured on the subcontractor’s insurance policy. The Contractor should note that the Purchaser will not be responsible for any cost incurred by a Contractor in complying with the insurance requirements outlined above.

**1.3 Not Used**

**1.4 Plant/Operator Requirements & Conditions**

* + 1. It shall be the responsibility of the Contractor to ensure that the maintenance requirements as set out in the manufacturer’s recommendations shall be met for all items of Plant on offer. (This requirement does not extend to the daily checks to be carried out by the Purchaser on any items of Plant on hire without operator). Furthermore, the Contractor must be able to satisfy the Purchaser that such standards are being met by producing maintenance records upon request. The operator of the Plant in conjunction with the Contractor is responsible for undertaking regular maintenance, inspection, and the prompt carrying out of any/or subsequent repairs. Such inspections are to be logged in an appropriate logbook

available with each Plant for spot inspections. In addition, the Contractor must ensure that the Plant is maintained in accordance with good industry practice.

* + 1. Bad work, done as a result of not competently working Plant, will be repaired at the Contractor’s own expense.
    2. The Plant offered should be capable of carrying out the work for which it was made without any diminution of power or output from the minimum laid down by the makers of the machine. The Purchaser’s engineering staff may monitor the performance, efficiency & suitability of all Plant. Such inspections in no way exonerate the supplier/operator from their responsibility to inspect, maintain and at all times provide safe equipment, regardless of plant age. Removal charges for Plant deemed unsuitable after monitoring by engineering staff and delivery charges for Plant replacing such items will be at the Contractor’s own expense.
    3. It should also be noted that any Plant tendered for and accepted for work by the Purchaser might be dismissed from a work site, if found on examination not to comply with the current Road Traffic and Health & Safety Legislation, or by non-compliance of any terms and conditions, in any particular instance. This will be at the discretion of the Purchaser.
    4. The Purchaser will not provide storage of materials/machinery and the Purchaser will not accept any responsibility for any loss or damage to materials or Plant placed on or near any work site by the Contractor or his agents. The Contractor shall make his own arrangements for the protection of his Plant and materials. Plant or tools stored by the Purchaser by prior agreement, for the Contractor's convenience, will be stored at the Contractor’s own risk.
    5. Where Plant is hired with an Operator, the Plant shall be at the risk of the Contractor and the Purchaser shall not be liable to compensate the Contractor for damage sustained to the Plant, nor shall the Purchaser be liable to pay any hire charge in respect of any Plant which shall remain idle or inoperable as a result of damage to same.
    6. **PLEASE NOTE** the terms and conditions in this Specification (Schedule 1) and in the *Standard Terms & Conditions for Contract Plant Hire* and in the Contract shall apply, to the exclusion of any terms and conditions which the Contractor may purport to apply at any time, whether contained in any invoice, delivery docket or other document produced by or furnished to the Purchaser by the Contractor, its agents or employers.
    7. The Contractor engaged by the Purchaser shall provide the names and addresses of all Operators of Plant hired, in the "Driver's Details" section of [www.Supplygov.ie](http://www.Supplygov.ie/) and enter updates as the need arises during the Period of Validity.
    8. Operator(s) in charge of Plant shall, at the date of hire and thereafter for the duration of the works -:
       1. hold the appropriate Construction Skills Registration Card(s) (CSCS ticket(s)),
       2. demonstrate while operating the Plant, the necessary skills and competency required for safe operation of such Plant,
       3. be capable of completing the specified work outlined by the Purchaser,
       4. shall not pose a Health & Safety risk to himself, other persons present on or near the site, nor to any member of the Public,
       5. shall not pose a Health & Safety risk when operating in the vicinity of existing services, and
       6. shall not be employed to work more than any one machine on any day
    9. In the event that the Operator with the hired Plant fails to meet any of the above requirements, the Purchaser reserves the right to seek immediate removal of said Operator from the site, to be replaced with a suitably competent Operator at the start of the next working day, or no later than 48 Hours. Failure of the supplier to address such a risk within this timeframe shall result in the immediate termination of the relevant contract.
    10. The operator must remain in constant attendance on the Plant while it is employed and under no circumstances shall Plant be operated by any person other than those for whom the relevant documentation as required by these terms and conditions has been submitted.
    11. All mechanically propelled Plant operating on public roads must have a valid registration plate applicable to that particular item of Plant.
    12. A current Vehicle Registration Certificate in respect of each item of Plant entered may be required. The Purchaser reserve the right to seek proof of ownership prior to or during the hired period.
    13. A valid and current Certificate of Roadworthiness must be submitted in respect of Goods Vehicles and Goods Trailers over one year old with a Design Gross Weight of more than 3,500kg. Goods vehicles and trailers, for which a current Certificate of Road Worthiness is not available, will not be hired. No alternatives will be considered.
    14. In addition, Goods Trailers with a Design Gross Weight of more than 3,500kg must be registered with the Purchaser and be licensed.
    15. In the case of tenders for lorries/haulage/etc. a photocopy of the current road freight license must be submitted specifying which items are covered.
    16. Haulers are required by law to have a current road haulage operator’s license. All vehicles listed under the Contractor account on [www.Supplygov.ie](http://www.Supplygov.ie/) must be authorised on this license.
    17. All Plant for which a Road Fund License (Tax Disc) is required must display a current Tax Disc correctly. Vehicles hired for commercial work must be taxed as general haulage. All Plant for which an "Insurance Disc" is required must display a current valid "Insurance Disc" correctly. All Plant hired will be required to have suitable flashing/warning beacons in working order at all times.
    18. Trailers or attachments having a maximum gross vehicle weight exceeding 3,500Kgs shall be licensed and have a current certificate of road worthiness.
    19. Agricultural tractors and attachments (other than trailers) shall comply in all respects with the requirements of the current Road Traffic Acts and Road Transport Acts and all Regulations made under those Acts. Where agricultural tractors are hired with Operators, such Operators shall hold driving licenses of the classes required under the Road Traffic Acts. All road going items of Plant must comply with the requirements of the various Road Traffic Acts and Regulations.
    20. The Contractor is reminded that bitumen emulsion sprayers whether chassis or trailer mounted, are subject to the requirements of the European Communities (Vehicle Testing) Regulations 2004 (Revocation) Regulations 2013 where used to transport bitumen emulsion on public roads. Certificate of Roadworthiness shall therefore be required in respect of such items where it is intended that they be used to transport bitumen emulsion from storage depots to work sites. The serial number, name of Issuing Authority and the date of the Certificate of Roadworthiness should be included in respect of each such Plant item.
    21. All transport vehicles, earth-moving machinery, materials-handling machinery and locomotives used for the purposes of construction work must comply with all legislative requirements including Part 11 of the Safety, Health and Welfare at Work (Construction) Regulations 2013.
    22. Vehicles utilised by the Purchaser shall comply with the Purchaser’s vehicle policy. The Contractor must comply with and abide by the safety management system of the Purchaser awarding a contract under the DPS.
    23. It shall be the responsibility of the Contractor to ensure that they comply with all of the following statutory Legislation/Regulations or any other statutory Legislation/Regulations, including but not limited to -:

1. The Wildlife Act 1976 and as amended
2. Waste Management Act 2006
3. Waste Management Amendment Act 2001
4. Litter Pollution Act 1997
5. Protection of the Environment Act 2003
6. The Road Traffic Act 1961
7. The Sustainable Use of Pesticides Directive
   * 1. The Purchaser may require GPS tracking capability – this will be specified at the Request for Tender stage.
     2. Road sweepers tendered for shall be ‘dual sweep’.
     3. For construction work on roads the Contractor shall ensure compliance with section 1.6.6 below.
     4. If the Purchaser makes space available for storage, the Contractor may use the space entirely at its own risk, without recourse to the Purchaser in any circumstances whatsoever.

**1.5 Health & Safety (Safety Statement)**

* + 1. The Contractor will be required to comply with all legislative requirements including the Safety, Health and Welfare at Work Act 2005 and all regulations, Codes of Practice and Guidance arising thereunder, including the Safety Health and Welfare at Work (Construction) Regulations 2013 and the Safety, Health and Welfare at Work (General Applications) Regulations 2007.
    2. Applicants applying for admission to the DPS, shall provide a copy of the company’s Safety Statement or equivalent document that sets out the details of the company’s overall Safety Management System, and that describes the measures, procedures, systems, roles and responsibilities used by the Applicant to secure and manage the safety, health, and welfare at work of its staff, other workers, clients, home occupants, and the general public in the place of work.
    3. Where the Contractor has 3 or less employees, the documents included in the Health & Safety Authority Code of Practice for Contractors with Three or Less Employees can be used to satisfy the requirement for submission of a Safety Statement. The Contractor shall complete and sign the documents included as Appendix E to the Code of Practice and submit these along with the associated Safe System of Work Plans.
    4. The Safety Statement shall be prepared in accordance with Section 20 of the Safety, Health & Welfare at Work Act 2005, and implementing Regulations.
    5. For Lot 3 projects, at the discretion of the Purchaser, the Contractor will be appointed Project Supervisor for the Construction Stage (PSCS) in accordance with the Safety, Health and Welfare at Work (Construction) Regulations 2013.
    6. The requirements under Health and Safety legislation will be evaluated by the Purchaser.
    7. The Contractor will have carried out and submitted a site-specific Risk Assessment/Method Statement to the Purchaser for their review and approval.
    8. Where a Contractor enters a site where they are not the nominated PSCS, they must comply with any directions given by the PSCS.

**1.6 Health & Safety (Legal/Paperwork)**

* + 1. The Contractor will be required to comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations, Codes of Practice and Guidance arising thereunder, including the Safety Health and Welfare at Work (Construction) Regulations 2013 and the Safety, Health and Welfare at Work (General Applications) Regulations 2007. All articles and substances supplied for use at work, including any Plant, machine, tool or hazardous substance, shall comply with the requirements of the current Safety, Health & Welfare at Work Act, Regulations, Codes of Practice and Guidance.
    2. All employees entering Purchaser's sites shall have a Safe Pass Card, with SOLAS accreditation or equivalent.
    3. The Safe Pass Card and CSCS equivalent qualifications (e.g. CSCS equivalent in Northern Ireland (CSR card)) will also be accepted. Details to be submitted online and original cards must be available upon request on site on any given day.
    4. Plant operators, as listed in the Schedule 5 of Safety, Health and Welfare at Work (Construction) Regulations 2013, must be in possession of a valid Construction Skills Certification Scheme (CSCS) card for the item of Plant being operated.
    5. All employees operating Plant shall have a current full driver’s license pertaining to the item(s) of Plant they are operating. Copies must be available upon request on site on any given day.
    6. For construction work on roads the Contractor shall ensure the following:
       1. Compliance with Regulation 97 of the Safety, Health and Welfare at Work (Construction) Regulations 2013 is complied with. The provision and maintenance of adequate Signing, Lighting and Guarding arrangements in compliance with DoT, 2010, Chapter 8 of the “Traffic Signs Manual” and “Guidance for the Control and Management of Traffic at Roadworks” – 2nd Edition where required.
       2. The provision of a person / persons in possession of a current CSCS for Signing, Lighting and Guarding at roadworks, where required.
       3. The provision of a person / persons in possession of a current CSCS for Health and Safety at roadworks where the CSCS card holder for signing, lighting and guarding at roadworks is absent from the site, where required.
       4. Details of cards will need to be submitted online prior to the Commencement Date.
       5. The provision of a written, site-specific traffic management plan(s) for all projects as defined in Chapter 8 as Category A and B type works, where required.

**1.7 Health & Safety (Plant/Equipment)**

* + 1. The operator in charge of Plant shall be provided with the necessary Personal Protective Equipment (P.P.E.) by the Contractor in order to safely carry out his duties; e.g. safety boots, reflective vests, helmets etc.
    2. All Plant must be fitted with a reverse alarm which cannot be disabled.

* + 1. Check valves are required on machines as per the guidance of the HSA or particular requirement of the Purchaser.
    2. All Plant using L.P.G. as a means to heat bituminous materials shall be supplied with a certificate of thorough examination issued by a certified Liquid Petroleum Gas Engineer, certifying that all pipe work, tanks, burners, flame failure valves and temperature probes meet with all the relevant safety standards.
    3. Plant must comply with requirements for Auxiliary Devices and Visual Aids under Regulation 87 and Schedule 7 of the Construction Regulations 2013 - SI No. 291.
    4. A Roll Over Protection System (ROPS), shall be provided on all earth moving machines and rollers. ROPS shall comply with Machinery Directive 98/37 and subsequent revisions and shall be designed, manufactured and tested to recognised standards. The machines in question shall be labelled to show compliance with recognised standards and these labels shall display the following information.
       1. Name and address of ROPS manufacturer
       2. ROPS Identification mark
       3. Machine make/model that ROPS is suited for
       4. Machine mass that ROPS is designed for

**1.8 Health & Safety (Project Supervisor Construction Stage) – Lot 3 Only**

* + 1. The Contractor or their nominee may be appointed as Project Supervisor for the Construction Stage (PSCS) under the Safety, Health and Welfare at Work (Construction) Regulations 2013, as advised in the Request for Tender. (Any costs associated with the provision of PSCS role by a Contractor/Suppler are the Contractor’s responsibility.)
    2. If the role of PSCS is required, the Contractors will have demonstrated their competence or their outsourced nominee’s competence to carry out the role to the Purchaser prior to Commencement Date.

**1.9 Terms and Conditions**

* + 1. The Contractor and their employees are expected to adhere to acceptable standards of behaviour, i.e. standards expected of the Purchaser's staff.
    2. The Contractor is responsible for ensuring that the supplied Plant meet the required Specification as detailed in these *Standard Terms and Conditions for Contract for Plant Hire*.
    3. Delivery of plant and machinery shall be made as and where required by the Purchaser. No material shall be delivered on site by a Contractor unless there is an authorized representative of the Purchaser on site to receive, check, and sign for the material.
    4. The Purchaser whose findings will be final will measure distances by road from the Contractor hiring source to the various work sites.

**1.10 Contract Performance**

* + 1. It is intended that the Contractor’s performance will be monitored by the Purchaser during the execution of the Contract.
    2. A Performance Evaluation Report will be completed by the Purchaser at the end of the Contract or earlier if necessary, that will record the performance of the Contractor on the Contract. Such reports will be copied to the Contractor and consideration of such reports may be incorporated into the award criteria for future centralised procurement competitions for Plant Hire Services. A copy of the Performance Evaluation Reports are included in Schedule 3.
    3. Where any Contractor fails to satisfactorily perform a Contract, the Contract may be terminated and the Purchaser shall have the right to re-tender the contract.
    4. Please refer to the *Standard Terms & Conditions for Contract for Plant Hire for* full details of the contract and performance review mechanism.

|  |  |
| --- | --- |
| **Ref** | **Purchasers** |
| 1 | Cavan County Council |
| 2 | Carlow County Council |
| 3 | Clare County Council |
| 4 | Cork City Council |
| 5 | Cork County Council |
| 6 | Donegal County Council |
| 7 | Dublin City Council |
| 8 | Dun-Laoghaire-Rathdown County Council |
| 9 | Fingal County Council |
| 10 | Galway City Council |
| 11 | Galway County Council |
| 12 | Kerry County Council |
| 13 | Kildare County Council |
| 14 | Kilkenny County Council |
| 15 | Laois County Council |
| 16 | Leitrim County Council |
| 17 | Limerick City and County Council |
| 18 | Longford County Council |
| 19 | Louth County Council |
| 20 | Mayo County Council |
| 21 | Meath County Council |
| 22 | Monaghan County Council |
| 23 | Tipperary County Council |
| 24 | Offaly County Council |
| 25 | Roscommon County Council |
| 26 | Sligo County Council |
| 27 | South Dublin County Council |
| 28 | Waterford City and County Council |
| 29 | Westmeath County Council |
| 30 | Wexford County Council |
| 31 | Wicklow County Council |
| 32 | Office of Public Works (OPW) |
| 33 | Health Service Executive |
| 34 | Department of Agriculture, Food and the Marine |
| 35 | Irish Water |
| 36 | Waterways Ireland |

|  |  |  |  |
| --- | --- | --- | --- |
| **Plant Hire Supplies & Services Contract Performance Evaluation (Lot 3)** | | | |
| **Details of Contract** | | | |
| **Contracting Authority:** |  | | |
| **Purchaser:** |  | | |
| **RFT Reference No.:** |  | | |
| **Name of Contractor:** |  | | |
| **SupplyGov I.D of Contractor** |  | | |
| **Contractor Contact Name:** |  | | |
| **Contractor Ranking:** |  | | |
| **Details of Contract Awarded:** | | | |
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| **Total Out-turn Cost (incl. VAT):** | | € |  |
| **Comments:** | | | |
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| **Evaluation Completed By -** | | | |
| **Purchaser Name:** |  | | |
| **Purchaser Contact No:** |  | | |
| **Purchaser email address:** |  | | |
| **Date of Review:** |  | | |
| **Signature:** |  | | |

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| **Performance Evaluation of Plant Hire (Lot 3)** | | | | | | | |
| **Scoring Range** | | **Excellent** | **Very Good** | **Good** | **Moderate** | **Poor** | |
| Please give one rating for each criterion. Add comments as required to justify your rating. | | | | | | | |
| **Evaluation Criteria** | | | | | | | **Rating** |
| **1** | Provision of the tendered items(s) of plant without undue delay | | | | | |  |
| *Did the Contractor make the tendered plant item(s) available in the time frame requested?*  *Were any other difficulties or Delays encountered?* | | | | | |  |
| ***Comments*** | | | | | |
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| **2** | Quality and Operating Condition of the hired plant item(s) | | | | | |  |
| *What was the overall condition of the tendered Plant Item(s) supplied?*  *Was the Plant Item(s) / Operator sufficiently capable of performing the required works? Did the Plant Item / Operator operate without any difficulty?* | | | | | |  |
| ***Comments*** | | | | | |
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| **3** | Cost effectiveness and Contractor Responsiveness | | | | | |  |
| *Was the specified works completed in a timely and efficient manner, consistent with good practice based on past experience with previous works of a similar nature?*  *Did Plant Item(s) / Operator negatively impact on the final out-turn cost for the works? Was this final cost in line with planned budget?*  *Level of the Contractor’s cooperation? Were all issues arising addressed in a professional and timely manner by the Contractor? Was it necessary to issue any requests for corrective action(s)?* | | | | | |  |
| ***Comments*** | | | | | |
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| **4** | Compliance with the requirements of Health & Safety Legislation and Road Traffic Legislation | | | | | |  |
| *Did the Contractor comply with Safety, Health & Welfare legislation including SH&W (Construction) Regulations 2013?*  *Did all on-site members of the project Team possess SOLAS accredited Safe-Pass cards and where applicable, CSCS cards? Did the Contractor provide and maintain adequate guarding, signing and lighting arrangements in compliance with DoT, 2010 Chapter 8 of the “Traffic Signs Manual”?*  *Did operation of the plant item(s) create or contribute to a Health & Safety risk? Was the Plant item(s) fitted with a reverse alarm and check Valves ?*  *Were the Certificates required for the Plant Hire items valid & current during the works?* | | | | | |  |
| ***Comments*** | | | | | |
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| **5** | Project Supervisor Construction Stage | | | | | |  |
| *Did the Project Supervisor Construction Stage (PSCS) carry out his/her duties in a professional manner?*  *Was the developed Preliminary Health & Safety Plan appropriate for the project (identified site particular risks & measures)? Did the PSCS coordinate the implementation of the General Principles of Prevention during construction?* | | | | | |  |
| ***Comments*** | | | | | |
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| **Overall Rating** | | | | | | |  |

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| **Performance Evaluation of Plant Hire Operator (Lot 3)** | | | | | | | | | |
| **Scoring Range** | | | **Excellent** | **Very Good** | | **Good** | **Moderate** | **Poor** | |
| Please give one rating for each criterion. Add comments as required to justify your rating. | | | | | | | | | |
| **Name of Driver:** | |  | | | **Safe Pass ID:** | |  | | |
| **Evaluation Criteria** | | | | | | | | | **Score** |
| **1** | Professional Qualifications | | | | | | | |  |
| *Did the Operator possess the Construction Skills Registration Cards applicable to the plant item and works?* | | | | | | | |  |
| ***Comments*** | | | | | | | |
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| **2** | The Operator demonstrated the skills, efficiency, experience and reliability required for competent operation of the hired plant | | | | | | | |  |
| *Did the Operator possess a Full Drivers Licence?*  *Was the Operator sufficiently competent to use the plant item while undertaking the specified works? Was any bad work completed that had to be corrected?* | | | | | | | |  |
| ***Comments*** | | | | | | | |
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| **3** | Quality of Workmanship | | | | | | | |  |
| *Was the required work completed in a good skilful manner?*  *Did the operator demonstrate a desire to complete the work to a high quality?*  *Did the completed works meet the aesthetic and functional requirements of the job?* | | | | | | | |  |
| ***Comments*** | | | | | | | |
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| **4** | Cost – effectiveness | | | | | | | |  |
| *Was the operator sufficiently organised in the day to day scheduling & progress of the works? Was the programme for the works negatively impacted by the assigned Operator?*  *Was the operator responsible for any unexpected plant down-time?* | | | | | | | |  |
| ***Comments*** | | | | | | | |
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| **5** | Compliance with the requirements of Health & Safety Legislation | | | | | | | |  |
| *Did the Operator possess a FÁS accredited Safe Pass card, and sufficient awareness of Health & Safety risks associated with operation of the plant?*  *Was the operator provided with the necessary Personal Protective Equipment (P.P.E.)?*  *Did the operator pose a Health & Safety risk to himself, other persons present on or near the site, to any member of the Public, or to existing services?* | | | | | | | |  |
| ***Comments*** | | | | | | | |
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| **Total Score** | | | | | | | | |  |

### **SCHEDULE 4: PLANT HIRE CATEGORIES**

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| --- | --- | --- |
| **Sub Category** | **Product** | **Product Item** |
| Bulldozers | Bulldozers | Bulldozers |
| Cars | Cars | Cars |
| Cranes | Cranes | Cranes |
| Crushing Plants | Crushing Plants | Crushing Plant |
| Draglines | Draglines | Dragline |
| Drilling Rigs | Drilling Rigs | Drilling Rig |
| Dumpers | Dumpers | Articulated Dumper |
| Dumpers | Dumpers | Rigid Dumper |
| Edging Machines | Edging Machines | Edging Machine |
| Working Platforms/Hoists/Elevations | Working Platforms/Hoists/Elevations | Working Platforms/Hoists/Elevations |
| Gritters/Chip Spreaders | Gritters/Chip Spreaders | Gritter/Chip Spreader |
| Excavators | Long Reach Steel Tracked Excavator 360° | Greater than 5 Tonne up to 20 Tonne |
| Excavators | Long Reach Steel Tracked Excavator 360° | Greater than 20 Tonne |
| Excavators | Mini Excavator 360° with Buckets | Less than 5 Tonne |
| Excavators | Mini Excavator 360° with Buckets | Greater than 5 Tonne up to 20 Tonne |
| Excavators | Rubber Tracked Excavator 360° | Greater than 5 Tonne up to 20 Tonne |
| Excavators | Rubber Tracked Excavator 360° | Greater than 20 Tonne |
| Excavators | Rubber Wheeled Backhoe Excavator 180° | Less than 10 Tonnes |
| Excavators | Rubber Wheeled Excavator 360° | Greater than 5 Tonne up to 20 Tonne |
| Excavators | Rubber Wheeled Excavator 360° | Greater than 20 Tonne |
| Excavators | Steel Tracked Excavator 360° | Greater than 5 Tonne up to 20 Tonne |
| Excavators | Steel Tracked Excavator 360° | Greater than 20 Tonne |
| Landfill Compactors | Landfill Compactors | Landfill Compactors |
| Loading Shovels/Teleporters | All Terrain Telescopic Loadalls (Teleporters) | Rubber Tyred |
| Loading Shovels/Teleporters | All Terrain Telescopic Loadalls (Teleporters) | Tracked |
| Loading Shovels/Teleporters | Loading Shovels | Rubber Tyred |
| Loading Shovels/Teleporters | Loading Shovels | Tracked |
| Mobile Libraries | Mobile Libraries | Mobile Libraries |
| Tar Patching Machines/Units | Tar Patching Machines/Units | Tar Patching Machine Units |
| Pavers | Pavers | Paver |
| Pipe Jetting & Suction Machines | Pipe Jetting & Suction Machines | Pipe Jetting Machines |
| Pipe Jetting & Suction Machines | Pipe Jetting & Suction Machines | Pipe Jetting and Suction Machine |
| Pipe Line Cleaners | Pipe Line Cleaners | Pipe Line Cleaner |

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| Pumps | Pumps | Sludge Pumps |
| Pumps | Pumps | Water Pumps |
| Pumps | Pumps | Truck-Mounted Concrete Pump |
| Refuse Collection Vehicles | Refuse Collection Vehicles | Refuse Collection Vehicles |
| Road Graders and Blade Graders | Road Graders and Blade Graders | Road Grader |
| Road Graders and Blade Graders | Road Graders and Blade Graders | Blade Graders |
| Sweepers | Sweepers | Road Sweeper |
| Sweepers | Sweepers | Footpath Sweeper |
| Rollers | Rollers | Vibrating Rollers |
| Rollers | Rollers | Static 3 Wheeled Rollers |
| Rollers | Rollers | Rubber Tyred Rollers for Surface Dressing |
| Rollers | Rollers | Remote Controlled Vibrating Roller |
| Skips | Skips | Skips |
| Skips | Skips for Sludge Cake Removal | Skips for Sludge Cake Removal |
| Vacuum Sludge Tankers | Vacuum Sludge Tankers | Rigid Trucks with Tank |
| Vacuum Sludge Tankers | Vacuum Sludge Tankers | Articulated Units with Semi Trailer |
| Tar Sprayers Binder Distributers & Combi Units | Tar Sprayers Binder Distributers & Combi Units | Tar Sprayers Binder Distributers |
| Tar Sprayers Binder Distributers & Combi Units | Tar Sprayers Binder Distributers & Combi Units | Combi Unit |
| Lorries/Trucks | Lorries/Trucks | Flat Body Rigid Lorry |
| Lorries/Trucks | Lorries/Trucks | Tipper Body Rigid Lorry |
| Lorries/Trucks | Lorries/Trucks | Tipper Body Rigid Lorry with Clam Shell Bucket |
| Lorries/Trucks | Lorries/Trucks | Articulated Unit |
| Lorries/Trucks | Lorries/Trucks | Dump Truck |
| Lorries/Trucks | Lorries/Trucks | Rigid Lorry for Bulk Haulage |
| Lorries/Trucks | Lorries/Trucks | Hook Loader Vehicle |
| Lorries/Trucks | Lorries/Trucks | Truck Mounted Hot Box |
| Tractor & Attachments | Tractor & Attachments | Tractor with Hedgecutter |
| Tractor & Attachments | Tractor & Attachments | Tractor only |
| Tractor & Attachments | Tractor & Attachments | Tractor with Bucket |
| Tractor & Attachments | Tractor & Attachments | Tractor with Trailer <3,500kgs |
| Tractor & Attachments | Tractor & Attachments | Tractor with Mowing Bar |
| Tractor & Attachments | Tractor & Attachments | Tractor with Cyclone Grass Cutter |
| Tractor & Attachments | Tractor & Attachments | Tractor with Rotavator |
| Tractor & Attachments | Tractor & Attachments | Tractor with Roller |
| Tractor & Attachments | Tractor & Attachments | Tractor with Harrow (chain) |

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| Tractor & Attachments | Tractor & Attachments | Tractor with Brush |
| Tractor & Attachments | Tractor & Attachments | Tractor with Aerator |
| Tractor & Attachments | Tractor & Attachments | Tractor with Vacuum/Slurry Tanker |
| Tractor & Attachments | Tractor & Attachments | Tractor with Front Loader |
| Tractor & Attachments | Tractor & Attachments | Tractor with Garden Equipment |
| Tractor & Attachments | Tractor & Attachments | Tractor with Dump Trailer |
| Tractor & Attachments | Tractor & Attachments | Tractor with Hydraulic Grader |
| Tractor & Attachments | Tractor & Attachments | Tractor with Post Driver |
| Tractor & Attachments | Tractor & Attachments | Tractor with Transport Box |
| Tractor & Attachments | Tractor & Attachments | Tractor with Sidelining Plough |
| Tractor & Attachments | Tractor & Attachments | Tractor with Concrete Mixer |
| Tractor & Attachments | Tractor & Attachments | Tractor with Snow Plough |
| Tractor & Attachments | Tractor & Attachments | Tractor with Stone Cart |
| Tractor & Attachments | Tractor & Attachments | Tractor with Stone Rake |
| Tractor & Attachments | Tractor & Attachments | Tractor with Road Mulcher |
| Tractor & Attachments | Tractor & Attachments | Tractor with Sprayer |
| Tractor & Attachments | Tractor & Attachments | Tractor with Tar Trailer |
| Tractor & Attachments | Tractor & Attachments | Tractor with Low Loader |
| Tractor & Attachments | Tractor & Attachments | Tractor with Swamp Power Tracked Dumper |
| Tractor & Attachments | Tractor & Attachments | Tractor with Lime Spreader |
| Tractor & Attachments | Tractor & Attachments | Tractor with Grit Spreader |
| Tractor & Attachments | Tractor & Attachments | Tractor With Trailer >3,500kgs |
| Vans/Jeeps/Pickups | Jeeps | Jeeps |
| Vans/Jeeps/Pickups | Pickups | Crew Cab Pickup |
| Vans/Jeeps/Pickups | Pickups | Day Cab Pickup |
| Vans/Jeeps/Pickups | Pickups | Pickup with Box Cage |
| Vans/Jeeps/Pickups | Pickups | Pickup with Breadbin Body |
| Vans/Jeeps/Pickups | Vans | Light Commercial Vans |
| Vans/Jeeps/Pickups | Vans | Medium Commercial Vans |
| Vans/Jeeps/Pickups | Vans | Large Commercial Vans |
| Vans/Jeeps/Pickups | Vans | Crew Cab Van |
| Road Planers | Road Planers | Road Planer |
| Portable Canteens/Portaloos/Site Storage Containers | Portable Canteens/Portaloos/Site Storage Containers | Portable Canteens |
| Portable Canteens/Portaloos/Site Storage Containers | Portable Canteens/Portaloos/Site Storage Containers | Standard Portaloos |

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| Portable Canteens/Portaloos/Site Storage Containers | Portable Canteens/Portaloos/Site Storage Containers | Site Storage Containers |
| Portable Canteens/Portaloos/Site Storage Containers | Portable Canteens/Portaloos/Site Storage Containers | Disabled Portaloos |
| Portable Canteens/Portaloos/Site Storage Containers | Portable Canteens/Portaloos/Site Storage Containers | Site Welfare Units(Combined Portaloo & Canteen) |
| Forklift Trucks | Forklift Trucks | Forklift Trucks |
| Mobile Welding Plants | Mobile Welding Plants | Mobile Welding Plant |
| Velocity Patcher | Velocity Patcher | Velocity Patcher |
| CCTV Pipe Surveying Equipment | CCTV Pipe Surveying Equipment | CCTV Pipe Surveying Equipment |
| Articulated Semi Trailers | Articulated Semi Trailers | Tipping Trailer |
| Articulated Semi Trailers | Articulated Semi Trailers | Flat Body Trailer |
| Articulated Semi Trailers | Articulated Semi Trailers | Vacuum Tanker Trailer |
| Articulated Semi Trailers | Articulated Semi Trailers | Low Loader Trailer |
| Articulated Semi Trailers | Articulated Semi Trailers | Curtain-sider Trailer |
| Water Tanker | Mobile Potable Water Tankers | Mobile Potable Water Tankers |
| Tree Cutting & Branch Lopping | Branch Lopping | Branch Lopping |
| Tree Cutting & Branch Lopping | Tree Cutting | Tree Cutting |
| Tree Cutting & Branch Lopping | Woodchipper Machine | Woodchipper Machine |
| Ride-on Lawnmower | Ride-on Lawnmower | Ride-On Lawnmower |
| Compressors | Compressors | Mobile Air Compressors |
| Compressors | Compressors | Hydraulic Compressors |
| Generators | Generators | Greater than 20kVA |
| Traffic Management | VMS Signs | Trailer Mounted VMS Sign |
| Traffic Management | VMS Signs | Standalone VMS Sign |
| Traffic Management | Traffic Management Vehicles | Lorry Mounted Crash Cushion |
| Traffic Management | Traffic Management Vehicles | Advance Warning Vehicle – Demount/Impact Protection Vehicle |
| Trench Supports | Trench Supports | Trench Boxes – non hydraulic strut support |
| Trench Supports | Trench Supports | Drag Boxes – non hydraulic strut support |

1. Insert name of contact person identified in tender documents [↑](#footnote-ref-1)
2. Insert name of Project [↑](#footnote-ref-2)
3. Lump sum in words [↑](#footnote-ref-3)
4. Please refer to [www.revenue.ie](http://www.revenue.ie) for details of current rates of VAT [↑](#footnote-ref-4)
5. If not otherwise specified, read as 180 days [↑](#footnote-ref-5)
6. To be completed and signed only after all award procedures have been completed. Acceptance of the tender will result in a   
   binding contract. [↑](#footnote-ref-6)
7. If no percentage specified, 10% applies. [↑](#footnote-ref-7)
8. If no percentage specified, 5% applies. [↑](#footnote-ref-8)
9. If no amount stated, €6,500 applies [↑](#footnote-ref-9)
10. If no amount stated, €6,500 applies [↑](#footnote-ref-10)
11. If no sum is stated, the applicable amount is an amount equal to the Price. [↑](#footnote-ref-11)
12. Date of Tender acceptance [↑](#footnote-ref-12)
13. Insert “the Project Supervisor” or the name of the Contractor, as appropriate. [↑](#footnote-ref-13)
14. Specify any additional scope for which this Project Supervisor is to be appointed – for example, a process installation. [↑](#footnote-ref-14)
15. If the Project Supervisor is not incorporated in Ireland, execution will be in accordance with the law of its jurisdiction of incorporation for execution in Ireland. [↑](#footnote-ref-15)