
DYNAMIC PURCHASING SYSTEM
SUPPLEMENTARY REQUEST FOR TENDER
CONTRACT

FOR

CIVIL ENGINEERING MATERIALS
(SUPPLY ONLY)

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THIS AGREEMENT is made on the	_____ day of _____ 202_
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BETWEEN

(hereinafter referred to as the “ Contracting Authority ”) (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) of the One Part.	_____ of _____
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AND

(hereinafter referred to as the “ Economic Operator ”) (which expression shall, where the context so admits or requires, be deemed to include its successors and assigns) of the Other Part.	_____ of _____
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Economic Operator Status¹	
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WHEREAS:

- A.** The Local Government Operational Procurement Centre (hereinafter referred to as the “LGOPC”) conducted a call for competition on www.etenders.gov.ie and in the Official Journal of the European Union inviting requests to participate in a Dynamic Purchasing System for the Supply of Civil Engineering Materials (Supply Only) (hereinafter referred to as “the DPS”).
- B.** The Economic Operator made a request to participate in the DPS and, following assessment by the LGOPC, was admitted to the DPS.
- C.** The Contracting Authority is a participating contracting authority on the DPS.
- D.** The Economic Operator is a participating economic operator on the DPS.
- E.** Pursuant to the DPS, the Contracting Authority issued a Supplementary Request for Tender (hereinafter referred to as “the Supplementary Request for Tender”) for the provision of civil engineering materials (hereinafter collectively referred to as “Goods”) which Goods were more particularly described in the Supplementary Request for Tender.
- F.** The Economic Operator responded to the Supplementary Request for Tender and, following assessment by the Contracting Authority, has been the awarded this Supplementary Request for Tender Contract (hereinafter referred to as “SRFT Contract”).
- G.** This Condition G applies only if the Economic Operator has been identified in the Letter of Intent and herein as the Preferred Tenderer: This SRFT Contract appoints the Economic Operator as Preferred Tenderer for the provision of the Goods to the Contracting Authority for the term of this SRFT Contract.
- H.** This Condition H applies only if the Economic Operator has been identified in the Letter of Intent and herein as a Substitute Supplier: This SRFT Contract appoints the Economic Operator as a substitute supplier for the provision of the Goods to the Contracting Authority for the term of this SRFT Contract.

¹ Insert either 'Preferred Tenderer' or 'Substitute Supplier'. If Substitute Supplier, insert ranking (e.g. 'Second Ranking Substitute Supplier')

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- I.** The term of this SRFT Contract is the term specified in the Supplementary Request for Tender (hereinafter referred to as “the Term”).
 - J.** During the Term, the Contracting Authority may purchase the Goods from the Economic Operator by way of a Task Order (a template Task Order Form is attached hereto at Schedule 2).
 - K.** The Economic Operator acknowledges and accepts that the within general terms and conditions (hereinafter referred to as the “General Terms and Conditions”) shall apply to each Task Order issued by the Contracting Authority to the Economic Operator notwithstanding that the General Terms and Conditions may not necessarily be affixed to, or expressly referred to in, the Task Order or any correspondence pertaining to same.
 - L.** The Economic Operator shall sell and the Contracting Authority shall purchase, in accordance with the General Terms and Conditions, the Goods described in the Task Order (and/or in the Supplementary Request for Tender where the Goods are more particularly described in same) issued by the Contracting Authority to the Economic Operator.
 - M.** Subject to the within General Terms and Conditions, the Contracting Authority agrees to pay to the Economic Operator the charges specified in the Economic Operator’s Response to the Supplementary Request for Tender which charges have been accepted by the Contracting Authority (hereinafter referred to as “the Charges”).
 - N.** The Contracting Authority makes no warranty as to its level of expenditure arising from the Supplementary Request for Tender and the award of this SRFT Contract does not: (a) constitute a commitment from the Contracting Authority to issue Task Orders to the Economic Operator during the Term; and (b) preclude the Contracting Authority from purchasing Goods from a third party during the Term.
 - O.** This Condition O applies only if the Economic Operator has been identified herein as the Preferred Tenderer: The Contracting Authority, pursuant to the Supplementary Request for Tender, has awarded substitute status to other economic operators (ranked in descending order following assessment by the Contracting Authority) who responded to the Supplementary Request for Tender. In circumstances where the Economic Operator: (a) has confirmed to the Contracting Authority that is it unable or unwilling (through lack of capacity or otherwise) to provide the Goods being the subject matter of a specific Task Order; or (b) is deemed by the Contracting Authority to be unable or unwilling (through change in circumstances, lack of capacity or otherwise) to provide the Goods being the subject matter of a specific Task Order, then, and in those circumstances, the Contracting Authority may assign the specific Task Order and procure the Goods from the highest ranking substitute economic operator (beginning with the substitute ranked No. 1) then capable of fulfilling the specific Task Order.
 - P.** This Condition P applies only if the Economic Operator has been identified herein as a Substitute Supplier: The Contracting Authority, pursuant to the Supplementary Request for Tender, has awarded: (a) Preferred Tenderer status to another economic operator who responded to the Supplementary Request for Tender (hereinafter referred to as “the Preferred Tenderer”) and (b) substitute status to other economic operators (ranked in descending order following assessment by the Contracting Authority) who responded to the Supplementary Request for Tender. The Contracting Authority shall, in the first instance, procure the Goods during the Term from the Preferred Tenderer. In circumstances where the Preferred Tenderer: (a) has confirmed to the Contracting Authority that is it unable or unwilling (through lack of capacity or otherwise) to provide the Goods being the subject matter of a specific Task Order; or (b) is deemed by the Contracting Authority to be unable or unwilling (through change in circumstances, lack of capacity or otherwise) to provide the Goods being the subject matter of a specific Task Order, then, and in those circumstances, the Contracting Authority may assign the specific Task Order and procure the Goods from the highest ranking substitute economic operator (beginning with the substitute ranked No. 1) then capable of fulfilling the specific Task Order.

<p>SIGNED AND DELIVERED</p> <p>by</p> <p>for and on behalf of</p> <p>the CONTRACTING AUTHORITY</p>	<p>Signature: _____</p> <p>Print : _____</p>
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<p>SIGNED AND DELIVERED</p> <p>by [name of Director]</p> <p>for and on behalf of</p> <p>the ECONOMIC OPERATOR [WHERE ECONOMIC OPERATOR IS A COMPANY]</p> <p>OR</p>	<p>Signature: _____</p> <p>Print : _____</p>
<p>SIGNED AND DELIVERED</p> <p>by</p> <p>for and on behalf of</p> <p>the ECONOMIC OPERATOR [WHERE ECONOMIC OPERATOR IS <u>NOT</u> A COMPANY]</p>	<p>Signature: _____</p> <p>Print : _____</p>

1.0 GENERAL TERMS AND CONDITIONS

1.1 DISCLAIMER OF ECONOMIC OPERATOR'S TERMS AND CONDITIONS

- 1.1.1 Any of the Economic Operator's pre-printed terms and conditions produced, signed and/or stamped by either party (or any other terms and conditions wheresoever found which the Economic Operator may wish to rely on) are hereby disallowed.

1.2 ADDITIONAL OR SPECIFIC TERMS AND CONDITIONS OF THE CONTRACTING AUTHORITY

- 1.2.1 In circumstances where additional or specific terms and conditions are contained within the Task Order (and/or in the Supplementary Request for Tender) issued by the Contracting Authority to the Economic Operator, such additional or specific terms and conditions shall take precedence over the within General Terms and Conditions where same are in conflict.

1.3 INTERPRETATION

- 1.3.1 Headings herein are included for ease of reference only and shall not affect the construction of the within General Terms and Conditions.
- 1.3.2 Unless the context requires otherwise, words in the singular may include the plural and vice versa.
- 1.3.3 References to any statute, enactment, order, regulation or other legislative instrument shall be construed as a reference to the statute, enactment, order, regulation or instrument as amended unless specifically indicated otherwise.
- 1.3.4 In the event that any ambiguity or question of intent or interpretation arises in relation to the within General Terms and Conditions, same shall be construed as if drafted jointly by the Contracting Authority and the Economic Operator and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of same.

1.4 ECONOMIC OPERATOR'S OBLIGATIONS

- 1.4.1 In consideration of the payment by the Contracting Authority of the Charges the Economic Operator shall:
- supply the Goods in accordance with the Task Order, the Supplementary Request for Tender (where additional specifications in relation to the Goods and their delivery were contained therein) and, where applicable, the requirements specified in Schedule 1 hereunder.
 - comply with any policies, guidelines and/or any project governance protocols and with all local security (including child protection and Garda vetting policy) and health and safety arrangements as notified to it by the Contracting Authority;
 - supply the Goods in accordance with good industry practice and comply with all applicable laws including, but not limited to, all obligations in the field of environmental, social and labour law that apply at the place where the Goods are provided, that have been established by EU and national law, collective agreements and by international, environmental, social and labour law listed in Schedule 7 of the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016) (hereinafter referred to as the "Regulations"). Without prejudice to the generality of the foregoing, the Economic Operator shall be solely responsible for the employment, remuneration, taxes, immigration status and work permits of all personnel retained by it for the purposes of complying with the Supplementary Request for Tender and Task Order.

1.5 ECONOMIC OPERATOR'S STATUS AS PRIME CONTRACTING PARTY

- 1.5.1 The Economic Operator is deemed to be the prime contracting party under this SRFT Contract and the Task Order and assumes full responsibility for the discharge of all obligations under same. The Economic Operator, as prime contracting party, hereby assumes liability for any of its subcontractors and agents (where applicable) performing a Task Order. The Economic Operator shall notify the Contracting Authority as soon as possible of any changes to the name, contact details and legal representatives of its subcontractors.

1.6 EXCLUSION GROUNDS AND SUBCONTRACTORS

- 1.6.1 Where the Contracting Authority becomes aware that any of the exclusion grounds contained in Regulation 57 of the Regulations apply to any of the Economic Operator's subcontractors, the Contracting Authority can (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) direct the Economic Operator to immediately replace such subcontractor.
- 1.6.2 The Economic Operator shall include in every subcontract a right for the Economic Operator to terminate the subcontract where any of the exclusion grounds apply to the subcontractor and a requirement that the subcontractor, in turn, includes a provision having the same effect in any subcontract which it awards.

1.7 LEGAL RELATIONSHIP BETWEEN THE PARTIES

- 1.7.1 In supplying the Goods, the Economic Operator shall be an independent operator and nothing in the within operates to create an employer/employee relationship, a joint venture or partnership and/or fiduciary or other relationship between the parties. The officers, employees or agents of the Economic Operator are not, and shall not hold themselves out to be, (and shall not be held out by the Economic Operator as being) servants or agents of the Contracting Authority for any purpose whatsoever.

1.8 SHARING OF INFORMATION BY THE CONTRACTING AUTHORITY

- 1.8.1 The Economic Operator agrees that any information relating to the supply of Goods by the Economic Operator to the Contracting Authority may be passed by the Contracting Authority to the LGOPC, the Office of Government Procurement and/or such other relevant statutory body for the purpose of analysis and reporting of spend data including the preparation and publishing of reports.

1.9 THE GOODS

- 1.9.1 The Economic Operator shall deliver the Goods at the time(s), to the location(s) and on the date(s) specified in the Task Order and/or in the Supplementary Request for Tender (where additional specifications in relation to the Goods and their delivery were contained therein) unless otherwise expressly directed by the Contracting Authority.
- 1.9.2 Unless otherwise expressly agreed between the parties:
- where the Goods are delivered by the Economic Operator, the point of delivery shall be when the Goods are removed from the transporting vehicle at the Contracting Authority's premises or such other location as notified by the Contracting Authority to the Economic Operator. Where the Goods are collected by the Contracting Authority, the point of delivery shall be when the Goods are loaded on the Contracting Authority's vehicle;
 - delivery shall include the unloading, stacking or installation of the Goods by the Economic Operator's staff, agents or carriers at such place as the Contracting Authority shall reasonably direct;
 - the Goods shall be packed and marked in a proper manner and in accordance with the Contracting Authority's instructions and any statutory requirements and any requirements of the carriers and manufacturers. The name of the contents shall be clearly marked on each container and all containers of hazardous content (and all documents relating thereto) shall bear prominent and adequate warnings.
- 1.9.3 Unless expressly agreed by the Contracting Authority, the Contracting Authority shall not be obliged to accept delivery of Goods by instalments. If, however, the Contracting Authority does specify or agree to delivery of Goods by instalments, delivery of any instalment later than the date specified or agreed for its delivery shall, without prejudice to such other legal rights and remedies generally available to the Contracting Authority, entitle the Contracting Authority to terminate the whole of any unfulfilled part of the Task Order without further liability to the Economic Operator.
- 1.9.4 The Contracting Authority shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered
- 1.9.5 The Contracting Authority shall be under no obligation to accept or pay for any Goods supplied earlier than the date expressly specified by the Contracting Authority.

1.10 INSPECTION OF THE GOODS

- 1.10.1 The Contracting Authority may inspect (to include a call for advance samples) or test the Goods, either completed or in the process of manufacture, during normal business hours on reasonable notice at the Economic Operator's premises (including the premises of any subcontractor or agent) and the Economic Operator shall provide all reasonable assistance in relation to any such inspection or test free of charge.
- 1.10.2 A failure to make a complaint at the time of an inspection or test and/or the approval given during or after such inspection or test shall not constitute a waiver by the Contracting Authority of any rights or remedies in respect of the Goods and the Contracting Authority reserves the right to reject the Goods in accordance with clause 1.10.3 herein.
- 1.10.3 The Contracting Authority may, by written notice to the Economic Operator, reject Goods which fail to conform to the approved sample or fail to meet the Contracting Authority's specification and applicable standards. If the Contracting Authority rejects any Goods pursuant to this clause, the Contracting Authority may (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) either:
- treat the Task Order as discharged by the Economic Operator's breach and obtain a refund (if payment for the Goods has already been made) from the Economic Operator in respect of the Goods concerned together with payment of any additional expenditure reasonably incurred by the Contracting Authority in obtaining other Goods in replacement provided that the Contracting Authority uses its reasonable endeavours to mitigate any additional expenditure in obtaining replacement Goods; or
 - have such goods promptly, and in any event within 5 calendar days, either repaired or replaced by the Economic Operator with Goods which conform in all respects with the approved sample or with the Contracting Authority's specification and applicable standards and due delivery shall not be deemed to have taken place until such repair or replacement has occurred.
- 1.10.4 Rejected Goods shall be removed by the Economic Operator within 5 calendar days (hereinafter referred to as the "Prescribed Time") from the date of the notification by the Contracting Authority to the Economic Operator of their rejection. In the event of the failure by the Economic Operator to remove the Goods within the Prescribed Time, the Contracting Authority may dispose of such Goods as it sees fit and pending such removal, the Goods will remain with the Contracting Authority at the risk of the Economic Operator. Any costs incurred by the Contracting Authority relating to such disposal shall be borne by the Economic Operator.
- 1.10.5 The Contracting Authority will be deemed to have accepted the Goods if it expressly states the same in writing or fails to reject the Goods in accordance with clause 1.10.3 herein.
- 1.10.6 The issue by the Contracting Authority of a receipt note for the Goods shall not constitute an acknowledgement of the condition, quantity or nature of those Goods or the Contracting Authority's acceptance of them.

1.11 RISK AND TITLE

- 1.11.1 All Goods shall be delivered by the Economic Operator free from encumbrances or retention of title clauses or similar provisions. The Charges are based on the Goods being delivered carriage paid to the location specified by the Contracting Authority. Pending delivery, the Goods remain at the risk of the Economic Operator.
- 1.11.2 Title shall pass to the Contracting Authority on payment of the Charges.

1.12 PAYMENT AND INVOICING

- 1.12.1 Invoicing arrangements for Goods ordered by the Contracting Authority through the Task Order shall be on such terms as directed by the Contracting Authority.
- 1.12.2 Discharge of the Charges is subject to:
- compliance by the Economic Operator with the provisions of the Task Order and the Supplementary Request for Tender (where additional specifications in relation to the Goods and their delivery are contained therein);
 - the furnishing by the Economic Operator of a valid invoice and such supporting documentation as may be reasonably required by the Contracting Authority;

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- where applicable, the Contracting Authority being in possession of the Economic Operator's current tax clearance certificate;
 - where applicable, the retention by the Contracting Authority of any Professional Services Withholding Tax payable to the Economic Operator in accordance with section 523 of the Taxes Consolidation Act 1997.
- 1.12.3 The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments. Incorrect invoices will be returned for correction with consequential effects on the due date of payment.
- 1.12.4 The Charges shall include the cost of reasonable instruction by the Economic Operator to the Contracting Authority's personnel in the use and maintenance of the Goods.
- 1.12.5 Any and all taxes applicable to the supply of the Goods from the Economic Operator shall be the sole responsibility of the Economic Operator.

1.13 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS OF THE ECONOMIC OPERATOR

- 1.13.1 The Economic Operator acknowledges, warrants, represents and undertakes that:
- it has the authority and right under law to enter into, and to carry out its obligations under, this SRFT Contract and the Task Order;
 - it is fulfilling this SRFT Contract and the Task Order with a full understanding of: (a) its obligations with regards to taxation, employment, social and environmental protection; and (b) its material terms and risks, and is capable of fulfilling those obligations and assuming those risks;
 - it has acquainted itself, and shall comply, with all legal requirements or such other recommendations, guidance or practices as may affect the supply of the Goods (to include manufacture and distribution process) as they apply to the Economic Operator;
 - it has taken all and any action necessary to ensure that it has the capacity to fulfil the Task Order;
 - it has inspected the Contracting Authority's premises, lands and facilities before submitting its response to the Supplementary Request for Tender and has made appropriate enquiries so as to be satisfied in relation to all matters connected with the performance of its obligations under the Supplementary Request for Tender and Task Order;
 - the status of the Economic Operator, as declared in the ESPD, which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Economic Operator, remains unchanged.
- 1.13.2 The Economic Operator shall be responsible, and to take due precautions, for the safe custody of any Goods on its premises which are the property of the Economic Operator and shall insure same against any form of loss or damage.
- 1.13.3 The Economic Operator confirms and undertakes that the Goods supplied will, at the time of delivery, correspond to the description given by the Economic Operator in its response to the Supplementary Request for Tender (to include any samples furnished thereunder) and that the manufacture, distribution and processes employed will comply in all material respects with the representations made in its response to the Supplementary Request for to Tender. None of the provisions of the Sale of Goods Acts 1893 and 1980 shall be excluded or limited under the Task Order.
- 1.13.4 The Economic Operator undertakes to ensure that all necessary consents and/or licenses required for the fulfilling of the Task Order are obtained and in place.
- 1.13.5 The Economic Operator hereby indemnifies the Contracting Authority and shall keep and hold the Contracting Authority harmless from any losses (whether direct, indirect or consequential), liability, damages, claims, costs or expenses which arise by reason of any breach of third party intellectual property rights in so far as any such rights are used for the purposes of fulfilling the SRFT Contract and any Task Order.
- 1.13.6 The Economic Operator undertakes to immediately notify the Contracting Authority of any material change to the status of the Economic Operator with regard to the warranties, acknowledgements, representations and undertakings made herein and to comply with all reasonable directions of the

Contracting Authority with regard thereto which may include termination of the SRFT Contract and Task Order.

1.14 INDEMNITY AND REMEDIES

- 1.14.1 The Economic Operator shall be liable for, and hereby indemnifies the Contracting Authority from, any losses, claims, demands, damages or expenses which the Contracting Authority may suffer due to and arising from, directly or indirectly, the negligence, acts or omissions, breach of contract, breach of duty, insolvency, recklessness, bad faith, willful default or fraud of the Economic Operator (including its subcontractors and/or agents) in performing the SRFT Contract and Task Order. The terms of this clause shall survive expiry, completion or termination, for whatever reason, of the SRFT Contract and Task Order.
- 1.14.2 Except as otherwise expressly provided herein, all remedies available to either party for breach of the SRFT Contract and the within General Terms and Conditions are cumulative and may be exercised concurrently or separately and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of other remedies.

1.15 CONFIDENTIALITY

- 1.15.1 Both the Contracting Authority and Economic Operator agree to hold confidential all information, documentation and other material received, provided or obtained arising from the supply of the Goods by the Economic Operator and shall not disclose same to any third party except to:-
- its professional advisers; or
 - as may be required by law; or
 - as may be necessary to give effect to the terms of the SRFT Contract, the Task Order or the Supplementary Request for Tender; or
 - in the case of the Contracting Authority, by request of any person or body or authority whose request the Contracting Authority or persons associated with the Contracting Authority (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- 1.15.2 The Contracting Authority may be subject to requests for information relating to the supply of the Goods by the Economic Operator under the Freedom of Information Act 2014 and/or the European Communities (Access to Information on the Environment) Regulations 2007 to 2014 (or such other similar legislation which may be enacted and apply from time time) and the Economic Operator acknowledges that information the Economic Operator deems as confidential or commercially sensitive may be disclosed by the Contracting Authority in accordance with same. In circumstances where the Contracting Authority is subject to a request for information under the aforementioned legislation, the Contracting Authority shall consult with the Economic Operator prior to making a decision on any request received and the Economic Operator shall specifically identify any information that is not to be disclosed on grounds of confidentiality or commercial sensitivity and shall state the reasons for this sensitivity. However, the Contracting Authority accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.
- 1.15.3 The terms of this clause shall survive expiry, completion or termination, for whatever reason, of the SRFT Contract and Task Order.

1.16 FORCE MAJEURE

- 1.16.1 A 'Force Majeure Event' means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party which has the effect of delaying or preventing that party from complying with its obligations under a Task Order including, but not limited to, acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Economic Operator's (or its subcontractors' or agents' as the case may be) or Contracting Authority's places of business.

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

- the nature of the Force Majeure Event;
- the anticipated delay in the performance of its obligations;
- the action proposed to minimise the impact of the Force Majeure Event;

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

1.16.3 If the Force Majeure Event continues for 7 working days, either party may terminate the Task Order by notice in writing.

1.16.4 In circumstances where the Economic Operator is the Affected Party, the Contracting Authority shall be relieved from any obligation to make payments under the Task Order save to the extent that payments are properly due and payable for obligations actually fulfilled by the Economic Operator in accordance with the within General Terms and Conditions.

1.17 TERMINATION

1.17.1 The Contracting Authority shall have the right (in addition to such other legal rights and remedies generally available to it) to terminate a Task Order and this SRFT Contract immediately and without liability for compensation or damages to the Economic Operator on the happening of any of the following:

- if the Economic Operator commits any serious breach, or a series of breaches, of any provision of the within General Terms and Conditions (or any other provision expressly notified to the Economic Operator by the Contracting Authority) and fails to remedy such breach(es) (if the breach(es) are deemed capable of remedy by the Contracting Authority) within 5 (five) working days after receipt of a request in writing from the Contracting Authority;
- if the Economic Operator becomes insolvent or bankrupt, enters into examinership, is wound up, commences winding up, has a receiving order made against it, makes any arrangement with its creditors generally or takes or suffers any similar action as a result of debt, or an event having an equivalent effect;
- if any statement made by the Economic Operator in connection with the procedure by which the Economic Operator was appointed to the DPS or was awarded this SRFT Contract was: (a) untrue when made or subsequently ceases to be true; or (b) was materially incorrect, inaccurate or misleading (whether intentionally so or not);
- if the Contracting Authority becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Economic Operator or its subcontractors.
- if the Economic Operator is sourcing Goods from quarries which are not in compliance (or not shown to be in compliance) with the Planning Acts.

1.17.2 Termination of a Task Order or this SRFT Contract shall not affect any antecedent and accrued rights, obligations or liabilities of either party, nor shall it affect any provision herein which is expressly or by implication intended to come into or continue in force on or after such termination.

1.18 CONTRACT MANAGEMENT

1.18.1 The Economic Operator agrees to:

- liaise regularly with the Contracting Authority and keep it fully informed of any matter which might affect the performance of its obligations under the Task Order and/or the SRFT Contract;
- maintain such records as directed by the Contracting Authority from time to time and comply with reporting arrangements, milestones, compliance schedules and operational protocols directed by the Contracting Authority from time to time; and

- comply with all reasonable directions of the Contracting Authority including, but not limited to, meeting formally with the Contracting Authority to report on progress.

1.18.2 The Contracting Authority, or its authorised representative, may inspect, at its own cost, the Economic Operator's premises, lands and facilities (or such part thereof relating to the Task Order and/or the SRFT Contract), with due access to relevant personnel and records, upon reasonable notice in writing to ensure compliance with the terms of the Task Order and/or the SRFT Contract. The Economic Operator shall comply with all reasonable directions of the Contracting Authority thereby arising.

1.18.3 The Economic Operator shall be required to hold, for the time required to fulfil all obligations arising under the Task Order, insurances of the nature and amount specified in the Supplementary Request for Tender and shall immediately advise the Contracting Authority of any material change to its insured status. Upon request, the Economic Operator shall produce: (a) proof of current premiums paid; and (b) valid certificates of insurance.

1.19 GOVERNING LAW

1.19.1 This SRFT Contract and the within General Terms and Conditions shall in all aspects be governed by and construed in accordance with the laws of Ireland and the courts of Ireland have exclusive jurisdiction to hear and determine any disputes arising out of or in connection with same.

1.20 ASSIGNMENT

1.20.1 Subject to the parties' rights and obligations at law and under the Regulations, any assignment or other transfer of the Economic Operator's rights or obligations under this SRFT Contract and/or the Task Order to a third party requires the prior written consent of the Contracting Authority. Prior to any such assignment, the assignee will be obliged to sign an undertaking to comply with all obligations under the within General Terms and Conditions.

1.21 SEVERABILITY

1.21.1 If any term or provision of this SRFT Contract and/or the within General Terms and Conditions is found to be illegal or unenforceable for any reason, then such term or provision shall be deemed severed and all other terms and provisions shall remain in full force and effect.

1.22 WAIVER

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

1.23 CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS

1.23.1 The Economic Operator confirms that it has carried out a conflicts of interest check and is satisfied that neither it nor any subcontractor nor agent as the case may be have any conflicts of interest in relation to the Goods and its obligations under the Task Order and/or the SRFT Contract.

1.23.2 The Economic Operator hereby undertakes to: (a) notify the Contracting Authority immediately should any conflict, or potential conflict of interest, come to its attention during currency of the Task Order and/or the SRFT Contract; and (b) comply with the Contracting Authority's directions in respect thereof. In the event of any such notification the Contracting Authority shall have the right (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) to terminate the Task Order and/or the SRFT Contract immediately without liability for compensation or damages to the Economic Operator where, in the opinion of the Contracting Authority, the conflict, or potential conflict of interest, cannot be removed by other means.

1.23.3 Any registrable interest involving the Economic Operator (and any of its subcontractors or agents as the case may be) and: (a) the Contracting Authority; (b) the Ceann Comhairle (Speaker); or (c) any member of the Government or the Oireachtas (or their relatives) must be fully disclosed by the Economic Operator to the Contracting Authority immediately upon such information becoming known to the Economic Operator and the Economic Operator shall comply with the Contracting Authority's directions in respect thereof. In the event of any such disclosure, the Contracting Authority shall have the right (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) to terminate the Task Order and/or the SRFT Contract immediately without

liability for compensation or damages to the Economic Operator. The terms “registrable interest” and “relative” shall be interpreted as per section 2 of the Ethics in Public Office Act 1995 (or such other similar legislation which may be enacted and apply from time time).

- 1.23.4** The Economic Operator shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of the Task Order and/or the SRFT Contract. Any breach of this clause or the commission of any offence by the Economic Operator (and any of its subcontractors or agents as the case may be) under the Prevention of Corruption Acts 1889 to 2005 (or such other similar legislation which may be enacted and apply from time time) shall entitle the Contracting Authority (without prejudice to such other legal rights and remedies generally available to the Contracting Authority) to terminate the Task Order and/or the SRFT Contract immediately and without liability for compensation or damages to the Economic Operator and to recover the amount of any loss resulting from such cancellation including, but not limited to, recovery from the Economic Operator of the amount or value of any such gift, consideration or commission.

1.24 ACCESS TO PREMISES

- 1.24.1** Any of the Contracting Authority’s premises made available from time to time to the Economic Operator in connection with the fulfilment of a Task Order are made available on a non-exclusive licence basis and shall be used by the Economic Operator solely for the purpose of performing its obligations under the Task Order with the Economic Operator immediately vacating on completion of same.

1.25 BREXIT

- 1.25.1** It shall be the responsibility of the Economic Operator to fulfil the obligations under the SRFT Contract and Task Order notwithstanding any changes in circulars, law, regulations, taxation or duties or other restrictions which might arise following the withdrawal of the United Kingdom from membership of the European Union.

2.0 SCHEDULE 1 - ECONOMIC OPERATOR'S OBLIGATIONS

2.1 LEGISLATION, GUIDELINES, TECHNICAL STANDARDS & CODES OF PRACTICE

2.1.1 The Economic Operator shall, in its performance of the SRFT Contract and Task Order, comply with all relevant technical standards, legislation, bye-laws, guidelines and codes of practice that apply during the term of the DPS including, but not limited to, the following (as may be amended, updated or re-published by the relevant body from time to time):

- Safety Health and Welfare at Work Act 2005;
- Safety Health and Welfare at Work (Construction) Regulations 2013;
- Safety Health and Welfare at Work (General Application) Regulations 2007 – 2016 (as amended);
- Safety Health and Welfare at Work (Quarries) Regulations 2008;
- Planning and Development Act 2000 (as amended);
- Planning and Development Regulations 2001 – 2018 (as amended);
- Waste Management Act 1996 (as amended);
- The Waste Management (Management of Waste from the Extractive Industries) Regulations 2009 (S.I. 566 of 2009);
- The Air Pollution Act 1987
- (Licensing of Industrial Plant) Regulations, 1988 - 2001

2.1.2 The Contracting Authority may seek evidence of the Economic Operator's compliance with the above by way of production of such licenses, permits or other documentation deemed reasonably necessary by the Contracting Authority.

Construction Products Regulations

2.1.3 The Contracting Authority may seek evidence of the Economic Operator's compliance with the Construction Product Regulations (Regulation (EU) No 305/2011). When requested to do so, the Economic Operator shall confirm:

- that construction products associated with harmonised standards will be CE marked and have a Declaration of Performance;
- that by submitting a Declaration of Performance (whether prepared by a third party or not) it is assuming full legal responsibility for the conformity of the construction product with its declared performance;
- that, together with the technical specification, the Declaration of Performance will give all the information required to determine whether the construction product meets the essential characteristics in accordance with the applicable harmonised technical specifications;
- that the CE mark shall be followed by the two last digits of the year in which it was first affixed, the name and the registered address of the manufacturer or the identifying mark allowing identification of the name and the registered address of the manufacturer without any ambiguity;
- that certification of an organisation's Factory Production Control System by a notified body will be available if so required.

2.1.4 In addition to the Construction Product Regulations, particular products, application types or processes may require;

- a Type Test or Type Approval Installation Trial ("TAIT") Certificates;
- a provisional Type Approval Installation Trial ("prTAIT") or European Assessment Documents where the product, application or process is not covered by a harmonised technical specification.

2.1.5 In order to ensure compliance with environmental technical standards, economic operators tendering for an alternative environmentally friendly product at Supplementary Request for Tender stage will be

required at that stage to submit an Environmental Product Declaration (EPD) in accordance with EN 15804 for each alternative environmentally friendly product they propose.

Lot 1 Bound and Unbound Aggregate Materials (Supply Only)

- 2.1.6 National guidance on performance in relation to the categories covered including, but not limited to SR 28: 2018 Recommendation for The Use and Implementation of The I.S. EN 13108 Series Bituminous Mixtures - Material Specifications;
- 2.1.7 TII publications contained within the historical National Roads Authority (“NRA”) Manual of Contract Documents for Road Works suite including, but not limited to:
- TII Specification for Roadworks Series 500 (Drainage & Service Ducts - CC-SPW-00500);
 - TII Specification for Roadworks Series 600 (Earthworks - CC-SPW-00600);
 - TII Specification for Roadworks Series 700 (Road Pavements - General - CC-SPW-00700);
 - TII Specification for Roadworks Series 800 (Road Pavements - Unbound and Cement Bound Materials - CC-SPW-00800);
 - TII Specification for Roadworks Series 900 (Road Pavements - Bituminous Materials - CC-SPW-00900). This includes the NRA *Specification for Road Works* **dated March 2011** and the latest version of Series 900 of the TII *Specification for Road Works* (CC-SPW-00900).
- 2.1.8 National and international standards including but not limited to the following:
- IS EN 13108-1 Material Specification Asphalt Concrete;
 - IS EN 13108-4 Material Specification Hot Rolled Asphalt;
 - IS EN 13108-5 Material Specification Stone Mastic Asphalt;
 - IS EN 13108-6 Material Specification Mastic Asphalt;
 - IS EN 13108-7 Material Specification Porous Asphalt;
 - IS EN 13108-8 Material Specification Reclaimed Asphalt;
 - IS EN 13108-20 Material Specification Type Testing;
 - IS EN 13108-21 Material Specification Factory Production;
 - IS EN 13242 Fill under concrete floors;
 - EN 13242 Aggregates for Unbound Mixtures;
 - IAT Guidelines for Surface Dressing in Ireland, 3rd Edition Revised, 2017;
 - EN 933 Tests for geometrical properties of aggregates (parts 1 & 3);
 - IS EN 1097 Parts 8 Tests for mechanical and physical properties of aggregates. Determination of the polished stone value;
 - IS EN 1097 Part 2 Tests for mechanical and physical properties of aggregates. Methods for the determination of resistance to fragmentation;
 - IS EN 12620:2013 Aggregates for concrete

Lot 2 Ready Mix Concrete (Supply Only)

- 2.1.9 National guidance on performance in relation to the categories covered including, but not limited to SR 21: 2014 Guidance on The Use of I.S. EN 13242:2002 +A1:2007 Aggregates for Unbound and Hydraulically Bound Materials for Use in Civil Engineering Work and Road Construction.
- 2.1.10 TII publications contained within the historical NRA Manual of Contract Documents for Road Works suite including but not limited to:
- TII Specification for Roadworks Series 800 (Road Pavements - Unbound and Cement Bound Materials - CC-SPW-00800);
 - TII Specification for Roadworks Series 1000 (Road Pavements - Concrete Materials - CC-SPW-01000);
 - TII Specification for Roadworks Series 1700 (Structural Concrete - CC-SPW-01700);
 - TII Specification for Roadworks Series 5500 (Structural Concrete Repairs - CC-SPW-05500)

2.1.11 National and international standards including but not limited to the following:

- IS EN 206-1:2002 - Concrete - Part 1: Specification, performance, production and conformity including revisions;
- IS EN 197-1:2001 - Cement - Part 1: Composition, Specifications and Conformity Criteria for Common Cements;
- IS EN 12620:2002 - Aggregates for Concrete;
- IS EN 1008:2002 - Mixing Water for Concrete,
- EN 13139 Aggregates for Mortar

2.1.12 The Economic Operator is responsible for the compliance of its materials with the technical requirements set out in the Supplementary Request for Tender. Compliance may be verified to the satisfaction of the Contracting Authority by use of material conformance testing (remote and in-situ) and reference to the quality management systems within the production plant.

2.2 PLANNING COMPLIANCE

2.2.1 If the Economic Operator is sourcing Goods from quarries, such quarries must be operating in compliance with the Planning Acts².

2.2.2 The Contracting Authority may seek from the Economic Operator, such information and documentary evidence as it deems reasonably necessary to ensure any quarry source is operating in compliance with the Planning Acts and such information and documentary evidence may be verified by the relevant Planning Authority.

2.3 WEIGHTS

2.3.1 Where required, the Economic Operator shall provide a docket showing:

- the net weight of the Goods delivered; and
- such additional information reasonably required by the Contracting Authority.

2.3.2 Weighing of the Goods shall take place at a certified and in-calibration weighbridge and a copy of the certification may be requested.

2.4 HEALTH & SAFETY

2.4.1 All the Economic Operator's personnel entering the Contracting Authority's sites must have a SOLAS Safe Pass Card (or approved equivalent) available upon request.

2.4.2 All the Economic Operator's personnel entering a construction site must comply with any directions given by the Project Supervisor for the Construction Stage (PSCS) and/or the Project Supervisor for the Design Process (PSDP) and/or any authorised representative of the Contracting Authority.

2.4.3 Where applicable, all the Economic Operator's personnel operating vehicles/plant must have a current full driver's license pertaining to the item(s) of vehicle/plant they are operating available upon request.

2.4.4 Where applicable, plant operators under Schedule 5 of the Safety, Health and Welfare at Work (Construction) Regulations 2013 must have a valid Construction Skills Certification Scheme (CSCS) Card for the item of plant being operated available upon request.

2.5 PUBLIC/PRODUCT LIABILITY INSURANCE

2.5.1 The Economic Operator shall hold, at a minimum, the following level of public/product liability insurance in respect of any one event below which the Economic Operator will bear the cost:

- €6,500,000 for any one event;
- maximum excess of €6,500 for property only with no excess for death, injury or illness.

2.5.2 The limit of indemnity under the Economic Operator's insurance policy ("the Policy") must be, at a minimum, €6,500,000.

² The Planning Acts means such legislation and regulations enacted from time to time to regulate planning including, but not limited to, the Local Government (Planning and Development) Act, 1963 and the Planning and Development Acts 2000 to 2019 (as amended).

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- 2.5.3 The Policy shall include: (a) an indemnity to principal clause; (b) the Contracting Authority as joint insured (and may be required to include a non-vitiation clause if requested by the Contracting Authority); (c) product and pollution liability insurance to indemnify the Contracting Authority in relation to defective products supplied whether manufactured, altered or just sold by the Economic Operator; (d) all motor 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 vehicle registration or vehicle identification number ("VIN")) in the motor policy) and (e) loading and unloading risks both on and beyond public thoroughfares.

2.6 EMPLOYER'S LIABILITY INSURANCE

- 2.6.1 The Economic Operator shall hold, at a minimum, the following level of employer liability insurance in respect of any one event below which the Economic Operator will bear the cost:
- €13,000,000 for any one event;
 - maximum excess of €6,500
- 2.6.2 The Policy shall cover: (a) death and injury to all of the Economic Operator's employees engaged to fulfill this SRFT Contract; (b) the Economic Operator in respect of all liability assumed pursuant to this SRFT Contract (e.g. the description of the insured business must be unambiguous) and (c) the Contracting Authority as principal and may be required to include a non-vitiation clause.

2.7 INSURANCE EXCLUSIONS

- 2.7.1 If the Economic Operators has specific exclusions noted in the Policy which restrict or prohibit its ability to fulfill this SRFT Contract and/or the Task Order, it shall have either:
- the exclusion removed from the Policy and employ a competent and appropriately insured specialist to carry out the excluded activity and put in place contingency cover on the Policy; or
 - the specialist included with the Economic Operator as a full joint insured on the specialist's insurance policy and have the Contracting Authority jointly insured on the policy.

SCHEDULE 2 - TEMPLATE TASK ORDER FORM

Civil Engineering Materials (Supply Only)

To: [Insert Economic Operator's details]

Enter "N/A" if field is not relevant

("The Economic Operator")

SupplyGov Reference No:	
Purchase Order No:	
Goods ordered (description and quantity) – ("the Goods")	
Delivery location(s) (if applicable):	
Collection location(s) (if applicable):	
Date(s) of delivery (if applicable):	
Date(s) of collection (if applicable):	
Any additional information and/or conditions attaching to the Task Order:	

In accordance with the provisions of the General Terms & Conditions of the Supplementary Request for Tender Contract you are instructed to proceed with the supply of the Goods identified herein.