

**TERMS AND CONDITIONS FOR THE PROVISION OF PLANT HIRE FOR
WATER SERVICES INFRASTRUCTURE**

THIS AGREEMENT is made on _____ **BETWEEN**

IRISH WATER a company incorporated in Ireland (No. 530363) under the Water Services Act 2013 having its registered office at Colvill House, 24-26 Talbot Street, Dublin (hereinafter called "**Irish Water**"); and

[SUPPLIER] _____ a company registered in Ireland under company number _____ having its registered address at _____ (hereinafter called "**the Supplier**").

WHEREAS:

This is an agreement under which Irish Water may, if it so wishes, from time to time, order plant hire and haulage services from the Supplier. It is one of a number of similar agreements with suppliers of such services (the "**Panel**").

The Agreement applies to the following region(s)¹:

- Region 1 – Counties: Donegal, Leitrim, Sligo, Roscommon and Mayo**
- Region 2 – Counties: Galway, Clare, Limerick and Tipperary North**
- Region 3 – Counties: Cork and Kerry**
- Region 4 – Counties: Tipperary South, Waterford, Kilkenny, Wexford and Carlow**
- Region 5 – Counties: Kildare, Wicklow, Laois and Offaly**
- Region 6 – Counties: Meath, Westmeath, Longford, Louth, Cavan and Monaghan**
- Region 7 – County Dublin**

1. Definitions

Unless the context otherwise requires, capitalised terms in the Agreement have the following meaning:

- Agreement** means the entire agreement described in clause 2
- Call Off Competition** means a tender competition for a Call Off Contract, undertaken in accordance with the procedure set out in Schedule 3
- Call Off Contract** means a contract in relation to the provision of services awarded pursuant to the procedure set out in Schedule 3

¹ The Supplier is to indicate which region(s) apply.

Call Off Tender	means a tender submitted by a supplier in relation to a Call Off Competition
Force Majeure	has the meaning given to it in clause 12
Payment Claim Date	means the date when a payment claim in relation to an amount due under a Call Off Contract is required to be made
Payment Claim Notice	means a notice of a payment claim under a Call Off Contract
Purchase Order	has the meaning given to it in Schedule 3
Request	has the meaning given to it in Schedule 3
Services	Plant Hire and Haulage services as may be described in a Request for Call Off Competition set out in Schedule 3
Specification	means the specification set out in Schedule 1
Supplier's Personnel	means the subcontractors, employees and any persons working for the Supplier and/or subcontractors in relation to the Services, and other persons assisting the Supplier to perform the Agreement
Tax Clearance Certificate	means a tax clearance certificate within the meaning of the Taxes Consolidation Act 1997 as amended
Tax Clearance Access Number	means a unique number assigned by the Collector General to a person that applies for a tax clearance certificate in electronic format under the Taxes Consolidation Act 1997 as amended
Tax Liability	means tax or payment in the nature of tax, including but without prejudice to the generality of the foregoing, income tax, social security contributions or any form of withholding tax or obligation which is a primary liability for the Supplier or Supplier's Personnel
VAT	means value-added tax under the Value-Added Tax Consolidation Act 2010 (as amended) and any other tax of a similar nature
Working Hours	means between 9am and 5pm on a day that is not Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997 or Good Friday

2. Entire Agreement

These terms and conditions together with:-

- Each relevant Request for Call Off Competitions
- Each relevant Purchase Order

shall constitute the entire contract between the Supplier and Irish Water with respect to the provision of the Services by the Supplier to Irish Water and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Supplier and Irish Water with respect to any Services ordered on or after the commencement of the Agreement. Without prejudice to the generality of the foregoing, the Agreement shall apply to

the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any acknowledgement of a Purchase Order or otherwise.

3. Scope of Appointment and Term of Agreement

The appointment of the Supplier to the Panel does not constitute a commitment or guarantee by Irish Water to procure any Services from the Supplier and does not confer any exclusivity on the Supplier. Irish Water may procure the Services in other ways outside of the Panel from any provider or from other national/regional/local frameworks/tenders in place.

The Agreement shall commence on 1 September 2016 and shall end on 31 August 2017, unless it is either:

- extended for a further twelve month period by Irish Water (at its sole discretion); or
- terminated in accordance with the provisions of the Agreement.

Notwithstanding the expiry of the Agreement, a Call Off Contract that is not completed prior to the end of the Agreement shall be governed by the Agreement.

4. Call Off Contracts

If Irish Water selects the Supplier to provide the Services in accordance with the procedure in Schedule 3, the Supplier shall (subject to the Supplier providing the required information in the “supplier set up form” as referred to in clause 8) enter into a Call Off Contract with Irish Water. Call Off Contracts will be formed by the issue of the Purchase Order (as defined in Schedule 3) by Irish Water to the Supplier following completion of the Call Off Competition.

Each Purchase Order shall constitute a separate Call Off Contract and any default by Irish Water in relation to any one purchase order shall not entitle the Supplier to treat such as a breach of the entire Agreement and/or terminate the Agreement.

Irish Water shall be responsible for awarding Call Off Contracts in accordance with Schedule 3 and Irish Water shall not have any responsibility or liability whatsoever or howsoever arising from the award of any Call Off Contract or the outcome of a Call Off Competition.

The Supplier shall perform all Call Off Contracts in accordance with the requirements of the Agreement, the terms and conditions of the respective Call Off Contracts and in accordance with Irish law.

5. The Supplier’s Obligations

The Supplier shall provide the Services meeting the Specification, in accordance with the Agreement.

The Supplier shall employ sufficient staff to provide the Services who shall be properly trained, skilled and qualified. Failure by the Supplier to meet its obligations under this clause 5 shall be considered a material breach of the Agreement.

The Supplier 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 sick pay and 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.

6. Insurance

Without prejudice to its express obligations under the Agreement, and in accordance, with good industry practice, the Supplier agrees that for the duration of the Panel, and for a period of two years thereafter, it will maintain appropriate insurance policies in relation to the following risks with a reputable insurance company in respect of the performance by the Supplier of the Services providing for a payment of a sum no less than the amounts stated:

- (i) public/products liability for all risks arising from legal liability to third parties in respect of death or personal injury and damage to tangible and real property arising from the Supplier's performance of the Agreement: €6.5 million per claim or series of claims arising from one event and in the aggregate in respect of products liability only;
- (ii) in respect of plant which is hired without an operator, public/products liability insurance cover including liability arising from the use or supply of defective equipment. This cover must be provided under a public/products liability policy, with a minimum limit of €6.5million per claim or series of claims arising from one event and in the aggregate in respect of products liability only;
- (iii) motor liability insurance (if applicable): €6.5 million per claim or series of claims arising from one event and unlimited in the aggregate; and
- (iv) employer's liability insurance: €13 million per claim or series of claims arising from one event and unlimited in the aggregate.

7. Indemnity

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

Irish Water shall not be liable to make any payment of tax or payment in the nature of tax, including but without prejudice to the generality of the foregoing, income tax, social security contributions or any form of withholding tax or obligation which is a primary liability for the Supplier or the Supplier Staff (the "Tax Liability"). The Supplier undertakes to use best endeavours to meet its Tax Liability obligations. Where Irish Water is required by law to make a payment or account for tax in respect of any Tax Liability to the Revenue Commissioners, Irish Water shall make that payment within the time allowed and in the minimum amount required by law and shall be entitled to deduct such payment from any outstanding payments due to the Supplier. The Supplier shall (within three business days of demand by Irish Water) pay to Irish Water an amount equal to any loss, liability or cost whatsoever which Irish Water determines will be or has been (directly or indirectly) suffered on account of payment of or accounting for the Tax Liability.

8. Payment

Prior to the Supplier providing a Payment Claim Notice, Irish Water may require the Supplier to submit periodic (e.g. weekly or monthly) statements of the Services provided during the period of the Agreement.

The Payment Claim Dates under a Call Off Contract are as follows:-

- (a) 30 days after the commencement of the Call Off Contract;

- (b) 30 days after the date referred to in part (a) and every 30 days thereafter up to the date of completion of the Call Off Contract;
- (c) 30 days after the date of completion of the Call Off Contract.

Where the duration of a Call Off Contract is or is estimated to be less than 45 consecutive days, the Payment Claim Date shall be 14 days following completion of the Call Off Contract.

The amount of an interim payment under a Call Off Contract shall be:-

- (a) the aggregate of the gross value (determined in accordance with the Purchase Order) of the Services performed at the Payment Claim Date concerned together with any additional amounts in the interim payment, less any deductions from payment; less
- (b) the aggregate amount of interim payments that have already been made at that Payment Claim Date.

The aggregate of the payments made under a Call Off Contract shall not exceed:-

- (a) the amount provided for in the Purchase Order; and
- (b) amounts provided for by any amendments to the Call Off Contract agreed in writing between the parties.

The Supplier shall send a Payment Claim Notice to Irish Water not later than five (5) calendar days after each Payment Claim Date. The Payment Claim Notice shall contain the following information:-

- The Supplier's name and address
- The Supplier's VAT registration number
- Payment Claim Notice number and date
- Irish Water's order number
- The RFT (Request For Tender) reference number from the SupplyGov.ie system
- Details of the amount being sought
- The period, stage or activity to which the payment relates
- The "subject matter" of the Supplier's claim for payment (i.e. details of the particular job)
- The basis upon which the amount sought has been calculated
- Company registration number/serial number if available

Subject to Irish Water being satisfied as to the due performance of the Call Off Contract, the Supplier shall be paid the price established through the Call Off Competition as set out in the Purchase Order. Irish Water may retain or set off against the price any amount owed to Irish Water by the Supplier on any account whatsoever.

Irish Water shall pay the Supplier for the Services received by it (and not rejected by it) by electronic transfer or such other method as designated by Irish Water within forty five (45) days of receipt of a valid and undisputed Payment Claim Notice together with all reasonable information and documentation that Irish Water may require from time to time with the remittance for the payment sent to the Supplier via email.

If Irish Water determines at any time that the quality of any Services provided by the Supplier is of a standard below that required by the Agreement, or that any Services in any other respect are not being rendered in accordance with the Agreement, Irish Water will notify the Supplier not later than 21 days after the Payment Claim Date (the **withholding notice**). The withholding notice will include the following details:-

- (i) the amount proposed to be paid;
- (ii) the reason or reasons for the difference between the amount in the Payment Claim Notice and the amount referred to in part (i);
- (iii) the basis on which the amount referred to in part (i) is calculated.

Where a reason for the withholding notice is attributable to a claim for loss or damage arising from an alleged breach of any contractual or other obligation on the part of the Supplier (under the Agreement or otherwise), the withholding notice shall also specify:-

- (a) when the loss was incurred or the damage occurred, or how the other claim arose;
- (b) the particulars of the loss, damage or claim; and
- (c) the portion of the difference that is attributable to each such particular.

Following the issue of the withholding notice, Irish Water will be entitled to withhold a proportionate amount of any future payment due to the Supplier pursuant to the Agreement until such time as the matter in question has been resolved. The rights of Irish Water pursuant to this clause 8 shall be without prejudice to any other rights it may have under the Agreement or at law, including the right of termination.

The Supplier shall be required to submit a "supplier set up form" which will include their tax clearance and bank details (and details of their RCT registration number if the Supplier is providing plant with an operator) prior to the first payment being made under the Agreement. The supplier set up form will include a current Tax Clearance Certificate as defined in Section 1095 of the Taxes Consolidation Act 1997. Payments will not be made until a current Tax Clearance Certificate is furnished to Irish Water by the Supplier and the Supplier will not be entitled to and Irish Water will not pay any interest or penalties as a result of late payment caused by the Supplier's failure to provide a current Tax Clearance Certificate in a timely manner.

Wherever under the Agreement any sum of money is recoverable from or payable by the Supplier (including any sum which the Supplier is liable to pay to Irish Water in respect of any breach of the Agreement), the parties may agree to deduct that sum from any sum then due, or which at any later time may become due to the Supplier under the Agreement or under any other agreement or contract with Irish Water. Any overpayment by either party, whether of the charges for the Services or of VAT or otherwise, shall be a sum of money recoverable by the party who made the overpayment from the party in receipt of the overpayment.

9. Confidentiality

Each of the parties to the Agreement agree to hold confidential all information, documentation and other material received, provided or obtained arising from their participation in the Agreement and shall not disclose same to any third party except to:-

- its professional advisors subject to the provisions of this clause 9; or
- as may be required by law; or
- as may be necessary to give effect to the Agreement subject to the provisions of this clause 9; or
- in the case of Irish Water by request of any person or body or authority whose request Irish Water or persons associated with Irish Water considers it necessary or appropriate to so comply.

The Supplier undertakes that it will properly instruct its staff on the absolute need to maintain privacy and confidentiality of all matters affecting the business of Irish Water or any persons

doing business with Irish Water or in any way arising from documents or records of any kind which may come under the hand of the Supplier or its staff while engaged by Irish Water.

The Supplier undertakes to comply with all reasonable directions of Irish Water with regard to use and application of all and any confidential information.

The Supplier acknowledges that the security of Irish Water and the State and its information is of paramount importance to Irish Water. Accordingly the Supplier confirms that it will from time to time, during the currency of the Agreement as may be requested by Irish Water submit full personal details (including those of sub-contractors) who are assigned to provide the Services (or any part thereof) under the Agreement. The Supplier further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Supplier shall comply with all reasonable directions of Irish Water arising there from.

10. Governing Law and Jurisdiction

This Agreement and the relationship between the parties shall be governed by, and interpreted in accordance with, Irish law.

Each of the parties agree that the courts of Ireland are to have exclusive jurisdiction to settle any dispute (including claims for set off and counterclaims) which may arise in connection with the creation, validity, effect, interpretation or performance of, or the legal relationships established by, the Agreement or otherwise arising in connection with the Agreement and for such purposes irrevocably submit to the jurisdiction of the Irish courts.

11. Termination

Without prejudice to any other remedies, the Agreement may be terminated by Irish Water with immediate effect if the Supplier:-

- ceases to carry on business in the normal course;
- fails to comply with its obligations under the Agreement, and, if the failure can be cured, Irish Water has directed the Supplier to put the matter right, and the Supplier has not done so within 14 days after receiving the direction;
- abandons or, except where required or permitted by the Agreement, suspends the execution of the Services;
- fails to proceed regularly and diligently with the execution of the Services;
- fails to maintain the required insurances;
- has committed or caused Irish Water to commit a serious breach of law concerning the Services;
- or personnel of the Supplier have committed a breach of the Safety, Health and Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the Services;
- commits an act of bankruptcy or is adjudicated bankrupt;
- enters into liquidation, whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction, compounds with its creditors generally or has a receiver or manager appointed over all or any of its assets, has an examiner appointed, ceases or threatens to cease trading or becomes insolvent;
- if an individual, dies or becomes incapable of performing the Agreement.

Without prejudice to any other rights, Irish Water may terminate the Agreement at any time and for no reason upon giving the Supplier three weeks notice. Termination by Irish Water shall be without prejudice to any rights Irish Water may have arising from the Agreement or any prior breach hereof.

For the avoidance of doubt if the Agreement is terminated without prejudice to any other provision the Supplier shall not be entitled to payment for any costs incurred or services supplied after the effective date of termination. Irish Water will not be held liable for damages howsoever arising or loss of anticipated profits on account of such termination. In the event of the Agreement being terminated by Irish Water on any of the grounds in the first paragraph of this clause 11 during a Call Off Contract, the Supplier shall be liable for any loss incurred by Irish Water as a result of such termination including the cost of finding an alternative Supplier to carry out the Supplier's uncompleted Services.

12. Force Majeure

No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure. Unless otherwise instructed by Irish Water, the Supplier shall recommence performance as soon as possible after the Force Majeure has ceased.

Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: - acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity; local or national emergency, sabotage or riots; floods, unusually severe weather conditions which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Supplier's workforce.

If any delay or failure in performance, as set out above, persists for 7 days or more, Irish Water shall have the right to terminate the relevant Call Off Contract by giving 7 days notice in writing to the Supplier.

13. Conflicts, Registrable Interests and Corrupt Gifts

The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the Services and its obligations undertaken under the Agreement. The Supplier hereby undertakes to advise Irish Water forthwith should any conflict or potential conflict of interest come to its attention during the currency of the Agreement and to comply with Irish Water's directions in respect thereof.

Any registrable interest involving the Supplier (and any sub-contractor or agent as the case may be) and Irish Water, or their relatives must be fully disclosed to Irish Water immediately upon such information becoming known to the Supplier and to comply with Irish Water's directions in respect thereof, to the satisfaction of Irish Water. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995.

The Supplier shall not offer or agree to give any public servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 13 or the commission of any offence by the Supplier, any sub-contractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2010 shall entitle Irish Water to terminate the Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Supplier of the amount or value of any such gift, consideration or commission.

14. Dispute Resolution Procedure

If a dispute arises in connection with this Agreement the following procedure applies:-

- (i) A party may give the other party to the dispute notice of the dispute, including details of the claims made by the party giving the notice.
- (ii) Within 21 days after notice of dispute is given, senior representatives of each party to the dispute must meet and, at the meeting, should attempt to resolve the dispute. A senior representative means the chief executive or managing director, or another senior executive nominated by him or her.
- (iii) If the dispute has not been resolved within 21 days after the notice was given, any party may refer it to mediation using the Engineers Ireland Mediation Procedure 2011.

15. Miscellaneous Provisions

The Supplier acknowledges that there does not exist any contractual, implied or quasi-contractual relationship between Irish Water and the Supplier prior to the execution of the Agreement nor will there exist any contractual, implied or quasi-contractual relationship in relation to a Call Off Competition prior to the acceptance by Irish Water of the terms of the Call Off Tender, or the entering into of the Call Off Contract, pursuant to the procedure adopted for the Call Off Competition.

Any amendments to the Agreement shall be signed by the parties and endorsed on the Agreement.

The Supplier shall not assign the Agreement or any Call Off Contract and shall not sub-contract any aspect of the provision of Services to any third party without the prior written consent of Irish Water. In the event of such consent being given, the Supplier shall remain fully responsible for the provision of the Services and the acts and omissions of the sub-contractor as if they were its own. The Supplier shall also maintain during the term of the Agreement and for 6 years thereafter records and documentation relating to the sub-contractor and the Services provided by it and shall make same available to the Irish Water upon request.

Failure or neglect by Irish Water to enforce at any time any provision of the Agreement or any Call Off Contract shall not be construed or deemed to be a waiver of Irish Water's rights hereunder, nor in any way affect the validity of the whole or any part of the Agreement, nor prejudice Irish Water's rights to take subsequent action.

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

It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in the Agreement will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between Irish Water and the Supplier.

16. Tax

16.1 Irish Water may make any deduction or withholding on account of tax (including but not limited to professional services withholding tax and relevant contracts tax) required by law, Governmental direction or the practice of the Revenue Commissioners.

16.2 The Supplier shall provide Irish Water with all information that Irish Water needs to provide to the Revenue Commissioners in respect of this Agreement, including

- 1) Either a current Tax Clearance Certificate or a tax reference number and Tax Clearance Access Number for the Supplier, and
- 2) (if requested by Irish Water) for all Supplier's Personnel (except individuals employed by the Supplier in connection with the Services) receiving payments in connection with the Agreement exceeding:
 - €650, a record of a tax reference number
 - €2,600 in any 12 month period, either (a) a current Tax Clearance Certificate / a tax reference number and Tax Clearance Access Number or, (b) a Subcontractor's Notification of Determination issued under Section 530I of the Taxes Consolidation Act 1997 showing a rate of 0% or 20%.
- 16.3 For the avoidance of doubt, Irish Water shall have no liability whatsoever to make any payments whatsoever to Supplier's Personnel, including overtime payments, sick or holiday pay, pension, bonus or other benefits. As between the parties, the Supplier shall bear exclusive responsibility for the payment of all payroll withholding taxes (including national insurance contributions, PAYE, USC and PRSI) for Supplier's Personnel.
- 16.4 To the extent that the Supplier is supplying personnel to Irish Water, payment may be withheld at any time where evidence requested is not provided by the Supplier to the effect that Irish payroll withholding taxes (including PAYE, USC and PRSI) are being operated in respect of Supplier's Personnel, or that Irish payroll withholding taxes need not be operated in line with current published Revenue Commissioners' Statements of Practice and other guidance, or that the Supplier has received permission from the Revenue Commissioners not to operate Irish payroll withholding taxes. This applies whether or not the Supplier or Supplier's Personnel in question is resident in Ireland, including when personnel are sourced from other companies. The Supplier shall provide evidence of registration for Irish payroll withholding taxes and of actual operation of Irish payroll withholding tax obligations in respect of remuneration liable to Irish payroll withholding taxes on an ongoing basis.
- 16.5 Unless otherwise stated, amounts in the Agreement exclude VAT. Irish Water shall pay any VAT arising under Irish or other applicable law on the supply (by the Supplier to Irish Water) under this Agreement. Irish Water shall pay that VAT to the appropriate tax authorities when so required by the laws or their practice, or otherwise shall pay it to the Supplier. The Supplier confirms that it is registered for VAT. The Supplier shall refund to Irish Water any VAT incorrectly charged immediately upon notification. The Supplier shall send Irish Water for each payment a valid VAT invoice complying as to form, timing and all other respects with the law.
- 16.6 Unless otherwise expressly stated in this Agreement, the Supplier bears exclusive liability for payment of all taxes and duties whatsoever and howsoever arising under Irish or other law in connection with the Services and performance of this Agreement. Irish Water will have no liability to make any payment of a Tax Liability. The Supplier undertakes to meet its Tax Liability obligations and to use its best endeavours to ensure that Supplier's Personnel meet their Tax Liability obligations. If Irish Water is required by law to make a payment or account for tax in respect of any Tax Liability to the Revenue Commissioners, Irish Water shall make that payment within the time allowed and in the minimum amount required by law and may deduct such payment from any outstanding payments due to the Supplier, or amounts subsequently becoming due to the Supplier.
- 16.7 The Supplier must (within three business days of demand by Irish Water) pay to Irish Water an amount equal to any loss, liability or cost whatsoever which Irish Water

determines will be or has been (directly or indirectly) suffered on account of payment of or accounting for the Tax Liability.

16.8 If the Supplier does not fully comply with this Clause 16 Irish Water shall not be required to pay in full.

IN WITNESS whereof the parties hereto have executed the Agreement the day and year first herein **WRITTEN**.

Signed on behalf of Irish Water by:

A duly authorised representative

Date

Signed on behalf of the Supplier by:

A duly authorised representative

Date

SCHEDULE 1 – SPECIFICATION

Set out in Schedule 1 of the Instructions Document for the competition

SCHEDULE 2 – THE SERVICES

Plant Hire and Haulage services shall comply with the Specification and with any requirements set out in any Call Off Competition.

SCHEDULE 3 – CALL OFF COMPETITION PROCEDURE

1. When Irish Water decides to procure Services through the Agreement, Irish Water will send each member of the Panel capable of performing the Services (and who are compliant with the requirements of the Agreement including the Specification) a request for Call Off Tenders (the “Request”). The Request will be sent by email only to the Panel at the email address as provided by each member of the Panel to Irish Water via SupplyGov.ie.
2. The Request will include specific information about the Services required by Irish Water. The Request will fix a time limit for members of the Panel to submit tenders and it will state the award procedure, either on the basis of the most economically advantageous tender (MEAT) by applying the indicative award criteria set out in the table below as may be supplemented as appropriate in relation to the specific drawdown requirements, or on the basis of the lowest price.
3. At Call Off Competition stage, the Panel will be required to submit fixed prices in accordance with the specific requirements of the Call Off Competition. The request will set out which pricing method for the particular Services such as: – hourly rate – plant only, hourly rate – plant and operator, daily rate, price per job etc. The Panel will be required to submit their prices online only through SupplyGov.ie
4. The award process of Call Off Contracts will be conducted in accordance with this Schedule 3 and any procedures stated in the Request. Call Off Tenders will be assessed in accordance with the following criteria which may be supplemented as appropriate in relation to the specific Call Off Competition requirements.
 - 4.1 Firstly, Call Off Tenders will be assessed to see if they meet the pass/fail criteria below as may be supplemented or amended depending the specific service requirement of the Call Off Competition. Any supplier that fails to meet the required pass/fail criteria will be excluded from further consideration.

Selection Criteria for Call Off Competitions

<ul style="list-style-type: none"> • The Supplier has the required machines/plant available 	Pass/Fail
<ul style="list-style-type: none"> • The Supplier can supply the Services within the delivery period required. 	Pass/Fail
<ul style="list-style-type: none"> • Confirmation that the requirements of the Specification set out in Schedule 1 of the Agreement can and will be complied with. 	Pass/Fail
<ul style="list-style-type: none"> • If applicable, confirmation that requirements specified in the invitation to tender for the Call Off Competition can be met. This criterion may be broken down into sub-criteria to take account of the particular characteristics of the job, the subject of the Call Off Competition. 	Pass/Fail
<ul style="list-style-type: none"> • If applicable, confirmation that evidence of the relevant specific qualification/certification can and will be provided. 	Pass/Fail

<ul style="list-style-type: none"> Relevant experience, if applicable, confirmation that the minimum level(s) of experience set out in the invitation to tender for the Call Off Competition can and will be complied with. <p>The Supplier must have satisfactory experience and must have successfully completed similar works to the contract being offered. Irish Water may request submission of details of other similar work carried out by the Supplier. In assessing the similarity of the works completed Irish Water will assess the type and variety of works done and the conditions under which and the locations where the contract work was carried out. In assessing whether the contracts were satisfactorily carried out and were similar, Irish Water may be requesting reports from the previous employer or employer's representative.</p>	Pass/Fail
<ul style="list-style-type: none"> If applicable, confirmation that the plant concerned will be available outside of Working Hours and that any maximum response time specified can and will be complied with. 	Pass/Fail

4.2 Suppliers that pass the selection criteria above will be assessed in accordance with the award criteria below. The supplier that achieves the highest ranking score by reference to the award criteria below will be awarded the Call Off Contract.

Award Criteria	Percentage Weighting	Minimum Requirements
Overall Price	[60%-100%]	[]%
Quality This criterion may be broken down into sub-criteria, including such matters as the age of machine, backup support services, etc. The particular characteristics of the job, the subject of the Call Off Competition including where appropriate the requirement for a safety plan/quality plan for the specific Call Off Contract(s), may also be taken into account. If applicable, it will also take account of green procurement.	[0%-40%]	[]%

4.3 Where, after a competition, two Call Off Tenders are level on marks, Irish Water reserves the right to either:

- (i) Ask the drawn suppliers to resubmit prices and continue this process until there is a winner
- (ii) To divide the contract between the two drawn suppliers.

5. The award criteria for Call Off Contracts will be either on the basis of the most economically advantageous tender (MEAT) or on the basis of the lowest price depending on the type of procedure stated in the Call Off Competition.

6. Irish Water does not undertake to accept the lowest tender for any Call Off Contract, or part or all of any such tender and the acknowledgement of receipt of any Call Off Tender

for an individual Call Off Contract shall not constitute any actual or implied agreement between Irish Water and any member of the Panel.

7. Following completion of the Call Off Competition, Irish Water shall issue a purchase order to the successful supplier which shall set out the specifics of the individual Call Off Contract awarded under the Call Off Competition such as a description of the required Services to be provided; output; deliverables; price; timing or schedule for provision of the Services; and such other terms and conditions as the supplier and Irish Water may agree in respect of the Services (the "**Purchase Order**").