

# COILLTE: TERMS AND CONDITIONS FOR GOODS & SERVICES

(Version 5 – February 2024)

## PART ONE: STANDARD CLAUSES

Part One applies to the procurement of both Goods and Services

### 1. INTERPRETATION & DEFINITIONS

- 1.1. The Contract is separated into the following parts:
  - 1.1.1. Standard Clauses (Part One) – this part applies to the procurement of both Goods and Services.
  - 1.1.2. Goods Contract Clauses (Part Two) – this part applies only if Coillte is procuring Goods.
  - 1.1.3. Operational Services Contract Clauses (Part Three) – this part applies only if Coillte is procuring Operational Services.
  - 1.1.4. Construction Contract Clauses (Part Four) – this part applies only if Coillte is procuring construction works or engaging construction design consultants.
- 1.2. Words importing the singular includes the plural, the masculine include the feminine, a natural person includes an entity and (all) vice-versa where the context requires.
- 1.3. Headings and subheadings are for convenience and ease of reference only and shall not affect interpretation.
- 1.4. Any defined terms used herein but not defined herein shall have the meaning ascribed to them in the Contract and/or the Tender Documents, as appropriate.
- 1.5. In the event of any ambiguity, inconsistency or discrepancy within or between any of the documents comprising a Contract, including these Conditions, any schedules, the Request for Tender and/or the Proposal, such conflict, or inconsistency shall be resolved by giving the following precedence:
  - 1.5.1. the Contract Form (including any schedules and/or appendices thereto).
  - 1.5.2. these Terms and Conditions.
  - 1.5.3. the Request for Tender.
  - 1.5.4. the Proposal, and
  - 1.5.5. any other Tender Documents.
- 1.6. A reference to a particular Law, is a reference to it as it is in force for the time being, taking account of and including any subsequent and any further Law, or any amendment, modification, extension, re-enactment or replacement and any subordinate Law for the time being in force or made under it.
- 1.7. Any words following the terms “including”, “include”, “in particular”, “for example” or any similar expression shall be construed as illustrative and are not to be read as exhaustive or to limit the sense of the words preceding those terms.
- 1.8. Any reference to schedules and/or appendices to the Contract shall form part of and are incorporated into the Contract.

## DEFINITIONS

In construing these Terms and Conditions, the following words and expressions shall have the following meanings unless there is something in the subject matter or context inconsistent with such meanings: -

<i>"Agreed Payment Provisions"</i>	has the meaning given to it in Clause 3.1 of these Conditions.
<i>"Appropriate Technical and Organisational Measures"</i>	has the meaning given to such term in Data Protection Legislation (including, as appropriate, the Measures referred to in Article 32(1) of the GDPR).
<i>"Bill of Materials"</i>	means a schedule of equipment and/or materials required for the provision of Services under the Contract, detailing the quantity, description and price, as set out in the Contract Form.
<i>"Business Day"</i>	a day other than a Saturday, Sunday or public holiday in Ireland when banks are open for business.
<i>"Charges"</i>	means the charges payable under the Contract, if any, as set out in the Contract Form.
<i>"Coillte"</i>	means Coillte Cuideachta Ghníomhaíochta Ainmnithe, registered number 138108, having its registered office at Dublin Road, Newtownmountkennedy, Co. Wicklow.
<i>"Companies Acts"</i>	means the Companies Acts 1963 to 2014.
<i>"Company"</i>	means, as relevant and appropriate, Coillte and/or Medite and/or SmartPly.
<i>"Company Internal Policies"</i>	means all internal policies and requirements which are notified to the Supplier or sought from the Supplier, by the Company from time to time and which ordinarily will apply to the Supplier, its employees, servants, agents, contractors, sub-contractors and so forth, including, where relevant but without limitation, policies relating to human resource matters, security, health and safety, information and communication, technology, data privacy and the acceptable use of stationery, telephones, e-mail, intranet and internet.
<i>"Company Representative"</i>	means the Company representative, as nominated by the Company and notified to the Supplier from time to time, to oversee the operation or provision of the Services on behalf of the Company.
<i>"Company's System"</i>	means the supplier management system of the Company, as amended, varied, supplemented or replaced by or on behalf of the Company from time to time.
<i>"Computer Virus"</i>	Means any undocumented malicious data, code, program, malware or other internal component (for example, computer worm, computer time bomb or similar component), which could damage, destroy, alter or disrupt any computer program, firmware or hardware or which could, in any manner, reveal,

	damage, destroy, alter or disrupt any data or other information.
<i>“Contract”</i>	means each contract (including a purchase order) between the Company and the Supplier that is made in accordance with Clause 2 of these Conditions.
<i>“Contract Form”</i>	means the form setting out the principal terms of a Contract (save for a purchase order) as agreed between the Company and the Supplier in accordance with these Conditions. For the avoidance of doubt, no Contract (pursuant to a Contract Form) shall come into existence or be deemed to come into existence unless and until the Contract Form has been executed and exchanged by all relevant parties.
<i>“Customer”</i>	means Coillte, Medite or SmartPly as appropriate.
<i>“Data”</i>	any data or information, in whatever form, including but not limited to images, still and moving, and sound recordings.
<i>“Data Controller”</i>	has the meaning given to such term in Data Protection Legislation.
<i>“Data Processor”</i>	has the meaning given to such term in Data Protection Legislation.
<i>“Data Protection Legislation”</i>	means the Data Protection Acts 1988-2018, GDPR ,the E-Privacy Directive 2002/58/EC (as amended); any national implementing legislation, secondary legislation (including European Commission decisions), amendments, revisions or replacements to those laws (including, when it comes into force, the successor to the e-Privacy Directive), any other applicable laws relating to data privacy, and any case law interpreting the foregoing; and any guidance from the European Data Protection Board or Irish Data Protection Commission.
<i>“Data Subject”</i>	an individual who is the subject of Personal Data.
<i>“EEA”</i>	means European Economic Area
<i>“Employment Laws”</i>	means all employment Laws, including but not limited to, the Unfair Dismissal Acts 1977-2017, the Employment Equality Act 1998 and 2004, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, the European Communities (Protection of Employees on Transfer of Undertakings) Regulatory 2003, the Protection of Employees (Temporary Agency Work) Act 2012 and other regulations, codes of practice, legally binding determinations of the Labour Court for the Republic of Ireland and registered employment agreements under applicable Laws.
<i>“Environmental Acts”</i>	means all environmental acts, including but not limited to, the Environmental Protection Agency Act 1992, the Waste Management Act 1996, the Waste Management Amendment) Act 2001, the Local Government (Water

Pollution) Act 1977, the Local Government (Water Pollution) (Amendment) Act 1990, the Air Pollution Act 1987, the Protection of the Environment Act 2003.

*“Fault(s)”*

means but shall not be limited to, any fault, error or omission in the Services caused by design defect, faulty materials, bad workmanship or other reason or a failure to meet any agreed specification.

*“Force Majeure Event(s)”*

means in relation to a party, any debilitating event, occurrence or circumstance or combination of events and/or occurrences and/or circumstances not within the reasonable control of that party, which could not have been avoided by taking reasonable precautions and which is not due to any wilful act, error, omission, breach, default or negligence of the party claiming relief. Subject always to the foregoing, Force Majeure Events include but are not limited to:

- a) acts of terrorists, sabotage or acts of vandalism, criminal damage or the threat of such acts. War declared or threatened, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict.
- b) national emergencies, and acts of God including, but not limited to floods, natural disasters, fire, earthquake, epidemics and pandemics.
- c) any strike, lock-out or other industrial action or labour dispute primarily or substantially aimed at a party or its suppliers, sub-contractors, agents or employees.
- d) and specifically does not include:
  - i. lack of funds.
  - ii. inability of a party to pay.
  - iii. events affecting a contractor or supplier of the party that would not have constituted a Force Majeure Event under these Conditions.
  - iv. changes in market conditions; or
  - v. inability to make a profit.

*“Forestry Acts”*

means the Forestry Acts 1946 to 2014.

*“GDPR”*

means the General Data Protection Regulation ((EU) 2016/679)

*“Goods”*

means the goods to be supplied under a Purchase Order.

*“Health and Safety Acts”*

means all health and safety acts, including but not limited to the Safety, Health and Welfare at Work Acts 1989 to 2005, the Safety, Health and Welfare at Work (Construction) Regulations 2001 to 2006 and the Safety, Health and Welfare at Work (General Application) Regulations 2007 and any amendments or modification or re-enactment thereof.

<i>"Insurance Confirmation Form"</i>	means a form to be completed confirming the insurance cover of the Supplier, which is completed by a reputable insurance company or insurance broker, in a format which conforms to the latest available version of the Company's standard insurance confirmation form.
<i>"Intellectual Property Rights"</i>	means patents, rights to inventions, copyright and neighbouring and related rights, trademarks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (to include any design, specification, ideas, know-how, techniques, documentation, software, reports that may be developed herein and/or supplied herein), in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.
<i>"Know-how"</i>	means unpatented business and technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials).
<i>"Laws"</i>	means all laws (including common law), statutes, statutory instruments, directives, regulations, rules, regulations, byelaws, codes, orders, decrees, judgments, consent decrees, settlement agreements, or other pronouncements, in each case having force of law.
<i>"Meditate"</i>	means Meditate Europe, registered number 80984, having its registered office at Redmondstown, Clonmel, Co. Tipperary.
<i>"Milestone Date(s)"</i>	means the date or dates for the achievement of a Services related milestone of particular importance and identified as such and set out in the timetable within the Agreed Payment Provisions.
<i>"Modern Slavery"</i>	means slavery, servitude, labour exploitation, forced labour and human trafficking.
<i>"Normal Business Hours"</i>	9.00am to 5.00pm GMT on a Business Day.
<i>"Operational Services"</i>	means activities and services carried out by the Supplier under the Contract that involve physical intervention or activity on a forestry site, including the use of machinery which includes project work, harvesting, or haulage, or the furnishing of all materials, equipment, labour, and incidentals necessary to successfully complete the Contract or any part thereof.
<i>"Personal Data"</i>	has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the

	Data Controller, and in respect of which the Supplier is the Data Processor under this Agreement.
<i>“Planning Acts”</i>	means all planning acts, including but not limited to, the Planning and Development Acts 2000 to 2010 and the Building Control Acts 1990 and 2014 (the “Building Control Act”).
<i>“Proposal”</i>	means the proposal of the Supplier in response to the ‘Request for Tender’, including any relevant supporting proposal documents.
<i>“Representatives”</i>	a Party’s employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services.
<i>“Request for Tender”</i>	means the invitation to tender, call for tender, request for tender, request for proposal, or otherwise of the Company.
<i>“Restricted Transfer”</i>	means any transfer of Personal Data to countries outside of the EEA which are not subject to an adequacy decision by the European Commission, where such transfer would be prohibited by Data Protection Legislation.
<i>“Services”</i>	means the services, goods, products, works and or such other services to be provided by the Supplier under the Contract, as set out and provided in the Contract Form and/or by reference to the Request for Tender or Proposal and may also refer to the Processing of Customer Data by the Supplier for the Services.
<i>“Site”</i>	means the Company site (and/or sites), within its ownership and/or control, as more particularly specified to the Supplier or such other site as may reasonably be specified, from time to time, by the Company and notified to the Supplier.
<i>“SmartPly”</i>	means SmartPly Europe, registered number 205747, having its registered office at Belview, Slieverue, Waterford.
<i>“Supplier”</i>	means the relevant person, party, company or other entity contracted by the Company to provide Services under the Contract, as set out in the Contract Form.
<i>“Supplier Delay”</i>	In respect of Milestone Dates, circumstances in which the material and principal cause of the relevant delay is due to the act, omission, failure or refusal to act (in accordance with the Contract) of and by the Supplier and/or any party for whom the Supplier is responsible, such that there is no other material cause for the delay.
<i>“Specifications”</i>	means the specifications of the Services to be provided under the Contract, as may be set out in the Contract Form and/or by reference to the Request for Tender or Proposal.

*“Tax” and “Taxation”*

means all forms of taxation, duties, imposts and levies, withholdings, rates and charges of whatsoever nature whether of Ireland or elsewhere, including (without limitation) income tax, corporation tax, corporation profits tax, advance corporation tax, capital gains tax, capital acquisitions tax, residential property tax, wealth tax, value added tax, customs and other import and export duties, excise duties, vehicle registration tax, stamp duty, capital duty, social insurance, social welfare or other similar contributions and other amounts corresponding thereto whether payable in Ireland or elsewhere, and any costs, interest, surcharge, penalty or fine relating to the same and any penalties chargeable for non-compliance with any statutory provisions or regulations in connection therewith and the word taxation shall be construed accordingly.

*“Tender Documents”*

means any tender documents relating to the Contract, including the invitation to tender, call for tender, request for tender, request for proposal, or otherwise of the Company (hereinafter each is referred to as the “Request for Tender”), the proposal of the Supplier (hereinafter referred to as the “Proposal”) and any other documentation referred to in the Contract Form.

*“Term”*

means the term of the Contract, as set out in the Contract Form or as may otherwise be agreed in writing by the parties, within the Request for Tender or otherwise.

*“Warranty Period”*

means the period of any such warranty for the Services or any part thereof, from the Supplier to the Company, as agreed by the parties in writing and stipulated in the Contract, commencing from the date agreed by the parties or in absence of such agreement from the date of any applicable Acceptance.

## 2. TERMS OF ENGAGEMENT

- 2.1. The Contract is an offer, and no binding contract shall be made until acceptance of the terms of the Contract by the Supplier, whether expressly by written notice or by delivery in accordance with the Specifications.
- 2.2. These Terms and Conditions, the Request for Tender, the Proposal, any Work Schedule and any other Tender Documents shall be incorporated in the Contract to the exclusion of the terms and conditions stipulated or referred to by the Supplier, unless specifically and explicitly agreed otherwise in writing by the Company.
- 2.3. For the avoidance of doubt and without prejudice to Clauses 2.1 and 2.2, at the discretion of the Company, the Services may be such that the Company requires the Supplier to enter into a different, more specific or specialised contract or framework contract for the Services (hereinafter referred to as the “Bespoke Contract”) as opposed to the Contract Form, with terms and conditions that may be outside the scope of these Conditions and in such event, unless otherwise stipulated in writing by the Company, the Parties acknowledge and agree that the terms and conditions of and/or associated with the Bespoke Contract (as executed and exchanged) shall apply as therein stipulated and supersede certain or all of these Conditions for those Services (notwithstanding any prior acceptance by the Supplier of these Conditions for the Services and/or any other Services).
- 2.4. For the duration of the Term, in consideration of the payment by the Company of the Charges in accordance with the Agreed Payment Provisions, the Supplier shall carry out, provide and complete the Services in compliance with any Specifications, the Tender Documents and the terms and conditions set out in the Contract.
- 2.5. Unless it has been specifically authorised to do so by the Company (pursuant to the provisions of the Contract or otherwise in writing), the Supplier shall not:
  - 2.5.1. have any authority to incur any expenditure in the name of or for the account of the Company, save with the express consent in writing of the Company,
  - 2.5.2. hold itself out as having authority to bind the Company; or
  - 2.5.3. make any public reference to its engagement hereunder. A public reference includes but is not limited to the Supplier’s dealings with third parties whether involved or not in carrying out the provision of the Services, whether verbally or by way of its own promotional or advertising material (to include, but not limited to, brochures and websites) and otherwise except where it is specifically required by the Contract or otherwise agreed by the parties.
- 2.6. In the performance of this Contract, the Supplier is an independent contractor and nothing in the Contract shall render the Supplier or any of its personnel engaged in the performance of the Contract an employee, worker, agent or partner of the Company and they shall not hold themselves out as such. The Contract constitutes a contract for the supply of goods or provision of independent services only and is not a contract or agreement of employment nor is it to be construed as any other form of contract or agreement between the parties.
- 2.7. The Supplier shall not offer, give or agree to offer or give, whether directly or indirectly, any employee, servant or agent of the Company, and the Company shall not accept any gift or consideration of any kind including, without limitation, any loan, fee, commission, reward, benefit or other payment as an inducement or reward in relation to the obtaining or execution of the Contract.
- 2.8. The Supplier shall comply with all reasonable Company Internal Policies as provided which, without prejudice, shall include, as relevant and required:
  - 2.8.1. adherence to the health and safety and security requirements of the Company, for any operation within any Site or such other property of the Company; and
  - 2.8.2. furnishing, upon execution of the Contract (or within such other period, as may be agreed with the Company), an environmental impact appraisal form (or such other appropriate and necessary documentation pursuant to the Environmental Acts), the site development plans, harvesting site plans or relevant work specifications.



- 2.9. The Company reserves the right, at any time, to revise, vary, enhance, modify, amend, alter or delete the Conditions and/or any of them.

### **3. PAYMENT**

- 3.1. The Charges shall be paid by the Company to the Supplier in accordance with the payment terms set out herein or, where different, in the Contract Form (the "Agreed Payment Provisions"). All sums payable under the Contract are exclusive of VAT.
- 3.2. The Supplier shall invoice the Company, or the Company will automatically generate an invoice for the Supplier, pursuant to the Company's System ("Company's System Invoice"), in accordance with and as provided for in the Agreed Payment Provisions. In respect of a Contract, the Company shall for any goods (so ordered,) pay such invoiced Charges by no later than 60 days after the last day of the calendar month during which those goods were delivered to the Company and for any services supplied to the Company, no later than the 15<sup>th</sup> day of the calendar month after the calendar month during which the invoice was received (where the services have been satisfactorily supplied). Subject to Clause 3.4.1 and 3.4.2, any invoiced amount that is not disputed by the Company or any Company's System Invoice that is not disputed by the Supplier shall be payable within the time frame stipulated by the Agreed Payment Provisions, following the date of receipt of the properly due and properly submitted invoice, by electronic transfer to such bank account of the Supplier, to be notified to the Company (or alternative arrangement as agreed by the parties in writing).
- 3.3. If the Company fails to pay any non-disputed amount by its applicable due date under the Contract, the Supplier shall be entitled (but not obliged) to charge the Company interest on the said overdue amount only, from the due date up to the date of payment, pursuant to the provisions of The European Communities (Late Payments in Commercial Transactions) Regulations 2012 (S.I. No. 580/2012) or any amendments thereof.
- 3.4. The Company shall have the right to query and/or dispute, in good faith, any invoice received from the Supplier, provided that such right is utilised within the time frame stipulated by the Agreed Payment Provisions, following receipt by the Company of that invoice, and that such right by the Company shall not affect:
- 3.4.1. the obligation of the Company to pay any undisputed element of such invoice; or
  - 3.4.2. the timing of such payment obligation, in relation to the undisputed element of such invoice. For the avoidance of doubt, it is hereby agreed by the Parties that they shall use reasonable endeavours to resolve any dispute pertaining to any invoice, with the intent that the dispute shall be resolved within the time frame as provided for in clause 3.2.
  - 3.4.3. The Supplier shall have the right to query and/or dispute, in good faith, any Company's System Invoice, provided that such right is utilised within the time frame stipulated by the Agreed Payment Provisions, following receipt from the Company of that Company's System Invoice, and that such right by Supplier shall not affect:
    - 3.4.3.1. the obligation of the Supplier to pay any undisputed element of such Company's System Invoice; or
    - 3.4.3.2. the timing of such payment obligation, in relation to the undisputed element of such Company's System Invoice. For the avoidance of doubt, it is hereby agreed by the parties to a Contract that they shall use reasonable endeavours to resolve any dispute pertaining to any Company's System Invoice, with the intent that the dispute shall be resolved within the time frame as provided for in clause 3.2.
- 3.5. In respect of any order(s) for the delivery of Goods which may be requested by the Company in writing pursuant to the Services:
- 3.5.1. The Company's purchase order number must be quoted on all correspondence, advice notes and invoices. Failure to show the Company's purchase order number on an invoice will result in return of the invoice to the Supplier and may result in delay in payment of the relevant charges.
  - 3.5.2. Advice of dispatch should be sent to the Company's designated destination ("Destination") on the date of dispatch of any orders.
  - 3.5.3. Unless otherwise agreed in writing, all orders made shall be supplied carriage paid to the Company's destination.

- 3.5.4. The Company reserves the right to refuse acceptance of any orders delivered in excess of quantities ordered and accepts no responsibility in respect of payment or otherwise in relation to any orders so delivered in excess of the quantity so ordered.
  - 3.5.5. The Company reserves the right to cancel an entire order by notice in writing to the Supplier if the Goods are not satisfactory or if deliveries are not made on time, save that such an extension of time as may appear to the Company to be reasonable may, at the Company's sole discretion, be allowed to the Supplier.
  - 3.5.6. The Company reserves the right to make reasonable changes to an order, by notifying the Supplier in writing and the parties agree to act reasonably to agree the particulars of any such changes to an order.
  - 3.5.7. It is understood that time is of the essence with regard to deliveries of orders and agreed delivery times.
- 3.6. The Supplier acknowledges that the Company maintains the right to retain, at its sole discretion, up to 10% of the Charges due pursuant to the Contract, until such time as Company is satisfied that the Supplier has carried out all its obligations under the Contract.
  - 3.7. The Company reserves the right to charge (upon notification) and if such right is exercised, then the Supplier shall pay an amount by way of a penalty and/or specified liquidated damages to the Company, in respect of the matters set out and identified by the Agreed Payment Provisions.
  - 3.8. For the avoidance of doubt, the parties have agreed that the Charges are fixed and that, save as otherwise expressly provided in the Contract and/or the Tender Document, the Supplier shall bear the cost of any travel, expenses and/or other costs that may be incurred in the performance of the Contract.
  - 3.9. The Supplier acknowledges that the Company is obliged to deduct Professional Services Withholding Tax ("PSWT"), if applicable, from payments made in respect of professional services, pursuant to the provisions of the Taxes Consolidation Act 1997 or any act amending same. The rate at which PSWT, if applicable, is deducted will be at the standard rate of PSWT in force.
  - 3.10. As may be relevant to the Services, the Agreed Payment Provisions may, where appropriate, set out or refer to a timetable (the "Timetable") of delivery. The Timetable shall set out one or more Milestone Dates as agreed by the parties to a Contract and those parties acknowledge that the Timetable may be subject to change from time to time, which may be agreed by the Company and Supplier, provided that:
    - 3.10.1. In respect of Supplier failure to achieve Milestone Dates, due to Supplier Delay and following a grace period of 5 days (the "Grace Period") following a Milestone Date, then at the option of the Company (following the said Grace Period), an amount shall be deductible from the payment applicable to the relevant Service in which such Milestone Date occurs (the "Relevant Stage") based upon the day that the relevant milestone attributable to such Milestone Date is actually achieved (the "Achievement Date"), which amount shall be calculated and set out in the Request for Tender.
    - 3.10.2. The position as set out in Clause 3.10.1, shall operate as a deductible from the payments due and payable in respect of the Relevant Stage, and where no such payments are due and payable, then, the sums shall apply as a cash payment from the Supplier to the Company, payable within 30 days of the Company's written demand.
    - 3.10.3. In circumstances of Supplier failure to achieve Milestone Dates, due to Supplier Delay, following the application of Clause 3.10.1 as aforesaid, which remains in effect for a period of not less than 60 days of the Milestone Date, then, the Company may terminate the Contract upon service of prior written notice to the Supplier.
    - 3.10.4. In the event of the Company serving notice in accordance with Clause 3.10.3, then: (a), the Supplier shall repay to the Company, within a period of 30 days of date of receipt of the notice (the "Period"), all and any payment (or any other such fees) paid pursuant to the Contract or reliance upon the Contract with respect to relevant Services and (b) the Company shall, within the Period, return, if so far as is possible, any relevant elements of the Services then supplied; and
    - 3.10.5. The provisions of this Clause 3.10 shall be without prejudice to the rights and remedies of either Party under the Contract, including, but not limited to, the ability, where applicable, of the

Company to refer the issue of Supplier Delay in respect of Milestone Dates to the Dispute Resolution Procedure herein.

- 3.11. The Supplier shall, at the request of the Company, assign to the Company, the benefit of all warranties, indemnities and other covenants received by the Supplier from any third party in connection with the provision of the Services.

#### **4. EMPLOYEES, SERVANTS AND AGENTS OF THE SUPPLIER**

- 4.1. When requested, the Supplier shall furnish to the Company, in the format required by the Company, details of all employees, servants, agents, contractors or sub-contractors or any other person whatsoever who will have an involvement in the carrying out and providing of the Services. The Supplier shall also provide the required information in respect of any additional or replacement personnel or any other personnel, whatsoever, who may be so involved.
- 4.2. If the Company reasonably determines at any time that any employees, servants, agents, contractors, or sub-contractors of the Supplier are not suitable for carrying out and providing the Services, it shall notify and discuss this determination with the Supplier. Unless agreed otherwise by the parties in the context of such discussion, the Supplier shall immediately remove the employees, servants, agents, contractors, or sub-contractors in question and propose further employees, servants, agents, contractors or sub-contractors.
- 4.3. In relation to the provision of the Services, the Supplier shall be solely responsible for any trespassers, objectors, protestors and/or others (to include their activities) as against the Supplier for their practices and/or activities, and the Company shall have no responsibility and/or liability for the practices and/or activities of the Supplier in the provision of the Services provided it is in adherence with the Contract, nor shall it have any responsibility and/or liability for the activities or presence of any said trespassers, objectors, protestors and/or others, in this regard. For the avoidance of doubt, the Company reserves its right to rely on the relevant provisions of Clause 13, as it deems fit, with respect to any issue arising pursuant to this Clause 4.3.

#### **5. ACCESS TO THE SITE**

Where the Supplier needs access to a Site, the Company shall afford to the appropriate personnel of the Supplier at all reasonable times and upon receipt of adequate prior notice, permitted access to the Site (subject to adherence to any reasonable requests of the Company) as may be necessary to enable the Services be provided and carried out, providing always that the Supplier shall ensure that its personnel shall comply with all health and safety and security requirements of the Company.

#### **6. INTELLECTUAL PROPERTY**

- 6.1. The Supplier warrants that it owns, has obtained or is able to obtain valid licences for all Intellectual Property Rights that are necessary for the performance of its obligations under the Contract. The Supplier grants to, or shall procure for, the Company, from the date of the Contract the direct grant of a royalty-free, transferable, irrevocable, perpetual licence to use such Intellectual Property as may be necessary for the Company to receive the benefit of the Contract.
- 6.2. All Know-How of the Company, Intellectual Property Rights and any other rights in all and any Company data and all parts and copies thereof shall be and shall at all times remain the property of the Company and the Supplier shall not use any such data except in connection with the Contract.
- 6.3. The Supplier acknowledges and agrees that all and any Intellectual Property Rights arising in or developed from any Know-how, material, equipment, or any other manner in the provision of the Services and all parts and copies thereof ("Work Products") shall be the sole property of the Company, save where otherwise expressly agreed in writing by the Company. The Supplier shall execute any assignments or other documents necessary to perfect ownership of such rights by the Company.

#### **7. APPLICABLE LAW**

The Supplier shall comply with all obligations of any applicable Laws, statutes, orders, rules and regulations of any governmental authority having jurisdiction and with all applicable permits, licences or notices for the time being in force relating to the performance of the Services, including all and any relevant and accepted industry standards and/or codes of practice employment protections, tax codes and working conditions and obligations with regard to its personnel.

## **8. INDEMNITY**

- 8.1. The Supplier acknowledges that the Company is relying on the Supplier's skill, know-how, experience, expertise and diligence to implement, carry out and provide the Services (and the Supplier's knowledge of acceptable standards of good industry practice).
- 8.2. The Supplier shall indemnify hold harmless and defend the Company, its servants, agents and all others so authorised by the Company, in full against any liability whatsoever including, without limitation, all claims, costs, including reasonable legal and other professional charges, demands, expenses, damages, liabilities, losses, suits and actions, which may be taken against the Company by third parties arising from or in the course of the Supplier's performance or non-performance of the Contract in respect of: -
- 8.2.1. death, injury, sickness or disease of any person.
  - 8.2.2. environmental damage, waste, pollution, contamination or spoil caused to any property.
  - 8.2.3. breach of any patent, trademark, copyright or other Intellectual Property Rights.
  - 8.2.4. loss of or damage to any property.
  - 8.2.5. any other liabilities which may occur by reason of any act, omission, wrongful act, neglect, negligence, default, wilful default, criminal act, fraud or misrepresentation of the Supplier, its servants and/or agents.
- 8.3. Other than provided by law, the Company has no liability to the Supplier, howsoever arising (whether for breach of contract, in tort, pursuant to statute, breach of duty, negligence or any other matter), whether directly or indirectly.

## **9. INSURANCE**

- 9.1. The Supplier shall effect and keep in force during the Term at its own cost, with a reputable insurance company, such levels of insurance cover as may be required to meet its potential liabilities under the Contract, which shall note a specific indemnity to the Company and/or note the Company as a joint insured, and which shall include, unless otherwise provided and agreed in the Contract and/or the Tender Documents, without prejudice to the generality of the foregoing:
- 9.1.1. Public Liability Insurance with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance and Product Liability Insurance with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 on an aggregate basis per annum.
  - 9.1.2. Employers Liability Insurance (and Personal Accident Cover, where appropriate) with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €13,000,000 in respect of each and every occurrence and unlimited in the period of insurance.
  - 9.1.3. The Supplier shall procure that the insurances referred to herein (inclusive) do not contain any condition(s) or exclusion(s) other than those which are standard in the Irish insurance market for contracts of this nature to be provided by the Supplier to Coillte.
- 9.2. In addition to clause 9.1 and as required by the Contract, the following insurances may also be required, and which shall be stated in the Contract Form and/or the Tender Documents to include:
- 9.2.1. Motor Insurance (to include third party property damage) with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance. The Supplier will note the additional motor insurance requirements for haulage and cartage, wherein the motor policy must provide for a specific indemnity to the Company, carriage for hire and reward, third party property damage

limit of €6,500,000, unauthorised use, unauthorised driving, loading and unloading beyond the limits of the carriageway, trailer cover and no passenger liability restrictions.

- 9.2.2. Professional Indemnity Insurance from the date of the Contract until six years after termination of the Contract, with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 or such further amount as may be required and agreed, in respect of each and every occurrence and unlimited in the period of insurance.
- 9.2.3. Property damage or all risks insurance for loss or damage up to the value of the works pursuant to the Services from the date of the Contract until completion and hand over to the Company.
- 9.2.4. Carriers Liability with a minimum limit of indemnity provided by the Supplier (or on its behalf) of €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance.
- 9.3. The Supplier, or his/her Insurance Broker on the Suppliers behalf, is required to furnish a completed Insurance Confirmation Form to the satisfaction of the Company, prior to entering into a Contract and/or prior to the performance of any Services.
- 9.4. Without prejudice to Clause 9.3, the Supplier may also be required to confirm that the required relevant insurances are in place and/or provide evidence of same upon request by the Company from time to time.
- 9.5. The Supplier acknowledges that Coillte may (acting reasonably and in good faith) wish for it to increase its insurance levels, from time to time, subject to specific work requirements or projects and the Supplier shall use all reasonable endeavours to do so.
- 9.6. The Company shall be entitled to terminate this contract/agreement if the Supplier does not maintain an adequate level of insurance.
- 9.7. In the event that a policy or any policy is cancelled or is terminated prior to the expiry date of the contract/agreement, the Supplier will immediately notify the Company, and shall take all necessary steps to put in place insurance to the satisfaction of the Company.

## **10. FORCE MAJEURE**

- 10.1. Neither party shall be deemed to be in breach of the Contract or otherwise be liable to the other party for any delay in performance or the non-performance of any of its obligations under the Contract to the extent that it is prevented, hindered or delayed from performing such obligations due to a Force Majeure Event of which it has notified the other party in writing as soon as reasonably practical and the time for performance of the affected obligations shall be extended accordingly.
- 10.2. In the event a Force Majeure Event referred to in Clause 10.1 continues for any period in excess of 30 days after the date on which the Force Majeure Event begins, either party may terminate the Contract upon written notice to the other party.
- 10.3. If because of a Force Majeure Event the Supplier is unable to meet orders for goods or services in whole or in part, the Company shall have the right, without any liability to the Supplier, to make alternative arrangements to obtain such quantity of goods and/or services as the Supplier is unable to supply or perform.

## **11. DISPUTE RESOLUTION**

- 11.1. Any dispute arising under or in connection with the Contract or its subject matter or formation shall, except where otherwise expressly agreed in the Contract, be subject to the provisions of this clause 11.
- 11.2. If a dispute arises the parties shall attempt to resolve the dispute through senior representatives of the parties. Any such dispute shall be notified in writing to the representative of the other party.
- 11.3. If the dispute is not resolved by the parties pursuant to Clause 11.2 within 14 days (or such longer period as may be agreed by the parties), either party may refer the dispute to an independent mediator that is mutually agreed by the parties. Neither party will unreasonably withhold consent to the selection of such mediator. If

the parties are unable to agree on a mediator or if the mediator that is agreed upon is unable or unwilling to act, either party may within 14 days' notice to the other party, apply to the President of the Law Society of Ireland to appoint a mediator. The fees and costs of the mediator shall be shared equally by the parties, but otherwise each party shall bear their own other relevant costs and expenses. In circumstances where either party refuses to participate in mediation, where a mediator fails to be mutually selected and agreed or failing satisfactory resolution by mediation within 21 days of referral (or such longer period as may be agreed by the parties), then either party may refer the dispute to be carried out in accordance with the Arbitration Acts 2010 by a single arbitrator to be appointed by agreement between the parties or, failing agreement within a period of 14 days, to be appointed by or on behalf of the President of the Law Society of Ireland upon the application of either party and the decision of such (save in the case of manifest error) shall be final and binding on the parties.

11.4. Nothing contained in this Clause shall restrict either party's freedom to commence legal proceedings where such proceedings are required urgently to preserve any legal right or remedy or to otherwise prevent irreparable harm.

11.5. Despite the existence of a dispute, the parties shall continue to perform their obligations under the Contract in good faith.

## **12. SUSPENSION**

12.1. The Company may suspend performance of some or all of the Services by the Supplier. The Company shall give at least 14 days written notice of such suspension to the Supplier and shall otherwise specify when such suspension is to become effective and the anticipated length of the suspension.

12.2. From and upon the effective date of any suspension of the Services pursuant to Clause 12.1, the Supplier (unless directed by the Company) shall incur no further expense and/or obligations in connection with the suspended Services and shall cease performing the suspended Services except as otherwise directed in writing by the Company.

12.2.1. In any event the Supplier shall bring the provision of any aspect of the Services as may be in progress to such a suitable state of completion consistent with a future resumption as may be agreed with the Company.

12.2.2. If so directed in writing by the Company, the Supplier shall perform such aspect of the suspended Services as may be necessary and/or appropriate.

12.3. In the event of a suspension pursuant to Clause 12.1 the Supplier is entitled to request:

12.3.1. payment for the provision of the Services completed prior to the effective date of the suspension in accordance with the Contract.

12.3.2. payment for provision of any aspect of the Contract as still may be required by the Company; and

12.3.3. the Supplier shall not be entitled to any other payment or damages for suspension.

12.4. If the Company lifts any suspension by notice in writing to the Supplier, then the Supplier shall promptly resume performance of the Contract.

## **13. TERM AND TERMINATION**

13.1. The Contract shall commence on the commencement date set out in the Contract and shall continue in full force and effect for the duration of the Term unless it is terminated earlier in accordance with its terms.

13.2. The Company may for its own convenience, in its absolute discretion, terminate the Contract at any time upon 30 days' written notice to the Supplier. Such termination shall be effective in the manner specified in the said notice and shall be without prejudice to any claims which either party may have against the other. Upon receipt of the foregoing notice from the Company, the Supplier shall, unless the notice directs otherwise, immediately discontinue its operations pursuant to the Contract and shall make every effort to procure cancellation of all existing commitments upon terms satisfactory to the Company.

- 13.3. The Company may immediately terminate the Contract, without prejudice to any other right or remedy to which it may be entitled, by giving the Supplier written notice thereof to take effect on the day of its service on the Supplier or upon such other day as may be specified therein, if the Supplier:
- 13.3.1. fails to comply within 7 days of receipt of a notice requiring the Supplier to improve, repair and/or resolve any issue with the Services (where same are capable of improvement, repair and/or resolution), being performed pursuant to the Contract.
  - 13.3.2. commits a material breach of the Contract.
  - 13.3.3. abandons the Contract.
  - 13.3.4. fails to disclose any conflict of interest.
  - 13.3.5. fails to notify Company of a change of control of the Supplier (where 'change of control' means a change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the management or policies of the Supplier, whether through ownership of shares, by contract or by other means).
  - 13.3.6. commits any act of fraud, misrepresentation, theft, criminal act or a deliberate or reckless misconduct or damage.
  - 13.3.7. becomes bankrupt, 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 to which the Supplier may be subject for a sequestration of its estate, or a trustee is appointed by him on behalf of their creditors, or if the Supplier, being a company, enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation), or has a receiver or manager, or where an administrative receiver is appointed over any of its assets or the Supplier carries on business under an examiner or administrator, or anything analogous to the foregoing occurs in respect of the Supplier in any applicable jurisdiction; and/or
  - 13.3.8. fails to provide certificates of insurance or certified copy policies pursuant to the Contract, when required.
- 13.4. The Supplier may terminate the Contract, by giving written notice to the Company, if the Company:
- 13.4.1. commits a material breach of the Contract and fails to remedy the material breach within 30 days of so being notified.
  - 13.4.2. commits any act of fraud or deliberate or reckless misconduct in relation to the Contract.
  - 13.4.3. enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation) or has a receiver or manager or administrative receiver appointed over any of its assets or carries on business under an examiner or administrator.
- 13.5. A material breach means a breach (including an anticipatory breach) that is serious in the widest sense of having a serious effect on the benefit which the terminating party would otherwise derive from the Contract.
- 13.6. If the Contract is terminated early for any reason in accordance with its terms, then each party's further rights and obligations under the Contract shall cease upon the effective date of termination provided that the accrued rights of the parties as at termination, or the continuation after termination of any provision which, by its meaning or effect, is intended to continue to be effective after the expiration or termination, shall not be affected or prejudiced.

#### **14. REPRESENTATIONS AND WARRANTIES**

The Supplier represents and warrants to the Company that:

- 14.1. It is duly organised and validly existing under the laws of jurisdiction of formation and is up to date on all and any payments and filings required in order to maintain such existence and good standing under the laws of its jurisdiction of formation and if the laws of jurisdiction of formation are outside Ireland then it shall upon request by the Company, acting reasonably, furnish a written legal opinion on such formation and its status, from an appropriate and competent person authorised to practice law in that jurisdiction of formation of the Supplier;
- 14.2. It has all necessary power, authority, approval and consent to carry on its business as presently conducted and to perform its obligations and carry out, provide and supply the Services under the Contract and to bind the Supplier as herein provided.

- 14.3. It shall not (at any time) have exclusive use, possession, management or control of any part of the Site and/or any other Company property, which shall remain with the Company.
- 14.4. The Services shall be provided by appropriately experienced, qualified and trained personnel and shall be rendered with all due skill, care and diligence.
- 14.5. To the extent that the Supplier's employees, servants, agents, contractors, or sub-contractors or other personnel may have access to the Company's computer systems and information in performing the Services under a Contract, the Supplier shall not deliberately or negligently introduce any Computer Virus into those systems. The Supplier shall use recognised industry standard virus scanners (updated with the then-most current virus signatures and data sets) to scan all work product or software immediately prior to introducing it to any computer system of the Company. If a Computer Virus is found to have been introduced into the Company's computer systems by the Supplier, the Supplier shall expeditiously provide, free of charge or expense and a minimum of disruption, all necessary assistance to the Company in removing the effects of the Computer Virus.
- 14.6. It will comply with all and any (reasonable) Company Internal Policies, as may be specified, from time to time, by the Company and notified to the Supplier.

## **15. DESIGN AND PLANNING**

- 15.1. Where applicable to the Services, the Supplier shall have the sole responsibility, entirely at its cost and expense, for expeditiously planning, designing, preparing, submitting and applying for any application required with regards to compliance with the Planning Acts to the relevant planning authority (which may include, An Bord Pleanála or any judicial review as may be necessary, only after consultation and agreement with the Company), to include complying with any requests for further information or any public consultation as may be necessary.
- 15.2. Upon the completion of any works, or such earlier periods as appropriate, the Supplier shall obtain (entirely at its cost and expense) and furnish to Company copies of the relevant planning permission, appropriately vouched compliance with the Building Control Act and regulations and any other necessary statutory approvals, licences or consents that may be required and shall also furnish to the Company, an original of a suitably qualified and competent architect's and/or engineer's opinion or certificate of compliance with the Planning Acts (to include copy confirmations) and compliance with any financial conditions and/or any other conditions and assignment of all collateral warranties, or (where applicable) confirmation by means of a certificate from a suitably qualified and competent architect and/or engineer, that that no such compliance with the Planning Acts nor any other permission, licences, approvals or consents are required for the works as may be undertaken.
- 15.3. Where applicable, the Supplier shall comply with a quality assurance function, as may be required to be established by the Supplier, to ensure all relevant quality standards are met with regard to the Supplier pursuant to the Contract and also a quality system as may be maintained by the Supplier and upon request, the Supplier shall furnish to Company, copies of its safety plan and safety statement (and those of any other personnel, as appropriate), in compliance with the Health and Safety Acts.

## **16. RIGHT OF SET-OFF**

Notwithstanding any provision, whether expressed or implied, the Company shall be entitled to set-off against any money (adequately vouched) otherwise payable pursuant to the Contract to the Supplier or any other agreement, any sums which the Company is entitled to claim from the Supplier pursuant to the Contract or any other agreement and/or any claim for damages, loss, costs and/or expense which has been incurred by Company by reason of any breach of the Contract by the Supplier or any other agreement.

## **17. NOTICES**

- 17.1. Any demand, notice or communication pursuant to the Contract shall be in writing and shall be deemed duly given or served:
- 17.1.1. if delivered by hand, at the time of the delivery to the address or its duly authorised agent.



- 17.1.2. if sent by prepaid post, three business days after being posted if addressed to the party to whom such notice is to be given at the address set forth for such party in the Contract (or such other address as is from time to time notified to the other party hereto).
- 17.1.3. if sent by email, to the correct email address of the party to which it is being sent.

Provided that if, in accordance with the above provisions, any such notice or other communication would otherwise be deemed to be given or made outside working hours (being 9 a.m. to 5 p.m. on a business day) such notice, or other communication shall be deemed to be given or made at the start of working hours on the next business day.

- 17.2. Each party shall notify the other of a change to its name, relevant addressee, address or email address for the purposes of this Clause.

## **18. ENTIRE AGREEMENT**

- 18.1. Save for the application of Clause 2.3, for each Contract, these Conditions, the Contract and any Tender Documents referred to in the Contract together constitute the entire agreement between the parties and supersede any prior or contemporaneous written or oral agreement or understanding with respect to the subject matter of the Contract. The execution or delivery of any other documents contemplated to be executed or delivered hereunder shall not supersede or otherwise affect the provisions of the Contract.
- 18.2. Each of the parties acknowledges and agrees that, save as expressly set out in these Conditions, in entering into the Contract it does not rely on and shall have no remedies in respect of, any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract.

## **19. NO AMENDMENTS**

Save as provided by Clause 2.9, no amendments, variations, additions or modifications may be made to a Contract unless in writing and signed by all the parties.

## **20. WAIVER**

No waiver of any provision of or rights under the Contract shall be effective unless in writing and signed by the waiving party. Waiver of performance of any obligation by either the Company or the Supplier shall not be deemed a waiver of performance of other obligations or a future waiver of the same obligation. No waiver by either party of any event or a default or other breach of any of the covenants or conditions of the Contract shall be construed as a waiver of any succeeding event of default or breach of the same or any other covenants or conditions of the contract.

## **21. RIGHTS CUMULATIVE**

Unless otherwise specified in the Contract, each party's rights and remedies are cumulative and not exclusive of any other rights or remedies provided by law.

## **22. CONFIDENTIALITY**

- 22.1. Save for the provision of the Services for the benefit of the Company, in this Clause 22, "Confidential Information" means all information obtained and/or disclosed (whether in writing, orally or by any other means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with the Contract by the Company (the "Disclosing Party") to the Supplier (the "Receiving Party") whether before or after the date of the Contract including, without limitation, information relating to these Terms and Conditions, Contract and/or Disclosing Party's products, services, operations, Know-how (and any other know-how), ideas, inventions, processes, plans or intentions, product information and development, schematics, design rights, trade secrets, market opportunities and other business, financial, technical and company information, affairs and information identified as commercially sensitive.
- 22.2. During the Term and after termination or expiration of the Contract for any reason the Receiving Party:

- 22.2.1. will not use Confidential Information for a purpose other than the performance of its obligations under the Contract.
  - 22.2.2. will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clauses 22.3 and 22.4; and
  - 22.2.3. shall make every effort to prevent the unauthorised use or disclosure of Confidential Information.
- 22.3. During the Term the Receiving Party may disclose Confidential Information to any of its directors, partners, officers, employees, professional advisers (including insurers), servants and agents (a "Recipient") to the extent that disclosure is reasonably necessary for the purposes of the Contract or for enabling the provision of any services under the Contract provided that 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 the Contract. For the avoidance of doubt, the Receiving Party shall be responsible for and liable for any breach of this Clause by its Recipient.
- 22.4. The Receiving Party may disclose Confidential Information if and to the extent that:
- 22.4.1. this is required by the Laws of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction or that of a competent governmental, statutory and/or regulatory authority provided that any information disclosed pursuant to this clause shall be disclosed, where reasonably practicable, only after notice to the Disclosing Party (where such notice is legally permitted).
  - 22.4.2. the information is disclosed on a strictly confidential basis to the professional advisers (including insurers), auditors and bankers of that party.
  - 22.4.3. the information has come into the public domain through no fault of that party.
  - 22.4.4. the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid.
  - 22.4.5. the information was obtained by the Receiving Party from a third party who was free to divulge the same.
  - 22.4.6. this is required to enable that party to enforce its rights under the Contract, or
  - 22.4.7. it is disclosed to bona fide current and/or potential buyer, investor and/or lender of the Receiving Party, and any legal and/or professional representatives thereof; provided that such potential buyer, investor and/or lender shall be subject to a confidentiality agreement (on terms usual to such transactions) covering such Confidential Information.
- 22.5. The obligations of the Receiving Party as to disclosure and confidentiality shall continue in force notwithstanding the termination of this Agreement.

### **23. CUSTOMER DATA**

The Supplier acknowledges that the Confidential Information in Clause 22 includes any customer data in the Data Protection clause 24.

### **24. DATA PROTECTION**

- 24.1. Both Parties will comply with all applicable requirements of the Data Protection Legislation. This Clause 24 is in addition to, and does not relieve, remove or replace, a Party's obligations under the Data Protection Legislation.
- 24.2. The parties acknowledge that the Supplier is generally and predominantly data controller, as defined in the Data Protection Legislation. Each party shall be an independent data controller and shall be responsible for discharging its own obligations as data controller in relation to Personal Data that it processes. If and to the extent that the Supplier is instructed, and agrees, to process any Personal Data as data processor, as defined in the Data Protection Legislation, on the Company's behalf when performing its obligations under the Contract, the remaining provisions of this clause 24.2 shall apply: -
- 24.2.1. The Parties acknowledge that for the purposes of the Data Protection Legislation, the Company is the data controller, and the Supplier is the data processor.

- 24.2.2. Without prejudice to the generality of Clause 24.1, the Supplier shall, in relation to any Personal Data processed in connection with the performance by the Supplier of its obligations under the Contract:
- 24.2.2.1. only make copies of the Personal Data to the extent reasonably necessary for the Services (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Personal Data).
  - 24.2.2.2. ensure that a back-up copy of the Personal Data is made weekly, and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data and in such an event and if attributable to any default by the Contractor or any Sub-contractor, promptly restore the Personal Data at its own expense.
  - 24.2.2.3. not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy, or store the Personal Data other than for the Services.
  - 24.2.2.4. not do anything that may materially damage the reputation of the Company.
  - 24.2.2.5. process that Personal Data only insofar as required for the purposes of the Contract and on the written instructions of the Company unless the Supplier is required by the laws of any member state of the European Union or by the laws of the European Union applicable to the Supplier to process Personal Data (“Applicable Data Processing Laws”). Where the Supplier is relying on laws of a member state of the European Union or European Union law as the basis for processing Personal Data, the Supplier shall promptly notify the Company of this before performing the processing required by the Applicable Data Processing Laws unless those Applicable Data Processing Laws prohibit the Supplier from so notifying the Company.
  - 24.2.2.6. ensure that it has in place Appropriate Technical and Organisational Measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).
  - 24.2.2.7. ensure that access to the Personal Data is limited to those employees who need access to the Personal Data strictly to meet the Supplier’s obligations under the Agreement and/or to comply with Data Protection Legislation; and in the case of any access by any employee, such part or parts of the Personal Data as is strictly necessary for performance of that employee’s duties.
  - 24.2.2.8. ensure that all Personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential.
  - 24.2.2.9. shall keep at its normal place of business detailed, accurate and up-to-date records (including in electronic form) relating to all categories of processing activities carried out on behalf of the Company containing:
    - a. details of the purposes of such processing;
    - b. a general description of the security measures taken in respect of the Personal Data, including details of any security features and the Appropriate Technical and Organisational Measures;

- c. the name and contact details of the Supplier; any sub-processor; where applicable, the Supplier's representatives; and where applicable any Data Protection Officer appointed by the Supplier;
  - d. the categories of Data Subjects and categories of Personal Data Processed by the Supplier on behalf of the Company;
  - e. the time limits for erasure of the Personal Data; and
  - f. details of any non-EEA Personal Data transfers, and the safeguards in place in respect of such transfers.
- 24.2.2.10. not transfer any Personal Data outside of the EEA unless the prior written consent of the Company has been obtained and the following conditions are fulfilled:
- a. the Company or the Supplier has provided appropriate safeguards in relation to the transfer.
  - b. the data subject has enforceable rights and effective legal remedies.
  - c. the Supplier complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transferred; and
  - d. the Supplier complies with reasonable instructions notified to it in advance by the Company with respect to the processing of the Personal Data.
- 24.2.2.11. not make a Restricted Transfer without the prior written consent of the Company, and if such consent has been obtained, such Restricted Transfer may only be made where there are Appropriate Technical and Organisational Measures in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, Privacy Shield, binding corporate rules, or any other model clauses or transfer mechanism approved by the ODPC).
- 24.2.2.12. provide all reasonable co-operation and assistance to assist the Company in responding to any request from a data subject and in ensuring compliance with its obligations under the Data Protection Legislation with respect to security, breach notifications, impact assessments and consultations with supervisory authorities or regulators.
- 24.2.2.13. notify the Company within twenty-four (24) hours if it receives a request from a Data Subject for access to that person's Personal Data, or any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of the Personal Data, or any complaint or any claim for compensation arising from or relating to the Processing of the Personal Data. In this regard, the Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Company or as provided for in this Agreement, or as required by law, in which case the Supplier shall to the extent permitted by law inform the Company of that legal requirement before the Supplier discloses the Personal Data to any Data Subject or third party.
- 24.2.2.14. notify the Company immediately, and without undue delay, if it becomes aware of a Personal Data breach which shall include (but shall not be limited to) if any Personal Data is copied, modified, lost or destroyed or becomes damaged, corrupted, or unusable, or if there is any accidental, unauthorised or unlawful disclosure of or access to the Personal Data. In such case, the Supplier will restore such Personal Data at its own expense and will comply with all of its obligations under Data Protection Legislation in this regard. The Supplier's obligation to notify under this clause shall include the provision of further information to the Company in phases, as details become available. Taking into account the nature of the processing, the Supplier shall:
- a. provide the Company with full assistance following any Personal Data breach.
  - b. assist the Company with any data protection impact assessments.
  - c. assist the Company with respect to any request from the Irish Data Protection Commission or any other relevant regulatory authority, or any consultation by the Customer with the Irish Data Protection Commission or any other relevant regulatory authority.

- d. maintain complete and accurate records and information to demonstrate its compliance with this clause 24.2.2.12.
  - 24.2.2.15. at the written direction of the Company, delete or return Personal Data and copies thereof to the Company on termination of the Agreement unless required by Applicable Data Processing Law to store the Personal Data.
  - 24.2.2.16. maintain complete and accurate records and information to demonstrate its compliance with this clause and allow for audits by the Company or the Company's designated auditor.
  - 24.2.2.17. indemnify the Company against all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Company arising out of or in connection with any breach by the Supplier of any terms of this Agreement or the Processing of the Personal Data by the Supplier, its employees or agents in breach of this Agreement, contrary to the instructions of the Company or in contravention of Data Protection Legislation (including but not limited to claims by Data Subjects relating to loss of control over Personal Data or limitation of rights, discrimination, financial loss, damage to reputation, loss of confidentiality of Personal Data and any other significant economic or social disadvantage).
- 24.3. On any termination of the Contract for any reason or expiry of the Term, at the choice of the Company, the Supplier shall delete or return all Personal Data to the Company unless legally required to store the Personal Data for a period of time. If the Company makes no such election within a ten (10) day period of termination of the Contract or expiry of the Term, the Supplier shall delete any of the Personal Data in its possession. If the Company elects for destruction rather than return of the Personal Data, the Supplier shall as soon as reasonably practicable ensure that all Personal Data is deleted from the Supplier System.
- 24.4. To the extent that the Supplier processes any Personal Data as data processor, the Company consents to the Supplier appointing a third-party processor of Personal Data strictly subject to the Supplier's compliance with Article 28.3(d) of the GDPR.
- 24.5. Where applicable, the Supplier shall be required to provide detail of the data processing as set out in Schedule 1 hereto.

## **25. ASSIGNMENT AND SUB-CONTRACTING**

- 25.1. The Supplier shall not assign, transfer, change control, novate, sub-contract, charge, encumber, hold in trust or another or in any manner share or part with possession of the Contract or any part, clause or provisions thereof, without the prior consent in writing of the Company, such consent shall not be unreasonably withheld and/or delayed.
- 25.2. In the event that the Supplier sub-contracts any of its obligations under the Contract in accordance with Clause 25.1, it shall remain responsible and liable to the Company for all acts and omissions of its sub-contractor as fully as if they were its own acts and omissions.

## **26. NON-SOLICITATION**

- 26.1. Each party agrees that, during the Term and for a period of 6 months after the termination of the Contract, it shall not (without the other party's prior agreement in writing, which shall not be unreasonably withheld or delayed) directly or indirectly offer to employ, engage as an independent contractor or induce any person who has been associated in a technical or managerial capacity with any aspect of the Contract during the preceding six months to leave the other party's employment.
- 26.2. This provision shall not apply to general mass solicitations of employment not specifically directed towards employees of the parties (including but not limited to the use of independent employment agencies and advertisements in publications or via the internet), nor to the hiring as a result thereof.

**27. TAX CLEARANCE**

The Supplier warrants that it is and will be at all times for the duration of the Term in possession of a valid tax clearance certificate from the Revenue Commissioners and any payment under the Contract is conditional on the Supplier having in its possession at the time of payment a current tax clearance certificate.

**28. SEVERABILITY**

If any term or other provision of the Contract is invalid, illegal or incapable of being enforced by any rule of law or public policy all the remainder of the Contract shall survive and remain in full force and effect. Upon a determination that any term or other provision is invalid, illegal or incapable of being enforced the parties shall negotiate in good faith to modify the Contract to effect and fulfil the original intent of the parties as closely as possible.

**29. GOVERNING LAW**

These Conditions and each Contract entered into in accordance with these Conditions shall be governed by and construed in accordance with the laws of the Republic of Ireland and, subject to Clause 11, the parties hereto submit to the exclusive jurisdiction of the Courts of the Republic of Ireland for the resolution of disputes hereunder.

**30. CHAIN OF COMMUNICATION**

- 30.1. The Supplier and the Company Representative shall be the primary point of contact with each other for the purpose of these Conditions and the Contract (save where otherwise provided).
- 30.2. Where applicable, the Supplier shall give the Company Representative monthly progress reports (or such other progress reports as agreed by the parties) from the date of the Contract until the Supplier has completed all Services, to the satisfaction of the Company Representative (acting reasonably).
- 30.3. The Supplier and the Company Representative shall attend regular meetings, as often as necessary and as scheduled by the Company Representative and any special meeting called by the Company Representative to discuss a particular issue identified when calling the meeting. The Company Representative may invite other personnel of the Supplier (pursuant to Clause 4) to attend meetings and the Supplier shall arrange for the attendance at a meeting of any such personnel so requested. The time and place of meetings shall be set by the Company, after consulting the Supplier, acting reasonably.
- 30.4. Within 7 days after each meeting the Company Representative may issue minutes of the meeting to both the Company and the Supplier. The Supplier shall notify the Company Representative of any objection to the minutes within 7 working days of receiving them, otherwise, unless clearly wrong, they shall be considered correct.

**31. CHANGE MANAGEMENT PROCESS**

- 31.1. Save were otherwise provided or agreed by the Company, any material change to the relevant Services for a Contract that may be requested by the Company (a "Change") shall be dealt with in accordance with the following procedure:
  - 31.1.1. The Company will provide the Supplier with a written request detailing the proposed Change (a "Change Request") and the person within the Company's undertaking to whom all correspondence in respect of the Change must be addressed (the "Change Representative").
  - 31.1.2. The Supplier will provide the Change Representative with an evaluation report on the Change Request which will cover the feasibility, impact on any time or other schedules contained or referred to in a Contract, resource requirements and a detailed breakdown of the cost associated with the proposed Change (the "Evaluation Report").
  - 31.1.3. The Change Representative will consider the Evaluation Report and will notify the Supplier in writing, within a reasonable time of receipt of the Evaluation Report having regard to the nature

and extent of the proposed Change, of the Company's decision whether or not to request the Supplier to proceed with the Change on the basis of the Evaluation Report.

31.1.4. If the Change Representative requests the Supplier to proceed with the Change on the basis of the Evaluation Report, then the relevant Services and any other relevant documentation shall be amended by the parties to reflect the content of the Change Request and the Evaluation Report.

31.1.5. The parties shall discuss reasonably and in good faith any difficulties that the Change Representative may have with the Evaluation Report and how they may be resolved with a view to achieving the Company's requirements, but if no such agreement can be reached then the Evaluation Report and the issues surrounding it shall be referred to the dispute resolution procedure set out in Clause 11.

## **32. PROVISION OF INFORMATION**

The Company's response or failure to respond to any communication from the Supplier will not constitute or imply any review or verification by the Company or relieve the Supplier from any responsibility or liability.

## **33. EXTENT OF LIABILITY OF THE COMPANY**

Save as provided by law, the Company:

33.1. has no liability to the Supplier in connection with a Contract and/or the Services (whether for breach of contract, tort, statute, duty, negligence, or any other matter), save as may be stated in these Conditions.

33.2. shall not, under any circumstance, be liable to the Supplier by reason of any representation or warranty, condition or other term or any duty of common law, or under the express terms of these Conditions or a Contract, for any consequential, special, incidental or punitive loss or damage (whether for loss of current, anticipated or future profits or income, loss of enterprise value or otherwise) and whether occasioned by the negligence of the Company, its employees, servants, agents or otherwise, even if advised of the possibility of such damages.

## **34. SOCIAL RESPONSIBILITY**

34.1. The Supplier must in the performance of the Contract observe the requirements and standards of any International Conventions, Covenants and Agreements to which Ireland is a signatory or contracting party and which may be directly effective and justiciable in Ireland.

34.2. The Supplier shall pay rates of wages and observe hours and conditions of labour not less favourable than those established in the trade or industry in the district where the work is carried out, by agreement, machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of employers and workers engaged in the trade or industry in the district (hereinafter referred to as established rates and conditions) or, failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.

34.3. In the absence of any such agreement or established rates and conditions as defined in section 34.2 the Supplier shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which are or would be paid and observed by Government in the trade in the district where the work is carried out.

34.4. The Supplier must ensure that the employers of all work persons do all of the following:

34.4.1. Pay all wages and other money due to each work person.

34.4.2. Ensure that work persons' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid.

34.4.3. Pay all pension contributions and other amounts due to be paid on behalf of each work person.

34.4.4. Make all deductions from payments to work persons required by law and pay them on as required by law.

- 34.4.5. 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 work person, deductions from each work person's pay and their disposition, and pension and other contributions made in respect of each work person and produce these records for inspection and copying by persons authorised by the Company, whenever required by the Company.
  - 34.4.6. Produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of work persons for inspection and copying by persons authorised by the Company, whenever required by the Company.
  - 34.4.7. Respect the right under law of work persons to be members of trade unions.
  - 34.4.8. Observe, in relation to the employment of work persons on Sites, the Safety, Health and Welfare at Work Act 2005, and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000 and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those laws.
- 34.5. The Company may seek information under the provisions of this clause only for the purpose of ensuring the obligations described in this clause to work persons have been properly discharged. All information provided under the provisions of this clause will be returned to the person providing it or destroyed if the Company is satisfied that the person providing the information has complied with legal obligations to work persons.
- 34.6. The Supplier must take reasonable steps to identify, assess and address risks of Modern Slavery practices in the operations and supply chains used in the provision of the Goods and/or Services. If at any time the Supplier becomes aware of Modern Slavery practices in the operations and supply chains used in the performance of a Contract, the Supplier must as soon as reasonably practicable take all reasonable action to address or remove these practices, including where relevant by addressing any practices of other entities in its supply chains.



## **PART TWO: GOODS CONTRACT CLAUSES**

Part Two applies only if the Company is procuring Goods.

### **35. TITLE AND RISK**

- 35.1. Without prejudice to Clause 3.5, title in all Goods as so ordered by the Company and supplied by the Supplier under the Contract shall pass to the Company when it receives possession of same whether or not payment thereof has been made or is due.
- 35.2. Risk of damage to or loss of any Goods (or any part thereof) pursuant to any order (as per Clause 3.5) shall pass to the Company when the Supplier's invoice has been discharged in full. Notwithstanding the foregoing, the Supplier shall be liable for any loss or damage discovered after transfer of title which is determined by the Company to be a result of negligence, faults, defects, faulty packaging, or handling by the Supplier. All individual packages, crates and equipment shall be tagged or marked. All and any shipped units requiring special handling shall be clearly labelled so as to be clearly noticeable by the shipper and unloading crews.

### **36. QUALITY**

The Supplier warrants that any Goods ordered pursuant to Clause 3.5 shall be of merchantable quality and fit for their intended purpose and will:

- 36.1. Correspond with their description.
- 36.2. Be equal in all respects to any samples provided.
- 36.3. Comply with any technical specification and any other requirements of the Contract.
- 36.4. Be capable of any standard of performance specified by the Company, but in any event shall be of merchantable quality.
- 36.5. Be fit for any particular purpose made known to the Supplier by the Company either expressly or by implication.
- 36.6. Shall not have any defect arising from design, materials or workmanship.
- 36.7. Be subject to the manufacturer's warranty.

### **37. INSPECTION**

The Supplier shall ensure that the whole of the order or any part thereof shall be made available to the Company for inspection and testing together with all facilities reasonably required for such inspection and testing. Any such right shall not in any way prejudice or limit the statutory, legal or equitable rights of the Company. Where, as a result of such inspection and testing, the Company is of the opinion that the order does not conform or is unlikely to conform with the specification and requirement of the order (to include any faults or defects), the Company may notify the Supplier in writing and the Supplier shall immediately and at its own cost and expense take such expeditious action, as is necessary, to ensure such conformity and to include rectification and/or replacement.

### **38. REPRESENTATIONS AND WARRANTIES RE GOODS**

- 38.1. If, within the Warranty Period, the Supplier notifies the Company and/or the Company notifies the Supplier, in writing, of any defect or fault in the Goods in consequence of which it fails to conform in all material respects or to any agreed specification, the Supplier shall within a reasonable time period, as agreed with the Company and without charge or expense to the Company:

- 38.1.1. repair same; or  
38.1.2. replace same; or

38.1.3. by agreement of the parties hereto, terminate the Contract by notice in writing and refund the relevant payment paid by the Company as at the date of such termination.

38.2. The warranties by the Supplier set out in these Conditions are in addition to the statutory terms implied in favour of the Company by the Sale of Goods Act 1893, as amended by the Sale of Goods and Supply of Services Act 1980 and any other applicable Laws and none of the provisions of the Sale of Goods Acts 1893 and 1980 shall be excluded or limited under the Contract.

#### **39. SUPPLY OF DOCUMENTS**

The Supplier shall supply to the Company free of charge all technical drawings, service manuals, and maintenance specifications written in the English language with all relevant updating documents, which relate to the Goods.

#### **40. RETURNS**

The Company accepts no liability in regard to the satisfactory return to the Supplier of any consignment or part of a consignment delivered in error.

#### **41. AFTER SALES SERVICE**

Unless otherwise agreed in writing, the Supplier shall:

- 41.1. Provide the Company with training in the use and maintenance of the Goods.
- 41.2. Supply to the Company spare parts necessary for the Goods at a reasonable cost, not exceeding that charged under like circumstances to other customers of the Supplier.
- 41.3. Authorise the Company to negotiate with and purchase spare parts for the Goods directly from suppliers to the Supplier.
- 41.4. Provide the Goods free of any restrictions or impediments, which may exist between the Supplier and suppliers to the Supplier.
- 41.5. Maintain sufficient stock levels so as to be in a position to meet the Company's requirements for Goods as notified to the Supplier prior to signing the Contract.

## **PART THREE: OPERATIONAL SERVICES CONTRACT CLAUSES**

Part Three applies only if the Company is procuring Operational Services including haulage services.

### **42. HAULAGE**

- 42.1. In the event that there is any haulage to be provided as part of the Services (and without prejudice to the generality of Clause 8), then the Supplier warrants for the duration of the Term,
- 42.1.1. that it will only use vehicles and trailers, where applicable, which are authorised, road worthy, compliant with all applicable Laws and fit for purpose (hereinafter “Vehicles”).
  - 42.1.2. that it has (or there is in place), at all times, a valid and subsisting road freight carriers’ licence, vehicle registration and supply plate number for all its Vehicles pursuant to the Contract.
  - 42.1.3. that without prejudice to the generality of Clause 42.1, all haulage for the provision of the Services will comply with:
    - 42.1.3.1. The Road Traffic (Construction and Use of Vehicles) Regulations 2003, (S.I. No. 5/2003)
    - 42.1.3.2. The European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62/2008), and
    - 42.1.3.3. the European Communities (Road Transport) (Amendment) Regulations 2006 (S.I. No. 561/2006).
- 42.2. The Supplier shall adhere to a maximum speed limit of 25 kilometres per hour (the “Maximum Speed Limit”), for drivers of all and any cars, lorries, trucks, motorbikes and any other mechanically propelled vehicles, on the road network or otherwise within any Site or such other property of the Company, subject always to the proviso that the Supplier shall be responsible for ensuring that drivers shall always take reasonable care to limit their speed to a speed, which may be lower than the Maximum Speed Limit, that is suitable having regard to other users, weather conditions, surface conditions, traffic conditions or any other relevant conditions.

### **43. TITLE AND RISK**

- 43.1. Where applicable, the Company shall retain full legal title to all its products, goods, materials and any other matter, which shall include (but shall not be limited to) any timber, trees, round log, saw log, pallet, stake, firewood, pulpwood, panel products, energy wood and or brash at all times and the Company reserves the right to remove or recall the same at any time and from any location. The Supplier shall have no entitlement to exercise a right of retention on any products, goods, materials and any other matter of the Company nor exercise a lien over any of the Company’s property, which may be in the Supplier’s possession.
- 43.2. Where Clause 43.1 applies, then the Supplier is responsible for the security and risk of the items specified in Clause 43.1 above once it has been collected, pursuant to the Contract, from the Site and loaded onto the Vehicle(s), until such time as it has been delivered correctly and safely to the Destination and any Charges payable in respect thereof have been invoiced in accordance with Clause 3.
- 43.3. Where appropriate and within its power or control, the Company shall procure that appropriate personnel of the Supplier shall be permitted access (only) to the Destination, pursuant to the Contract, entirely at the risk and responsibility of the Supplier and the Company shall not be under any duty, risk or responsibility and the Supplier hereby indemnifies, shall keep indemnified and hold harmless the Company, in this regard.

### **44. DISRUPTION, DEFECT AND DAMAGE**

- 44.1. The Supplier shall take all reasonable care to ensure that, in carrying out and performing the Services, it does not disrupt the operations of or, save as may be reasonably unavoidable, inconvenience the Company, its employees, agents or any other contractors or other person (including customers of the Company) to include on or at the Site and/or any other Company property.
- 44.2. Where required, the Supplier shall make good at its own expense, to the satisfaction of Company, any errors and/or defects in the Services. Failure by the Supplier in this regard, shall entitle (but not oblige) the Company,

acting reasonably, to make good any such errors and/or defects and to defray any costs and expense associated from any amounts due to the Supplier by the Company pursuant to the Contract or any other contract or agreement.

44.3. Where relevant to the Contract, the Supplier shall expeditiously make good at its own expense, to the reasonable satisfaction of the Company, any damage caused to or on the Site and/or any other Company property or any part thereof (including, but not limited to any access, buildings, walls, gates, fences, hedges, trees, drains, roads, bridges, tracks, monuments, cultural and/or archaeological features) in the performance of the Services pursuant to the Contract. Failure by the Supplier in this regard, shall entitle (but not oblige) the Company, acting reasonably, to make good any such damage (where possible) and to defray any costs and expense associated from any amounts due to the Company by the Supplier pursuant to the Contract or any other contract or agreement.

44.4. Where relevant to the Contract, the Supplier shall not do (or permit to be done) anything (save with the written consent of the Company), in, upon, over or under the Site and/or any other Company property or any part thereof (including access thereto) which shall be or become or cause a nuisance, damage, disturbance, injury or danger to the Company or to the owner or occupier of any adjoining or neighbouring property.

#### **45. MATERIALS & EQUIPMENT**

45.1. Where relevant to the Contract and save as otherwise agreed, the Supplier shall be responsible for supplying and providing for its own vehicles, plant, tools, labour, material and equipment pursuant to the Contract and, other than as may be necessary for the provision of the Services and in locations agreed with the Company, the Supplier shall not locate, retain, store or keep any vehicles, plant, tools, labour, material or equipment at the Site and/or any other Company property, without the prior consent in writing of the Company.

45.2. In the event that any plant, tools, material or equipment may be supplied to the Supplier by or on behalf of the Company for use in connection with the Services, such plant, material or equipment shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request or if not so requested, then upon completion of the relevant Services, in a safe working condition and fit for their intended purpose, in accordance with good industry practice.

45.3. The Supplier shall ensure that the Services, where relevant, are carried out and conducted in a good and workmanlike manner using good quality materials and equipment in accordance with good industry practice, which are not in any way deleterious (by themselves, in conjunction with other materials, by virtue of location or passage of time), likely to cause damage or be a hazard to health and safety or capable of posing a threat to the stability, integrity, performance or normal life expectancy of the Services or any part thereof.

#### **46. REPRESENTATIONS AND WARRANTIES RE OPERATIONAL SERVICES**

Subject to Clause 14, the Supplier additionally represents and warrants to the Company that:

46.1. It acknowledges that a felling licence from the Forest Service may be necessary for the removal of any trees and/or timber, as may be required, within the Site and/or other Company property pursuant to the Forestry Acts. Prior to the commencement of the any works pursuant to the Services, the Supplier shall liaise with the Company. On receipt of a felling licence(s), where required, the Company and the Supplier shall agree a programme of works in order to ensure that the carrying out of the felling and removal operations are coordinated and fully understood by both parties. The parties acknowledge that they shall act reasonably to agree the programme of works aforesaid.

46.2. It acknowledges that it is not permitted to enter onto a Site to carry out any works as may be envisaged under the Contract until such time as appropriate environmental compliance training or other appropriate training as agreed with the Company is delivered to the Supplier, to include its/their employees, contractors, sub-contractors, servants and agents, as may be engaged in the performance of the Contract.

46.3. Within two months of the completion of any works, pursuant to the Services, it shall restore the Site and any other Company property to a standard reasonably acceptable to the Company. The Services shall be provided by appropriately experienced, qualified and trained personnel and shall be rendered with all due skill, care and diligence.

46.4. All consents, licences, permits, approvals and authorisations required in connection with its entry into and performance of the Contract have been obtained and shall be maintained in full force and effect for the duration of the Term.

## PART FOUR: CONSTRUCTION CONTRACT CLAUSES

Part Four applies only if the Company is procuring construction services.

### 47. PROJECT SUPERVISOR DESIGN PROCESS AND PROJECT SUPERVISOR CONSTRUCTION STAGE

- 47.1. In the event that the Supplier is appointed project supervisor for the design process (“PSDP”) for any works pursuant to the Services or any part thereof (the “project”), in compliance with the Safety, Health and Welfare at Work (Construction) Regulations 2001 to 2013 (the “Regulations”), it shall conduct (but not limited to) the following on behalf of the Company:
- 47.1.1. identify hazards arising from the design or from the technical, organisational, planning or time related aspects of the project.
  - 47.1.2. coordinate and communicate the process where identified hazards can be eliminated, if possible, or where the risk can be reduced.
  - 47.1.3. ensure all remaining hazards / risks and design assumptions are communicated to any project supervisor for the construction stage (“PSCS”) so they can be dealt with.
  - 47.1.4. develop a safety and health plan.
  - 47.1.5. ensure that the work of designers is coordinated to ensure safety including that of temporary work designers and permanent work designers.
  - 47.1.6. prepare a written safety and health plan in respect of the project for the Company, at a time agreed and communicate same to any PSCS, as relevant.
  - 47.1.7. prepare systems to ensure a safety file is prepared for the completed project / structure.
  - 47.1.8. notify the authority and company of non-compliance with any written directions issued.
- 47.2. In the event that the Supplier is appointed PSCS for the project, in compliance with the Regulations, it shall conduct (but not limited to) the following on behalf of the Company:
- 47.2.1. develop a safety and health plan based on the plan prepared by the PSDP.
  - 47.2.2. ensure systems are in place to ensure compliance with the Regulations and all other relevant Laws.
  - 47.2.3. ensure coordination and cooperation between all relevant parties working on the project.
  - 47.2.4. ensure appropriate approved notification to the Health and Safety Authority (the “Authority”), prior to commencement of any construction.
  - 47.2.5. coordinate the reporting of accidents to the Authority.
  - 47.2.6. coordinate the election of a Site safety representative and the provision of relevant information.
  - 47.2.7. coordinate the inspection of safe working procedures and monitor compliance of contractors and others.
  - 47.2.8. ensure provisions are put in place to restrict unauthorised access onto the Site.
  - 47.2.9. coordinate the provision and maintenance of welfare facilities.
  - 47.2.10. coordinate arrangements to ensure all relevant personnel are in compliance with the legislation with regard to safety training (Safe Pass and Construction Skills Certification Scheme CSCS).
  - 47.2.11. appoint a safety advisor where appropriate.
  - 47.2.12. collate all necessary safety file information for the PSDP, and
  - 47.2.13. notify the Authority and the Company of non-compliance with written directions issued.
- 47.3. Where appropriate to the Services, the Supplier shall furnish to Company, the agreed design, plans and specifications, to include (but not be limited to):
- 47.3.1. A copy of the final grant of planning permission (if applicable) for the services together with all other appropriate consents, licences or permits pursuant to the Planning Acts.
  - 47.3.2. General arrangement drawings in plan which demonstrate the proposed positioning of any works.
  - 47.3.3. Construction monitoring arrangements.
  - 47.3.4. Construction completion and site restoration proposals.
  - 47.3.5. The specifications for all materials, components and equipment to be deployed in the construction of any works,

47.4. As soon as practicable and no later than 14 days following completion of the works pursuant to the Services, the Supplier will furnish the following, to the Company "As built" information, design, specification and arrangements.

## **SCHEDULE 1: DATA PROCESSING INFORMATION**

This Schedule applies only if the Supplier is acting as data processor.

If the Supplier processes any Personal Data as data processor, as defined in the Data Protection Legislation, on the Company's behalf when performing its obligations under the Contract, the Supplier shall be required to provide the following detail of the data processing: -

### **Annex 1 Data processing**

1. Subject matter of the processing
2. Duration of the processing and retention of data
3. Nature and Purpose of the processing
4. Personal data and special categories of data types
5. Categories of data subjects

### **Annex 2 Sub Processors**

1. Processor's name
2. Sub-Processing activities
3. Technical and organisational measures
4. Review of agreement