

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

**THIS AGREEMENT** is made on \_\_\_\_\_ **BETWEEN**

**IRISH WATER** a company incorporated in Ireland (No. 530363) under the Water Services Act 2013 having its registered office at Lapps Quay, Cork (hereinafter called "**Irish Water**"); and

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

**WHEREAS:**

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

The Agreement applies to the following region(s)<sup>1</sup>:

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

**1. Definitions**

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

<b>Agreement</b>	means the entire agreement described in clause 2
<b>Call Off Competition</b>	means a tender competition for a Call Off Contract, undertaken in accordance with the procedure set out in Schedule 3
<b>Call Off Contract</b>	means a contract in relation to the provision of services awarded pursuant to the procedure set out in Schedule 3
<b>Call Off Tender</b>	means a tender submitted by a supplier in relation to a Call Off Competition

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<sup>1</sup> The Supplier is to indicate which region(s) apply.

<b>Force Majeure</b>	has the meaning given to it in clause 12
<b>Payment Claim Date</b>	means the date when a payment claim in relation to an amount due under a Call Off Contract is required to be made
<b>Payment Claim Notice</b>	means a notice of a payment claim under a Call Off Contract
<b>Purchase Order</b>	has the meaning given to it in Schedule 3
<b>Request</b>	has the meaning given to it in Schedule 3
<b>Services</b>	Plant Hire and Haulage services as may be described in a Request for Call Off Competition set out in Schedule 3
<b>Specification</b>	means the specification set out in Schedule 1
<b>Working Hours</b>	means between 9am and 5pm on a day that is not Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997 or Good Friday

## 2. Entire Agreement

These terms and conditions together with:-

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

shall constitute the entire contract between the Supplier and Irish Water with respect to the provision of the Services by the Supplier to Irish Water and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Supplier and Irish Water with respect to any Services ordered on or after the commencement of the Agreement. Without prejudice to the generality of the foregoing, the Agreement shall apply to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any acknowledgement of a Purchase Order or otherwise.

## 3. Scope of Appointment and Term of Agreement

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

The Agreement shall commence on 1 January 2014 and shall end on 31 December 2014, unless it is otherwise terminated in accordance with the provisions of the Agreement. Notwithstanding the expiry of the Agreement, a Call Off Contract that is not completed prior to the end of the Agreement shall be governed by the Agreement.

## 4. Call Off Contracts

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

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

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

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

#### **5. The Supplier's Obligations**

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

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

The Supplier shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to sick pay and pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act 2000.

#### **6. Insurance**

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

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

#### **7. Indemnity**

The Supplier shall be liable for and shall indemnify Irish Water for and in respect of all and any losses, claims, demands damages or expenses which Irish Water may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract breach of

duty, wilful default or fraud of the Supplier, its employees, sub-contractors or agents or any of them.

## **8. Payment**

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

## 9. Confidentiality

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

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

The Supplier undertakes that it will properly instruct its staff on the absolute need to maintain privacy and confidentiality of all matters affecting the business of Irish Water or any persons doing business with Irish Water or in any way arising from documents or records of any kind which may come under the hand of the Supplier or its staff while engaged by Irish Water.

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

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

#### **10. Governing Law and Jurisdiction**

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

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

#### **11. Termination**

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

- ceases to carry on business in the normal course;
- fails to comply with its obligations under the Agreement, and, if the failure can be cured, Irish Water has directed the Supplier to put the matter right, and the Supplier has not done so within 14 days after receiving the direction;
- abandons or, except where required or permitted by the Agreement, suspends the execution of the Services;
- fails to proceed regularly and diligently with the execution of the Services;
- fails to maintain the required insurances;
- has committed or caused Irish Water to commit a serious breach of law concerning the Services;

- or personnel of the Supplier have committed a breach of the Safety, Health and Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the Services;
- commits an act of bankruptcy or is adjudicated bankrupt;
- enters into liquidation, whether compulsory or voluntary other than for the purposes of amalgamation or reconstruction, compounds with its creditors generally or has a receiver or manager appointed over all or any of its assets, has an examiner appointed, ceases or threatens to cease trading or becomes insolvent;
- if an individual, dies or becomes incapable of performing the Agreement.

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

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

## **12. Force Majeure**

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

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

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

## **13. Conflicts, Registrable Interests and Corrupt Gifts**

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

Any registrable interest involving the Supplier (and any sub-contractor or agent as the case may be) and Irish Water, or their relatives must be fully disclosed to Irish Water immediately upon such information becoming known to the Supplier and to comply with Irish Water's

directions in respect thereof, to the satisfaction of Irish Water. The terms “registrable interest” and “relative” shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995.

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

#### **14. Dispute Resolution Procedure**

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

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

#### **15. Miscellaneous Provisions**

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

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

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

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



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

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

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

Signed on behalf of Irish Water by:

\_\_\_\_\_

A duly authorised representative

\_\_\_\_\_

Date

Signed on behalf of the Supplier by:

\_\_\_\_\_

A duly authorised representative

\_\_\_\_\_

Date

## SCHEDULE 1 – SPECIFICATION

**Note: Failure to comply with this Specification may result in disqualification from the Panel.**

### **Section A: Insurance**

1.1 No machine/vehicle or supplier shall be awarded a contract unless satisfactory evidence of insurance is submitted online prior to contract award by the Insurance Broker/Company. Where the Insurance Policy in question lapses prior to the end of the period of the Panel it shall be the responsibility of the Supplier to ensure that said policy is renewed and to ensure that the insurance details are updated on [www.LAQuotes.ie](http://www.LAQuotes.ie).

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

- a. Cover must apply to the employees of the Supplier engaged on the contract.
- b. The liability for death or injury to employees must be covered on an unlimited basis.
- c. The cover must indemnify Irish Water as principal.
- d. Cover must be extended to cover the Supplier in respect of liability assumed by him under the contract, e.g. the description of the Insured's business must be unambiguous.

Indemnity to Irish Water as principal is required with a minimum limit of €13m for Employer's Liability, €6.5m for Public/Products Liability, and €5m for Motor Third Party Property Damage Insurance. In respect of plant which is hired without an operator, Irish Water requires evidence of €6.5m Public/Products Liability insurance cover including liability arising from defective equipment.

- 1.2 The Supplier shall be liable for and shall indemnify Irish Water for and in respect of all and any losses, claims, demands damages or expenses which Irish Water may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract breach of duty, wilful default or fraud of the Supplier, its employees, sub-contractors or agents or any of them.
2. The onus is on the Supplier to advise Kerry County Council when their insurance has lapsed or has been cancelled. All suppliers must notify Kerry County Council of alterations, cancellations and confirm renewal of policies. Any failure to do so may result in immediate barring of the Supplier for the duration of the Panel.
3. When quoting for the hire and employment of agricultural tractors, trailers and hedgecutters, suppliers are advised that insurance policies 'limited to agricultural and forestry use' do not cover work of a commercial nature and must be extended to permit such work.

### **Section B: Payment, Tax Clearance, etc.**

4. Requirements relating to tax clearance are set out in the Agreement. Where plant/machinery is being hired with a driver, the Supplier is required to produce a current Tax Clearance Certificate from the Revenue Commissioners and comply with the new RCT systems that were introduced on the 1<sup>st</sup> of January 2012. For further details on this system please logon to [www.revenue.ie](http://www.revenue.ie).

5. The Supplier of a machine/vehicle must deliver it free to and from the site where it is required for hire unless a delivery price is allowed and submitted as part of the Call Off Competition.
6. No payment will be made in respect of Hired Machinery standing on days on which Irish Water does not normally work.
7. Payment will be made at the working rate for each hour or part of hour worked. Where allowed the standby rate will be paid when the machine is not working, due to stoppages caused by Irish Water or by inclement weather, up to a maximum of six hours in any day. No payment will be made for time lost in stoppages due to a breakdown in the machine itself and where machines require services and repairs. A time sheet, showing fully the hours of each day work under the headings of working, standing, idle, etc. signed by the person authorised by Irish Water and countersigned by the plant operator must be filled up for each days work. It is on these returns that payment will be made. Irish Water will not generally pay standby rates.
8. Where equipment/machines are hired without driver/operator, a day is clearly defined/understood as a period of 24 hours and a week is seven consecutive days.
9. Refuelling of plant is not permitted during Working Hours and payment for time worked will only be made on the basis of the relevant City or County Council's time records of hours/days worked and not on the Supplier's own time sheets. Unless otherwise stated fuel costs to be paid by the Supplier. No allowance will be made for public holidays established under the Organisation of Working Time Act 1997, Good Friday, Church holidays or other holidays recognised by Irish Water, the City Councils or County Councils.
10. A person authorised by Irish Water may terminate the employment of a machine/vehicle at any time, on giving at least one hour's notice to the operator in charge of a machine. Irish Water shall cease to be responsible for any further charges for standing, travelling or removal costs on the expiration of the one hour termination period.
11. Only plant and items that were included in the Application and are entered on the LAQuotes system at the time of the relevant Call Off Competition will be allowed to work. Substitutions of plant items may be allowed where such items are being replaced by other machines of similar type and capacity provided Irish Water is satisfied that need for substitution arises because of normal plant replacement requirements and the machine being replaced is registered to Supplier.
12. Clause 8 of the Agreement sets out requirement in relation to payment.
13. Prior to invoicing, Irish Water may require suppliers to submit periodic (e.g. weekly or monthly) statements of service provided during the period, for the purpose of certification.
14. Payment: Irish Water only pays suppliers via EFT (Electronic Fund Transfer) and the remittance is sent to Supplier via email.
15. Irish Water is not subject to the Freedom of Information Acts 1997-2003 (the FOI Act). Kerry County Council is subject to the FOI Act and acknowledges that it would expect the Call Off Tenders to be sensitive, confidential and commercially sensitive because, amongst other details, that information will include:
  - pricing information and details of fee structures;
  - details of how suppliers undertake projects and their understanding of and approach to projects;
  - details regarding suppliers' business;

- information in relation to insurances; and
  - information about suppliers' proposed teams.
16. In addition, suppliers are asked to consider if any information provided by them in relation to the Call Off Tenders should not be disclosed because it is commercially sensitive or confidential. If this is the case, suppliers can, when providing the information, identify same and specify the reasons for its commercial sensitivity or confidentiality. Irish Water and Kerry County Council will have regard to such a statement but are not bound by it.
17. The plant Supplier or his/her agent or employees will take their instructions from persons identified by Irish Water.
18. The Supplier shall not be at liberty to impose any conditions of hire at any time on Irish Water and any document purporting to impose any such conditions of hire shall be void in so far as such conditions of hire are concerned.
19. Suppliers engaged by Irish Water shall provide the names and addresses of all operators of plant hired in the "Driver's Details" section of [www.LAQuotes.ie](http://www.LAQuotes.ie) and enter updates as the need arises during the currency of the Agreement.
20. Suppliers and their employees are expected to adhere to acceptable standards of behaviour, i.e. standards expected of Irish Water staff.

### **Section C: Plant/Operator Requirements & Conditions**

21. It shall be the responsibility of the Supplier to ensure that the maintenance requirements as set out in manufacturer's recommendations shall be met for all items of plant or equipment on offer. (This requirement does not extend to the daily checks to be carried out by Irish Water on any items of plant or equipment on hire without operator.) Furthermore the Supplier must be able to satisfy Irish Water that such standards are being met by production of maintenance records upon request. The operator of the machine/vehicle in conjunction with the Supplier is responsible for undertaking regular maintenance, inspection and the prompt carrying out of any subsequent repairs. Such inspections are to be logged in an appropriate logbook available with each machine/vehicle for spot inspections.
22. Bad work, done as a result of not competently working a machine/vehicle, will be repaired at the Supplier's expense.
23. The machine/vehicle offered should be capable of carrying out the work for which it was made without any diminution of power or output from the minimum laid down by the makers of the machine. Plant should not normally be in excess of six years old. Irish Water, at its discretion, is entitled to specify machine age limits in individual Call Off Tenders. Where plant in excess of six years old is proffered for use, persons authorised by Irish Water may monitor its performance, efficiency & suitability. Such inspections in no way exonerate the supplier/operator from their responsibility to inspect, maintain and at all times provide safe equipment, regardless of age. Removal charges for plant deemed unsuitable after monitoring by the authorised staff will not be applicable. Delivery charges for plant replacing such items will not be applicable. It should also be noted that any machine/vehicle that is accepted for work by the respective Irish Water might be dismissed from a work site, if found, on examination not to comply with the current Road Traffic Acts, or relevant Health and Safety Regulations, or by non-compliance of the Agreement, in any particular instance. This will be at the discretion of Irish Water.
24. Irish Water will not provide storage of materials/machinery and will not accept any responsibility for any loss or damage to materials or plant placed on any work site by the Supplier or his agents. The Supplier shall make his own arrangements for the protection

of his machine/vehicle and materials. Plant or tools stored by Irish Water by prior agreement, for the Supplier's convenience, will be stored at the Supplier's own risk.

Where plant is hired with a driver, the plant shall be at the risk of the owner/provider and Irish Water shall not be liable to compensate the owner/provider for damage sustained to the plant, nor shall Irish Water be liable to pay any hire charge in respect of any plant which shall remain idle or inoperable as a result of damage to same.

PLEASE NOTE the Agreement shall apply to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any invoice, delivery docket or other document produced by or furnished to Irish Water by the Supplier, its agents or employers.

25. The operator in charge of a machine/vehicle shall be skilled in the operation of the machine and thoroughly conversant with the machine/vehicle, which he/she is operating and shall not be employed to work more than any one machine on any day. The operator must remain in constant attendance on the machine/vehicle while it is employed and under no circumstances shall a machine/vehicle be operated by any person other than those for whom the relevant documentation as required by this Agreement has been submitted.
26. All mechanically propelled vehicles/machines operating on public roads must have a valid registration plate applicable to that particular vehicle/machine.
27. A current Vehicle Registration Certificate in respect of each vehicle entered may be required. Irish Water reserves the right to seek proof of ownership prior to or during the hired period.
28. A valid and current Certificate of Road Worthiness (CRW) must be submitted in respect of vehicles and trailers required to possess one. All goods trailers with a Gross Vehicle Weight (GVW) of more than 3,500kg require a Certificate of Road Worthiness. Goods vehicles and trailers, for which a current Certificate of Road Worthiness is not available, will not be hired.
29. In the case of lorries/haulage/etc. a photocopy of the current road freight licence must be submitted specifying which items are covered.
30. Hauliers are required by law to have a current road haulage operator's licence. All vehicles listed under the Supplier's account on [www.LAQuotes.ie](http://www.LAQuotes.ie) must be authorised on this licence.
31. All vehicles/machines for which a Road Fund Licence (Tax Disc) is required must display a current Tax Disc correctly. Vehicles hired for commercial work must be taxed as general haulage and must use derv fuel.
32. All vehicles/machines for which an "Insurance Disc" is required must display a current "Insurance Disc" correctly.
33. All Plant/vehicles hired will be required to have suitable flashing/warning beacons in working order at all times.
34. Trailers or attachments having a maximum gross vehicle weight exceeding 3,500Kgs shall be licenced and also have a current certificate of road worthiness. Where a certificate of road worthiness cannot be obtained the following shall be required in respect of agricultural tractors and attachments: A certifying document from a competent professional mechanic on headed paper stating that the items of plant included in the Agreement are roadworthy safe and fit for their intended usage as an individual item of plant and also in combination with all other items of plant (included in the Application) to

which they shall be attached. This certifying document shall cover all aspects of safe performance in relation to the item(s) of plant and attachments as quoted for and in particular shall address the following:

- Braking Systems
  - Steering
  - Hitching Arrangements
  - Hand Braking Systems controlling Attachments
  - Break away braking systems
  - Other safety items in relation to Tyres, Lights, Indicators, Reversing Buzzers, Flashing Beacons, Rear and side reflector markings, etc.
35. Agricultural tractors and trailers shall comply in all respects with the requirements of the current Road Traffic Acts and Road Transport Acts and all regulations made under those Acts. Where agricultural tractors are hired with drivers, such drivers shall hold driving licences of the classes required under the Road Traffic Acts. All road going vehicles must comply with the requirements of the various Road Traffic Acts and regulations.
36. Suppliers are reminded that bitumen emulsion sprayers whether chassis or trailer mounted are subject to the requirements of the European Communities (Vehicle Testing) Regulations, 2004 where used to transport bitumen emulsion on public roads. Certificate of Roadworthiness shall therefore be required in respect of such items where it is intended that they be used to transport bitumen emulsion from storage depots to work sites. The serial number, name of Issuing Authority and the date of the Certificate of Roadworthiness should be included in respect of each such plant item.
37. Supplier shall be required to provide in respect of bitumen emulsion sprayers certified results of Spraybar Distribution Test (Depot Tray Test) carried out in accordance with B.S. 1707 within six months preceding date of the relevant Call Off Competition. Suppliers whose sprayers are included on the plant hire list will be required to provide on request certified results of Spraybar Distribution Test undertaken on each Spraybar during the course of 2010. Gas heating systems where used shall be up to approved standards for such systems. Certification shall be provided on request.
38. All transport vehicles, earth-moving machinery, materials-handling machinery and locomotives used for the purposes of construction work must comply with Schedule 6 of the Safety, Health and Welfare at Work (Construction) Regulations 2013.
39. Vehicles will comply with any applicable vehicle policies and suppliers will comply with any applicable safety management systems (e.g. the City or County Council's Plant Check Sheet) that are identified to the suppliers by Irish Water.
40. All hedge\_cutting contractors must provide FETAC accreditation in 'hedgerow management and mechanical hedge cutting'.
41. Irish Water may require GPS tracking capability; this will be specified in the Call Off Competition.
42. Road Sweepers shall be 'dual sweep'.
43. For construction work on roads the Supplier shall ensure the following:
- Compliance with Regulation 97 of the Safety, Health and Welfare at Work (Construction) Regulations 2013.
  - The provision and maintenance of adequate guarding, signing and lighting arrangements in compliance with DoT, 2010 Chapter 8 of the "Traffic Signs Manual".
  - The provision of a person / persons in possession of a current CSCS for signing, lighting and guarding at roadworks
  - The provision of a person / persons in possession of a current CSCS for health and safety at roadworks where the CSCS card holder for signing, lighting and guarding at

- roadworks is absent from the site
- The provision of a written, site-specific traffic management plan(s) for all projects as defined in Chapter 8 as Category A and B type works.

#### **Section D: Health & Safety (Legal/Paperwork)**

44. All suppliers shall submit a Safety Statement to Irish Water as part of the process for appointment to the Panel. Where requested by Irish Water as part of the Call Off Competition, suppliers must submit an updated Safety Statement in accordance with the Safety, Health and Welfare at Work Act, 2005 and all Regulations, Codes of Practice and Guidance arising thereof. The Safety Statement has to be up to date and signed by the Head of the Company. The Safety Statement must include Risk Assessments relating to the relevant Call Off Contract.

All suppliers shall comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations, Codes of Practice and Guidance arising thereof.

All articles and substances supplied for use at work, including any plant, machine, tool or hazardous substance, shall comply with the requirements of the current Safety, Health & Welfare at Work Act, Regulations, Codes of Practice and Guidance.

45. All employees operating plant/vehicles or involved in the delivery of road making materials shall have a Safe Pass Card, with FAS accreditation. Plant operators, as listed in the Schedule 4 of the Safety, Health and Welfare at Work (Construction) Regulations 2013, must be in possession of a Construction Skills Certification Scheme (CSCS) ticket. The Safe pass card and CSCS equivalent in Northern Ireland (CSR card) will also be accepted. Details to be submitted online and original cards must be available upon request on site on any given day. Details must be kept up to-date at all times on [www.LAQuotes.ie](http://www.LAQuotes.ie)
46. All employees operating plant/vehicles shall have a current full driver's licence pertaining to the item(s) of plant they are operating. Copies to be available upon request on site on any given day.
47. All machines used for lifting, lifting appliances and all lifting gear shall comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations arising thereof, Codes of Practice and Guidance. In particular plant utilised for lifting shall be fitted with hose burst protection valves (check valves) onto each lifting arm and the fitting of these valves shall be certified by a competent person on Form GA1 as approved by the Health and Safety Authority. In respect of a mini excavator, a certified GA1 form stating that check valves are fitted is required if the machine will be used for lifting. If the mini excavator is not designed for lifting, a certificate either from the manufacturer or a main agent to this effect is required. The GA1 form should be completed when a excavator or loader are being used as a crane and a GA1 form should be completed, when a machine is being used specifically for lifting only. In addition form GA2 must be completed on a weekly basis by the operator.

As required by law currently in force, all cranes, winches, lifting equipment and lifting tackle shall have periodic inspections and be issued with a Report of Thorough Examination by a qualified Engineer/Surveyor. Also all lifting chain slings, rope slings, links, hooks, shackles and swivels shall be tested and issued with a Test Certificate having the appropriate information labelled or stamped onto the specific lifting item for identification.

All Tracked Excavators and Rubber Tyred Excavators if used for the purpose of lifting shall have the Safe Working Load (S.W.L.) stamped on to the manufacturer's plate or clearly identified elsewhere on the main structure of the machine. Each machine shall also have in force a Report of Thorough Examination by a qualified Engineer/Surveyor.

Evidence of same should be provided for the above at commencement of hire period to hirer.

**Section E: Health & Safety (Plant/Equipment)**

48. All lorries and specified plant are to be equipped with wire watchers, reversing cameras, front view (blind spot) mirrors, reverse alarms and suitable flashing beacons. All lorries shall be required to operate on dipped headlights. Tyres shall be replaced when they reach the minimum legal tread depth of 1.6mm. All Lorries shall be equipped with hands free communication. Some City and County Councils have a policy of discouraging the use of mobile phones, including the use of hands free equipment and this must be adhered to.
49. The operator in charge of a machine/vehicle shall be provided with the necessary Personal Protective Equipment (P.P.E.) by the Supplier, in order to safely carry out his duties; e.g. safety boots, reflective vests, helmets etc.
50. All hired plant must be fitted with a reverse alarm which cannot be disabled.
51. Drivers' seat of vehicles in excess of 7000kg gross vehicle weight should be ergonomically designed and fitted with a suitable suspension system.
52. Vehicles in excess of 7000kg gross vehicle weight should be fitted with a reversing camera which has a colour monitor fitted in the cab.
53. Hedge-cutters shall have a safety guard fitted on both sides and rear of the vehicle cab. A guard must also be fitted to the rear of the flail head. A beacon is to be mounted on roof of agricultural tractor cab.
54. Hired lorries/trucks must have the exhaust emission piped vertically behind the cab. This does not apply to trucks using Add Blue system or similar.
55. All plant or associated equipment using L.P.G. as a means to heat bitumous emulsion materials shall be supplied with a certificate of thorough examination issued by a certified Liquid Petroleum Gas Engineer, certifying that all pipe work, tanks, burners, flame failure valves and temperature probes meet with all the relevant safety standards.
56. Plant must comply with requirements for Auxiliary Devices and Visual Aids under Regulation 87 of the Safety, Health and Welfare at Work (Construction) Regulations 2013.
57. All Pick-ups may be required to be fitted with complete wire meshing across the rear window and may be required to be fitted with an operational 55 Watt Work Lamp which shall be attached to the cab roof and shall be capable of being rotated and oriented in any direction. The Load carrying area of a Van should have a protective layer of plywood, or separate material to the floor and sides. There should be a solid bulkhead between the load carrying area and the passenger area.
58. A Roll Over Protection System (ROPS), shall be provided on all earth moving machines and rollers. ROPS shall comply with Machinery Directive 98/37 and subsequent revisions and shall be designed, manufactured and tested to recognised standards. The machines in question shall be labelled to show compliance with recognised standards and these labels shall display the following information.

Name and address of ROPS manufacturer  
ROPS Identification mark  
Machine make/model that ROPS is suited for &  
Machine mass that ROPS is designed for



59. Items of plant with cabs provided shall incorporate a working cigarette lighter point on the dash board into which operators can insert the jack of their "plug in speakers" when using mobile phones. All Hired in Crew Cabs to be fitted with mobile telephone kits or the Supplier to agree to fit crew cab with same. If any operator is observed using a hand held mobile phone while driving the hire will be immediately terminated.
60. All pick-ups and vans, when required, shall be supplied with a tow-bar approved by the vehicle manufacturer, clearly stating the maximum towing capacity of the complete tow-bar attachment.
61. All ex-operator vehicles to be supplied with suitable First Aid Kits, Fire Extinguishers and warning breakdown triangles.
62. The Supplier will ensure that drivers and operators of machines are aware of the location of the serial numbers of plant used and will assist site staff in positively identifying the machines.

**Section G: General Terms & Conditions**

63. Where plant is to be used for the collection of waste the requirements of the Waste Management (Collection Permit) Regulations, 2001 shall be adhered to. Anyone hauling waste must hold a Waste Collection Permit and must also be satisfied that a Waste Permit has been granted by Irish Water for the site to which the waste is being drawn.
64. A person with a good command of the English language must be present on site at all times during working hours.
65. Vans hired, shall be supplied with a roof rack if so requested by Irish Water, at no extra cost.

**SCHEDULE 2 – THE SERVICES**

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

**SCHEDULE 3 – CALL OFF COMPETITION PROCEDURE**

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

**Selection Criteria for Call Off Competitions**

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

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

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

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

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

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

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

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

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

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