

PLANT HIRE CONTRACT

A DYNAMIC PURCHASING SYSTEM

FOR

PLANT HIRE

FOR

LOCAL AUTHORITIES and the OFFICE OF PUBLIC WORKS

LOT 1 (PLANT HIRE WITHOUT OPERATOR)

LOT 2 (PLANT HIRE WITH OPERATOR)

CONTENTS

Clause

1. INTERPRETATION	3
2. HIRE	4
3. DELIVERY	4
4. PAYMENT	4
5. OPERATORS	5
6. INSURANCE	6
7. TERMINATION AND SUBSTITUTION	7
8. ETHICS IN PUBLIC OFFICE	7
9. GOVERNING LAW	7
10. LAW, JURISDICTION AND DISPUTES	7
THE APPENDIX.....	10
THE SCHEDULE.....	11

THIS CONTRACT is made on 20.....

BETWEEN

- (1) **[FULL COMPANY NAME]** incorporated and registered in Ireland with company number [NUMBER] whose registered office is at [REGISTERED OFFICE ADDRESS] (**Contractor**).
- (2) **[NAME OF PURCHASER]** whose main office is at [MAIN OFFICE ADDRESS] (**Purchaser**).

BACKGROUND

The Purchaser wishes to hire the Plant and has entered into this contract with the Contractor following a competition conducted under a dynamic purchasing system established by the Local Government Operational Procurement Centre by publication of a contract notice on www.etenders.ie on [DATE] ([INSERT REFERENCE NUMBER]) (the **DPS**).

THE CONTRACTOR AND THE PURSHASER AGREE AS FOLLOWS:

1. INTERPRETATION

1.1. The following definitions apply in this contract.

Operator: if applicable by reference to the Appendix, an employee or other individual engaged by the Contractor to operate the Plant in accordance with this contract, or the Contractor (being an individual).

Plant: the items listed in the Appendix and any substitutions, replacements or renewals made in accordance with this contract and, if applicable, any Operator, where context allows.

Rental Payment: the payment to be made by the Purchaser under this contract for the hire of the Plant.

Rental Rate: the rate stated in the Appendix for hire of the Plant.

Rental Period: the period of hire delimited in the Appendix, as may be extended or shortened pursuant to the Schedule.

Schedule: the attached document titled [Standard Terms and Conditions for Contract for Plant Hire for Lot 1] ¹ [Standard Terms and Conditions for Contract for Plant Hire for Lot 2]² which is wholly incorporated into this contract.

1.2. Unless the context otherwise requires—

1.2.1. Words in the singular include the plural and vice versa.

1.2.2. Words using one gender the other genders.

¹ Delete if Contract is for Lot 2

² Delete if Contract is for Lot 1

- 1.2.3. A reference to a law or provision of a law is a reference to it as amended, extended or re-enacted from time to time, and includes all subordinate legislation made from time to time under it.
- 1.2.4. References to clauses are to the clauses of this contract.
- 1.2.5. Any words following the terms **including, include, in particular, for example** or any similar expression are construed as illustrative and do not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **HIRE**

- 2.1. The Contractor hires the Plant to the Purchaser for the Rental Period, subject to this contract.

3. **DELIVERY**

- 3.1. Delivery of the Plant shall be in accordance with the Schedule.

4. **PAYMENT**

- 4.1. The Purchaser must pay the Rental Payment to the Contractor as calculated below.
- 4.2. Where plant/machinery is being hired with a driver, the Contractor is required to produce a current Tax Clearance Certification or eTax Clearance Certificate from the Revenue Commissioners and comply with the RCT systems that were introduced on the 1st of January 2012. For further details on this system please log on to www.revenue.ie.
- 4.3. The Purchaser may seek and retain a copy of identification or record and retain relevant details from documentary evidence given by any sub-contractor engaged on a relevant contract. This may take the form of a copy of a current driver's license or passport or in the case of a company or partnership the identification may belong to a director or partner.
- 4.4. Save for clause 4.5 below, payment will be made at the rates Rental Rates.
- 4.5. Purchaser operate a core time 39-hour, 5-day week. Payment for time worked will only be made on the basis of the Purchaser's time records of hours/days worked and not on the Contractor's own time sheets. No allowance will be made for Church Holidays, Bank Holidays, Annual Holidays or other Holidays recognised by Purchaser.
- 4.6. Fuelling of plant is not permitted during working hours, and no payment is due for fuelling time.
- 4.7. The Contractor's invoice shall show the following information:
 - 4.7.1. The Contractors' name and address
 - 4.7.2. The Contractors' VAT Registration Number
 - 4.7.3. Invoice number and date
 - 4.7.4. The Purchaser order number
 - 4.7.5. The Request For Tender reference number from the Supplygov system
 - 4.7.6. Product Name, Plant type, and product ID
 - 4.7.7. Hours worked and Price

- 4.7.8. Litres of fuel consumed and fuel type for each Plant type contracted (set out as "Litres of [Fuel Type] consumed")
- 4.8. Prior to invoicing, the Purchaser may require Contractors to submit periodic (e.g. weekly or monthly) statements of materials/services provided during the period, for the purpose of certification.
- 4.9. A number of the Purchaser only pay via Electronic Fund Transfer and the remittance is sent to Contractor via email.
- 4.10. In addition to set-off rights at law, the Purchaser may deduct any amount claimed against the Contractor and may make any deduction on account of tax required by law or Revenue Commissioners practice.
- 4.11. In addition to the Rental Payment, the Purchaser must pay the Contractor (or the Revenue Commissioners according to law or their practice) any value-added tax on the supply under this contract.

5. OPERATORS

- 5.1. This clause 5 applies if the Appendix provides for the hire of Plant with an Operator.
- 5.2. The Contractor must employ sufficient Operators who are properly trained, skilled, experienced, and qualified for operating the Plant which they are to operate.
- 5.3. The Contractor must ensure that Operators operate Plant safely, competently, lawfully, and in compliance with the Contractor's obligations under this contract.
- 5.4. The Contractor must replace any Operator that the Purchaser instructs be removed on the basis of their negligence, incompetence, or noncompliance with this Contract or that their presence is not conducive to safety, health, or good order. The Contractor must remove an Operator when such an instruction is given and replace the Operator at the start of the next working day. The Contractor shall not employ that Operator for any further contract awarded under the DPS.
- 5.5. The Contractor must prominently exhibit the following sub-clauses of this clause for the information of Operators at their workplaces.
- 5.6. In this clause, **worker** means an Operator, but not the Contractor.
- 5.7. The Contractor must ensure that the rates of pay and the conditions of employment, including pension contributions, comply with all applicable law and that those rates and conditions are at least as favourable as those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2015. This applies to workers who are posted workers (within the meaning of Directive 96/71/EC of the European Parliament and the Council of the 16 December 1996 concerning the posting of workers in the framework provision of services), except that the Contractor's obligation to make pension contributions under registered employment agreements does not apply to posted workers who already contribute, or whose contributions are paid, to a supplementary pension scheme established in another member state of the European Union.
- 5.8. The Contractor must, and must ensure that the employers of all workers, do all of the following:
- 5.8.1. pay all wages and other money due to each worker
- 5.8.2. ensure that workers' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid
- 5.8.3. pay all pension contributions and other amounts due to be paid on behalf of each worker

- 5.8.4. make all deductions from payments to workers required by law, and pay them on as required by law
 - 5.8.5. 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 worker, deductions from each worker's pay and their disposition, and pension and other contributions made in respect of each worker, and produce these records for inspection and copying by persons authorised by the Purchaser, whenever required by the Purchaser
 - 5.8.6. produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of workers for inspection and copying by persons authorised by the Purchaser, whenever required by the Purchaser
 - 5.8.7. respect the right under law of workers to be members of trade unions
 - 5.8.8. observe, in relation to the employment of workers on the site, 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 2015, 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.
- 5.9. If the Purchaser so requests, the Contractor must, within 5 working days after the request, give to the Purchaser a statement showing the amount of wages and other payments due at the date of the request to and in respect of each worker, or, in respect of workers, not employed by or otherwise working for the Contractor, ensure that their employer or the person for whom they are working does the same.
- 5.10. The Purchaser may seek information under the above provisions of this clause only for the purpose of ensuring the obligations described in this clause to workers have been properly discharged. All documents and records received under the above provisions of this clause will be returned to the person providing it or destroyed if the Purchaser is satisfied that the person providing the information has complied with legal obligations to workers.
- 5.11. If the Contractor has not complied with this clause, the Purchaser may (without limiting its other rights or remedies) estimate the amount that should have been paid to workers and contributions that should have been made on their behalf, and the Purchaser may withhold the estimated amount from any payment due to the Contractor, until the Purchaser is satisfied that the required amounts have been paid. If it has still not been paid by the time the Rental Period has expired, the estimated amount is deducted from the sums payable.
- 5.12. The Contractor must give the Purchaser with each invoice a certificate that, for the period to which the statement relates, the Contractor has complied in full with this clause. Payment due for the period covered by the invoice will only be due if the certificate is given.
- 5.13. If the Contractor does not comply with this clause, it must pay to the Purchaser any costs the Purchaser incurs in investigating and dealing with the non-compliance.
- 5.14. The Contractor must ensure that in the event of an official of a trade union which is a party to a registered employment agreement affecting workers having concerns in relation to the Contractors or Operators' compliance with the agreement, that official will have access to a designated member of the Contractor's management who must engage constructively to resolve all matters on this point.
6. **INSURANCE**
- 6.1. The Contractor shall maintain in force during the Rental Period full and comprehensive insurance policies as set out in the Schedule.

6.2. Within 10 days of being requested to do so, the Contractor must give the Purchaser evidence that the insurances required under this contract are in effect, including by supplying copies of policies and evidence of payment of premiums.

6.3. If the Contractor fails to maintain any required insurance, the Purchaser may (without obligation, and without affecting its other rights) take out insurance and pay the premiums, and the Contractor must pay or allow the amount so paid on demand.

7. **TERMINATION AND SUBSTITUTION**

7.1. These terms and conditions may be terminated by any party pursuant to section 19 of the Schedule. Termination shall take effect on the date specified in the said section 19.1 of the Schedule and shall be without prejudice to any claims which either the Contractor or the Purchaser may have against the other under these terms and conditions. In the event of such termination pursuant to section 19 of the Schedule, the Contractor shall, subject to section 19.5 of the Schedule, be paid such reasonable costs as were accrued prior to the date of termination in respect of Services reasonably ordered and vouched to the satisfaction of the Purchaser but not completed.

7.2. These terms and conditions may be suspended by the Purchaser pursuant to section 19 of the Schedule.

8. **ETHICS IN PUBLIC OFFICE**

The Contractor warrants to the Purchaser that neither the Contractor nor any person on the Contractor's behalf has committed any offence under the Prevention of Corruption Acts 1889 to 2010 or the Ethics in Public Office Acts 1995 and 2001 in connection with this Contract or the Works, and nor will they commit any such offence.

9. **GOVERNING LAW**

This contract and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by and construed in accordance with the laws of Ireland.

10. **LAW, JURISDICTION AND DISPUTES**

10.1. All disputes that arise between the Contractor and the Purchaser (each a “**disputing party**”) in connection with these terms and conditions or the subject matter of these terms and conditions shall be dealt with as follows:

10.1.1. In the first instance, the disputing parties shall submit the dispute to the personnel nominated specifically to participate in the escalation process in sub-clause 10.1.2 in the order set out therein.

10.1.2. Escalation Procedure: In the event of a dispute in relation to the interpretation or fulfilment of any of the provisions of these terms and conditions, the disputing parties shall, in accordance with sub-clause 10.1.1, submit the dispute to the following personnel:

(1) Purchaser Representative: As directed by the Purchaser's Chief Executive

(2) Contractor Representative: Director

10.1.3. If a dispute cannot be resolved pursuant to the escalation procedure set out at sub-clause 10.1.2 within a period of ten (10) days, either of the disputing parties may request that the matter is submitted to conciliation. If any such request is made, the matter will be submitted to conciliation by a conciliator to be appointed, in the absence of agreement between the disputing parties, by the President for the time being of the Law Society of Ireland (or in the

event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment). The determination of such conciliator shall be final and binding on both disputing parties unless, within fourteen (14) days following the date of the determination, either party notifies the other in writing that it rejects the determination of the conciliator. Each disputing party shall bear its own costs in the conciliation and shall each pay half of the costs of the conciliator.

10.1.4. In the event that the conciliation procedure under sub-clause 10.1.3 fails to result in a satisfactory resolution of the dispute within thirty (30) days of the date of the notice to refer to conciliation (or such other longer period as is agreed between the disputing parties); or if either disputing party notifies the other in writing in accordance with sub-clause 10.1.3 that it rejects the determination of the conciliator; or if both disputing parties agree to submit the dispute directly to arbitration after the conclusion of the escalation process under sub-clause 10.1.2, either disputing party may submit the dispute to be decided at arbitration by an arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of Ireland or in the event of his being unwilling or unable to do so by the next senior officer of the Law Society of Ireland who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court, or refuses to act, or is incapable of acting or dies.

10.1.5. Any such arbitration shall be governed by the Arbitration Act 2010 as amended or re-enacted from time to time. If the dispute to be referred to arbitration raises issues which are substantially the same as/or connected with issues raised in a related dispute between either party and any third party and if such related dispute has already been referred for determination to an arbitrator or any court the parties hereby agree that the difference or dispute under or in connection with these terms and conditions can be referred to such arbitrator or such court and that such arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure in the High Court as to the joining of one or more co-defendants or third parties was available to both Parties and to such arbitrator.

10.2. The parties submit to the jurisdiction of the Irish courts.

THE APPENDIX

Clause Number	Description	Data
Clause 1.1	Operator	Applicable/Not Applicable ³
Clause 1.1	Plant ⁴	
Clause 1.1	Rental Period ⁵	
Clause 1.1	Rental Rates	
Clause 3.1	Date	
Clause 3.1	Location	
Clause 3.1	Time	

³ Select either 'Applicable' or 'Not Applicable', whichever applies. If neither wording is deleted then 'Not Applicable' applies.

⁴ Plant description.

⁵ Not to exceed 12 months

THE SCHEDULE

[Standard Terms and Conditions for Contract for Plant Hire for Lot 1]⁶

[Standard Terms and Conditions for Contract for Plant Hire for Lot 2]⁷

⁶ Delete if Contract is for Lot 2

⁷ Delete if Contract is for Lot 1

Signed by [NAME OF DIRECTOR]
for and on behalf of [NAME OF
CONTRACTOR]

.....
Director

Signed by [NAME OF OFFICIAL]
for and on behalf of [NAME OF
PURCHASER]

.....
[TITLE]

**STANDARD TERMS AND
CONDITIONS**

for

Contract for Plant Hire

(Lot 1)

Plant Hire only (without Operator/PSCS)

FOR

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

WHEREAS:

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

NOW IT IS HEREBY AGREED as follows: -

1) Definitions and Interpretation

- 1.1 In these terms and conditions, the following terms shall have the following meanings unless the context otherwise provides:

"Application for Admission" means the Contractor's DPS application for admission submitted via www.Supplygov.ie ;

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

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

"Contractors" means those Contractors (including the Contractor) who have been appointed to the DPS;

"Defects" means non-compliance of any service with these terms and conditions including:

- (a) a failed quality test
- (b) Services that fail to comply with the Specification or any applicable law or regulation;

"Delivery Address" means the address stated as stated in the appendix to the Contract;

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

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

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

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

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

"Request for Tender" means the competition between the DPS Contractors for the provision of the Services.

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

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

"Rental Period" means the period of hire delimited in the appendix to the Contract;

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

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

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

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

"VAT" means Value Added Tax.

1.2 In these terms and conditions, unless where otherwise specified:

1.2.1 words in the singular include the plural and vice versa;

1.2.2 words importing individuals shall also include reference to incorporated and unincorporated associations and vice versa;

1.2.3 words in any gender shall include all genders;

1.2.4 headings and titles are inserted for convenience only and shall not affect the construction of these terms and conditions;

1.2.5 references to a day mean a calendar day;

1.2.6 references to a working day mean a day that is not a Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997 or Good Friday;

1.2.7 any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or

accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned;

1.2.8 references to any statute or statutory provision shall be construed as references to the same as it may have been or may from time to time be amended, modified or re-enacted.

1.2.9 in the event of any ambiguity or discrepancy between these terms and conditions and the Schedules, then these terms and conditions shall prevail;

1.3 Certain Rules of Construction disapplied:

1.3.1 These terms and conditions shall be construed without regard to the rule of construction known as "ejusdem generis".

1.3.2 If any ambiguity or question of intent or interpretation arises, these terms and conditions shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of these terms and conditions.

2) Entire Agreement

2.1 These terms and conditions together with the Contract contain the entire agreement between the parties and contain all the terms that the parties have agreed with respect to its subject matter and supersedes all previous drafts, agreements, representations, arrangements and understandings between the parties.

2.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.

2.3 The Contractor acknowledges that it has not been induced to enter into these terms and conditions by a statement or promise that these terms and conditions does not contain. The Purchaser is not liable in equity, contract or tort or in any other way for a representation that is not set out in these terms and conditions. Nothing in Clause 2 shall have the effect of limiting or restricting any liability of a party arising as a result of fraud.

2.4 Each obligation, warranty or representation of the Contractor under these terms and conditions is undertaken or made for the benefit of the Purchaser.

3) Duration

3.1 The Contract and shall continue in full force and effect up from the Commencement Date up until the expiry of the Rental Period (the "**Contract Period**"), unless it is otherwise terminated in accordance with the provisions of these terms and conditions. For the avoidance of any doubt, the term of the Contract may not exceed 12 months.

4) Scope

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

5) DPS for Plant Hire Period – Division into Lots

5.1 These terms and conditions pertain to the completion of 'Plant Hire Services - Lot 1. Plant Hire only (without Operator/PSCS)'.

6) Not used

7) The Contractor's Obligations

7.1 The Contractor shall provide the Services in compliance with the outlined Specification (**Schedule 1**) to the Purchaser, and shall ensure that its Staff shall complete the Services to the Purchaser:

7.1.1 in accordance with these terms and conditions and the Contract;

7.1.2 with skill and expertise and in a first class, professional, diligent, expeditious, conscientious and timely manner;

7.1.3 in compliance with all instructions of the Purchaser in relation to the Services; and

7.1.4 in compliance with all requirements and/or obligations of any law, statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures.

7.2 The Contractor's obligations also include, but are not limited to:

7.2.1 open communication with the Purchaser and with any third parties appropriately authorised by the Purchaser so as to facilitate the efficient provision of Services;

7.2.2 maintaining the minimum quality levels of the Services as set out in the Specification appended at **Schedule 1**;

7.2.3 permitting nominated officers of the Purchaser at any time for the duration of the DPS to inspect the manufacturer or production facilities used by the Contractor for the purpose of carrying out quality tests to ensure compliance with the minimum quality levels as set out in the Specification;

7.2.4 notifying the Purchaser in writing of any notice or order by any court, governmental agency, local authority or regulatory agency which may have an impact on the Contractor's ability to provide the Services as soon as such notice or order is received by the Contractor; and

7.2.5 notifying the Purchaser immediately in respect of any claims arising in connection with these terms and conditions within seven (7) days of such a claim arising.

7.2.6 other than in the exercise of its rights under the Contract, not interfering with the Purchaser's quiet possession and use of the Plant.

8) Pricing

8.1 Pricing shall be in accordance with the provisions set out in **Schedule 1**.

8.2 Unless otherwise stated, the Price shall be:

- 8.2.1 exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a valid VAT invoice); and
- 8.2.2 payable in euro (€).
- 8.3 The Price shall be inclusive of any and all costs and/or expenses incurred by the Contractor in the provision of the Services.

9) Terms of Payment

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

10) Time

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

11) Acceptance

- 11.1 Notwithstanding completion of the Services the Purchaser shall not be deemed to have accepted any Services until:
 - a) those Services have been inspected and checked to the satisfaction of the Purchaser;
 - b) immediately before or on delivery of the Services, the Contractor shall either demonstrate how each item of Plant is operated or, subject to the Purchaser's approval, shall provide the Purchaser with a copy of the operating manual for each item of Plant.
- 11.2 Without prejudice to any other remedy that the Purchaser may have if the Services are not supplied in accordance with these terms and conditions, including the Specification or the Contract, where the Contractor has failed to deliver on time or to the correct location in accordance with Clause 10, or where the Purchaser has discovered Defects or a discrepancy in the Services, and has given the Contractor a reasonable opportunity to investigate and remedy the Defects or shortage, the Purchaser may:
 - 11.2.1 require the Contractor, at the Contractor's expense, to fulfil its obligations in all respects within such period as is specified by the Purchaser; or
 - 11.2.2 require the Contractor to provide the Purchaser with a credit note for any part of the Price which has been paid in respect of such Services; or

- 11.2.3 purchase substitute Services elsewhere and recover from the Contractor any actual losses, cost and liabilities whatsoever incurred by the Purchaser (including without limitation the costs of any replacement Services); or
 - 11.2.4 terminate the relevant Contract in accordance with the provisions of Clause 19 and require repayment of any part of the agreed contract sum that has been paid in respect of the relevant Services and that the Purchaser shall be entitled to recover from the Contractor actual losses, cost and liabilities howsoever incurred by it (including without limitation the costs of any replacement Services).
- 11.3 If the Contractor delivers Plant, including supplies and an Operator, which is not specified in the appendix to the Contract, the Purchaser may, in its absolute discretion—
- 11.3.1 refuse to accept delivery, in which case no payment whatsoever will be due to the Contractor for the Plant or
 - 11.3.2 accept delivery of the item delivered in lieu of the specified item, in which case clause 11.4 below will apply.
- 11.4 If the Purchaser accepts delivery of an item of Plant with a higher value than the Plant specified in the appendix to the Contract, the Rental Rate in the appendix to the Contract will nonetheless apply. If the Purchaser accepts delivery of an item of Plant with a lower value than the Plant specified in the appendix to the Contract, or which otherwise does not conform to the Contract, the Rental Payments will be reduced by a proportionate amount specified by the Purchaser.

12) Risk and Title

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

13) Staff

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

14) Warranties and Indemnities

- 14.1 The Contractor shall be responsible for and shall indemnify and keep indemnified the Purchaser, its agents, employees, officers, subsidiaries, associated companies, assigns and, where the Purchaser is acting as an agent, the Purchaser's principal, on demand and in full against any and all losses, costs, judgments, claims or liabilities in respect of:
- 14.1.1 any death or personal injury to any person;
 - 14.1.2 any loss of or damage to any property (including property belonging to the Purchaser or for which it is responsible);
 - 14.1.3 any breach of statutory duty;
 - 14.1.4 any losses, actions, claims or demands by third parties against the Purchaser, and any costs, charges and expenses (including legal expenses) suffered or incurred by the Purchaser in respect of same; and
 - 14.1.5 any losses, claims, expenses and liability that the Purchaser may suffer as a result of the Purchaser's performance or non-performance of the Contract (excepting the Purchaser's obligation to pay the Rental Payment).
- in each case arising directly or indirectly out of, or in connection with any negligent act or omission, or breach of these terms and conditions committed by the Contractor or its employees, agents or sub-contractors.
- 14.2 The Purchaser undertakes that the Contractor shall be given notice of any third party action or claim described in Clause 14.1 above that is made against the Purchaser within seven (7) days and the Contractor shall, subject to the Purchaser being indemnified and secured by the Contractor to its reasonable satisfaction against any costs, liabilities, losses or expenses it may suffer in so doing, have the right to defend any such claims, following consultation with the DPS Purchaser who shall be kept fully informed at all times of all such claims or proceedings arising from such actions or claims, and make settlements thereof at its own discretion in order to settle or oppose any such claims.
- 14.3 The Contractor hereby warrants and undertakes to the Purchaser that:
- 14.3.1 it has the appropriate skills and technical capacity, legal right and full power and authority to perform its obligations under these terms and conditions;
 - 14.3.2 all Services are and will be fit for the purpose for which they are intended;
 - 14.3.3 all Services will conform to its specification, be of satisfactory quality, safe, and suitable for the purpose for which is normally used and the purpose disclosed by the Purchaser; and
 - 14.3.4 it shall not do anything to prejudice the name or reputation of the Purchaser, or the Purchaser's business interests.
- 14.4 The Contractor and the Purchaser acknowledge and understand their respective duties of care in respect of the Safety, Health and Welfare at Work Act, 2005 and all regulations made thereunder, including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013.

14.5 Any approval, testing or acceptance by the Purchaser in accordance with these terms and conditions shall not, in any way, limit the Contractor's liability and obligations under these terms and conditions.

15) Insurance

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

16) Tax Clearance

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

17) Confidentiality

17.1 For the purposes of this Clause 17 **"Confidential Information"** means all confidential information disclosed (whether in writing, orally or by another means and whether directly or indirectly) by a party (the **Disclosing Party**) to the other party/another party (the **Receiving Party**) whether before or after the date of these terms and conditions.

17.2 Subject to Clause 17.3, during the Contract and at any time after the termination or expiry of these terms and conditions (for any reason) the Receiving Party:

17.2.1 may not use any Confidential Information for any purpose other than in the performance of its obligations or the enjoyment of its rights under these terms and conditions;

17.2.2 may not disclose any Confidential Information to any person except with the prior written consent of the Disclosing Party or in accordance with Clause 17.3; and

17.2.3 shall make every effort to prevent the use or disclosure of Confidential Information.

17.3 The Receiving Party may disclose information which would otherwise be Confidential Information if and to the extent that:

17.3.1 it is required by law;

17.3.2 the Receiving Party can demonstrate that it has come into the public domain, otherwise than through a breach of these terms and conditions by the Receiving Party;

17.3.3 it is required by existing contractual obligations (as of the Commencement Date) of which the Disclosing Party is aware;

17.3.4 it is required by any securities exchange or regulatory or governmental body to which it is subject; or

- 17.3.5 the disclosure is to its professional advisers, auditors or banker; or to any of its directors, other officers, employees and sub-Contractors (a **Recipient**) to the extent that disclosure is reasonably necessary for the purposes of these terms and conditions.
- 17.4 The Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under the Contract as if the Recipient was a Party to these terms and conditions.
- 17.5 Upon any termination or expiry of these terms and conditions, each party shall cause all Confidential Information belonging to the other party in whatever medium, to be returned, deleted or destroyed, according to the written instructions of the other party.

18) Conduct Review/Audit

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

Performance Measurement Table

Employers Objective	Indicator	Measurement Period	Level 1 (Rule 18.4)	Level 2 (Rule 18.5)	Level 3 (Rule 18.6)
Health and Safety					
Management of Safety during hire	Failure to maintain safety measures as set out in the Safety and Health Plan and/or Contractor's Safety Statement	Contract	N/A	2	3
	Failure to submit required safety certificates relevant to hired Plant item e.g. GA1, GA2 etc.	Contract	N/A	2	3

	Requirement for immediate off hire of plant or driver on foot of committing a breach of the Safety, Health & Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the works	Contract	N/A	1	2
	Requirement for immediate off hire of plant or driver on foot of failure to comply with reasonable Direction(s) issued by the PSCS or Purchaser's Representative or HSA	Contract	N/A	1	2
Performance					
General	Failure of the Contractor to comply with its obligations under the Contract, and if applicable, failure to put matters right following issuance of direction by the Purchaser	Contract	2	3	5
	Failure of the Contractor to proceed regularly and diligently with the execution of the works	Contract	2	3	5
Plant reliability	Failure of Plant to be fully operational during the course of the contract period to an extent that impedes works completion	Contract	2	3	5
Mobilisation	Failure to mobilise with the nominated plant on the dates as agreed in the appendix to the Contract	Contract	2	3	5
Plant Driver/ Operator	Requirement for immediate removal of plant Operator on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Contractor's obligations under the Contract	Contract	N/A	1	2
Legal Requirements	Requirement for immediate off hire of plant or driver on foot of committing or causing the Purchaser to commit a serious breach of Legal or Statutory requirements concerning the works	Contract	N/A	1	2
Quality of Work					
Workmanship during hire	Failure of the Contractor to execute the works in a proper and workmanlike manner and using good practice	Contract	2	3	5
	Defects in completed work requiring re-visiting to repair	180 days	1	2	3

- 18.7 The Contractor shall implement such recommendations and comply with any Purchaser's findings to the extent necessary to ensure that the Services continue to be delivered and the Contractor continues to meet its obligations in accordance with the requirements set out in these terms and conditions.
- 18.8 In addition to the performance review as may be conducted by the Purchasers pursuant to Clause 18.1 above, the performance of the Contractor under these terms and conditions shall be subject to review by the Purchaser, when deemed necessary for the purpose of addressing

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

- 18.9 The Contractor shall implement such recommendations and comply with the Purchaser's findings pursuant to Clause 11 to the extent necessary to ensure that the Services continue to be delivered and the Contractor continues to meet its related obligations in accordance with the requirements set out in these terms and conditions.
- 18.10 The Contractor shall keep and maintain until a minimum of six (6) years after the expiry of the Contract Period, full and proper records and all documents relating to the performance of its obligations under these terms and conditions and shall allow each Purchaser and any auditors of or other advisers to a Purchaser to access at any time and from time to time any of the Contractor's premises, personnel and such records and documents for the purposes of:
- 18.10.1 fulfilling any legally enforceable request by any court, tribunal or regulatory body; or
 - 18.10.2 undertaking verifications of the accuracy of the Price in accordance with Clause 8 or identify suspected fraud; or
 - 18.10.3 undertake verification that Services are being (and have been) provided in accordance with these terms and conditions.
- 18.11 Conduct of Audits:
- 18.11.1 Subject to Clause 18.11.2 below, any audit shall be carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the Contractor's business.
 - 18.11.2 Where a Purchaser has reasonable grounds to believe that the Contractor is not complying with its obligations under these terms and conditions, an audit may be carried out without prior notice.
 - 18.11.3 Any Purchaser, its agents or designees may exercise a right of audit under this Clause 18.11 and shall comply with the Contractor's reasonable security and access rules and procedures. Persons that a Purchaser may designate include that Purchaser's, the LGOPC's independent auditors, representative of governmental or regulatory authorities having jurisdiction under applicable law for the activities relating to these terms and conditions.
 - 18.11.4 During any audit, any Purchaser shall ensure that its agents or designees shall treat as confidential any information, data or documents relating to the Contractor to which they may have access.
 - 18.11.5 The Contractor shall provide all assistance reasonably requested by a Purchaser (and its auditors and other advisers) in relation to any audit, including access to the Contractor's personnel, records and premises.
 - 18.11.6 Each Purchaser shall pay its own cost and expenses for any audit undertaken pursuant to this Clause 18 save where such audit identifies that the Contractor has overcharged a Purchaser by 2% or more of the invoice amount for the Services under audit, or overstated the Contractor's pricing by more than 2%, in which case the Contractor shall reimburse the Purchaser, for its out of pocket expenses in conducting such audit.

This Clause 18.11.6 is intended as a fair allocation of audit expenses and not as damages or a penalty.

19) Termination and Substitution

- 19.1 These terms and conditions may be terminated by any party providing not less than three (3) months' written notice.
- 19.2 Without prejudice to any other rights or remedies to which it may be entitled, the Purchaser may terminate the Contract without liability to the Contractor by giving written notice to the Contractor to take effect immediately or on the date specified in the said notice if:
- 19.2.1 the Contractor commits a material breach of any term or condition of these terms and conditions, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Purchaser requiring the Contractor to do so;
 - 19.2.2 the Contractor has reached Level 3 following a review conducted by a Purchaser pursuant to Clause 18;
 - 19.2.3 the Contractor contravenes Clause 20;
 - 19.2.4 the Contractor, being an individual, becomes bankrupt or dying or becoming incapable of performing this agreement, or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of its estate, or a trustee is granted by it on behalf of its creditors, or if the Contractor, being a company, enters into a voluntary or compulsory liquidation (other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the relevant Purchaser), or if a receiver or examiner of any of its assets is appointed, or if the Contractor is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014, or the Contractor takes or suffers any analogous action under any other applicable law;
 - 19.2.5 the Contractor ceases or threatens to cease to carry on business;
 - 19.2.6 being a company, the Contractor is struck off the register of companies;
 - 19.2.7 being a company, a petition being presented to wind it up and not being dismissed within 14 days after presentation
 - 19.2.8 being a company, a meeting of its creditors or members being held for the purpose of considering a resolution to wind it up
 - 19.2.9 being a company, entering or proposing to enter an arrangement with or for the benefit of its creditors
 - 19.2.10 being a company, a petition being presented to appoint an examiner
 - 19.2.11 a Purchaser reasonably believes that any of the events mentioned in **Sub-clauses 19.2.3 to 19.3.10** inclusive or any analogous event is about to occur in relation to the Contractor in any jurisdiction and notifies the Contractor accordingly;
 - 19.2.12 any representation made by the Contractor in connection with these terms and conditions shall in the opinion of a Purchaser prove to be untrue or incorrect in a material respect as of the date when made;

- 19.2.13 the Contractor has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of these terms and conditions;
- 19.2.14 a Purchaser has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Contractor or any agent or representative of the Contractor, to any employee of any Purchaser with a view towards securing any agreement for the provision of the Services or any other contract. Paying the expenses of normal business meals shall not be prohibited by this provision; or
- 19.2.15 it is suspected (acting reasonably) that the Contractor has entered into or implemented an agreement or has made or implemented a decision or has engaged in a concerted practice that is prohibited by Section 4(1) of the Competition Acts 2002 to 2014; in which case the Contractor may be reported by a Purchaser to the Competition & Consumer Protection Commission, and a Purchaser may take any other steps permitted by law.
- 19.2.16 the Purchaser is of the reasonable opinion that the Contractor does not have sufficient capacity or is unavailable to complete the Services.
- 19.3 Should conditions arise which, in the opinion of the Purchaser in its absolute discretion, necessitate the termination of these terms and conditions, the Purchaser may terminate these terms and conditions upon written notice to the Contractor.
- 19.4 Termination of these terms and conditions pursuant to sub-clauses 19.1, 19.2, or 19.3 above shall not relieve or discharge either the Contractor or the Purchaser from any obligations which have accrued prior to such termination.
- 19.5 The Purchaser shall be liable to the Contractor for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Contractor arising out of or in connection with these terms and conditions or the termination of these terms and conditions or any Contract awarded.
- 19.6 The provisions of Clauses 1) (*definitions and interpretation*) 14)(*warranties and indemnities*), 15)(*insurance*), 16)(*tax clearance*) 17)(*confidentiality*), 19) (*termination*) 21) (*notices*) 22) (*waiver*) 26) (*publicity*) 27) (*data protection*) 29) (*freedom of information*) 30) (*governing law*) and 31) (*dispute resolution*) shall survive the termination or expiry of these terms and conditions.
- 19.7 The events and circumstances listed in this sub-clause are as follows—
- 19.7.1 the Contractor substantially fails to comply with this agreement
- 19.7.2 the Purchaser considers that a failure of the Contractor to comply with this contract may create an immediate and serious threat to the environment or to public safety or health
- 19.7.3 it appears necessary or expedient to the Purchaser in the interest of environmental protection or public safety or health or the discharge of the Purchaser's duties under the law
- 19.7.4 any of the events or circumstances set out at sub-clause 19.2.1 to 19.2.16 above, or a similar event anywhere, occurs in relation to the Contractor:
- 19.8 If any of the events or circumstances in sub-clause 19.7 occur then the Purchaser may give notice at any time requiring the Contractor to take such steps as the Purchaser considers necessary or expedient to mitigate or avoid the event or circumstances in question. Such steps

may include the Purchaser, or a replacement contractor appointed by the Purchaser (a **Substitute Contractor**), supplying equipment in place of the Plant.

- 19.9 If the Purchaser gives a notice under sub-clause 19.8, payment of any money due by the Purchaser to the Contractor will be postponed, and the Purchaser is not required to make any further payment to the Contractor until after the expiry of the Rental Period, when any liability of the Contractor to the Purchaser under this contract has been established.
- 19.10 The Contractor must co-operate, as instructed by the Purchaser, with any Substitute Contractor.
- 19.11 The Purchaser may from time to time certify the cost incurred by the Purchaser in taking steps under sub-clauses 19.7, 19.8, 19.9 and 19.10, including the additional cost of any Substitute Contractor and associated procurement and administrative expenses. Insofar as the amount of such costs exceeds the amount the Purchaser would have paid had the Purchaser not acted under this clause, the Contractor must reimburse the Purchaser on demand.
- 19.12 When, in the Purchaser's opinion, the events or circumstances in question have passed such that it is no longer necessary for the steps referred to in a notice under this sub-clause to be taken, (and if this contract has not been transferred) the Purchaser may give the Contractor a further notice requiring the Contractor to resume performance of this contract as before or otherwise instructed in the notice.
- 19.13 The Purchaser may, by one or more further notices, amend a notice given under sub-clause 19.8.
- 19.14 If any of the events or circumstances listed in sub-clause 19.7 occurs, the Purchaser may, by notice to the Contractor, transfer the Contractor's rights and obligations under this contract to a Substitute Contractor. Such a notice will take effect on the date it is given, or on such other date as is stated in the notice, to novate the Contractor's rights and obligations under this contract, from and after the date on which the notice takes effect, to the Substitute Contractor.
- 19.15 A Substitute Contractor appointed by the Purchaser may be one of the following:
 - 19.15.1 Another contractor admitted to the DPS
 - 19.15.2 Another contractor who was selected to tender for this contract
 - 19.15.3 If, in the Purchaser's opinion, no suitable contractor within sub-clauses 19.15.1 and 19.15.2 above is available, another contractor the Purchaser considers suitable for transfer of the Contract.

20) Assignment, Transfer and Sub-Contracting

- 20.1 The Contractor shall not sub-contract, assign or transfer these terms and conditions or any part thereof or the benefit or advantage of these terms and conditions or any part thereof without the prior written consent of the Purchaser.
- 20.2 Where sub-contracting is consented to pursuant to Clause 20.1 above, the Contractor shall ensure that the sub-contractor is a reasonable and prudent Contractor, and that the sub-contractor shall carry out its obligations in accordance with the terms of these terms and conditions. Notwithstanding the foregoing, the Contractor acknowledges that it remains liable for the acts and omissions of its employees, servants, agents and sub-contractors as if they were its own acts and omissions.
- 20.3 These terms and conditions shall be binding upon successors and assigns of the Purchaser and the Contractor and the name of a party appearing in these terms and conditions shall be

deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

21) Notices

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

<i>The Purchaser</i>		<i>Contractor</i>	
Name:		Name:	
Email:		Email:	
Attention:		Attention:	

21.2 Any notice required or authorised by these terms and conditions to be given by a party to the other shall be in writing and may be forwarded electronically only to the email address set out at and marked for the attention of the person identified in Clause 21.1

21.3 Any notice or other communication shall be deemed to have been duly given when transmitted by electronic means on receipt of 'read receipt' or equivalent.

21.4 All notices, documents and communications provided under these terms and conditions or Contract shall be in the English language save that nothing in this Clause 21.4 shall restrict or prejudice the ability of the Purchaser to comply with its obligations under the Official Languages Act 2003.

21.5 Any party may, by notice to the others in compliance with this Clause 21 change the contact details set out at Clause 21.1.

22) Waiver

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

23) Severability

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

24) Relationship

24.1 The Contractor shall not be the authorised agent of the Purchaser or have the right or authority either express or implied to create or incur any liability against or on behalf of the Purchaser. In particular, the Contractor shall not hold itself out, nor permit any person to hold it out, as being authorised to bind or pledge the credit of the Purchaser in any way and shall not do any act that might reasonably create the impression that it is so authorised.

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

25) Force Majeure

- 25.1 In these terms and conditions, "**Force Majeure**" means an occurrence that is beyond the control of the Contractor, the Purchaser (each an "**Affected Party**") to the extent that event is not attributable to the fault or negligence of the Affected Party, including, but not limited to, the following: acts of God; war; riot; civil disorder; fire; flood; storm; acts or failures or refusals to act by a central government authority; and other similar occurrences beyond the control of the Affected Party which such the Affected Party is unable to prevent by exercising reasonable diligence but excludes, for the avoidance of doubt, any labour dispute, strike or industrial dispute affecting the Contractor or any other event which a prudent Contractor of Plant Hire Services could have reasonably foreseen and provided for the cause in question.
- 25.2 If an Affected Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part, it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 25.3 No Affected Party shall in any circumstances be liable to the other(s) for any loss of any kind whatsoever directly or indirectly caused or incurred by the other(s) by reason of any failure or delay by the Affected Party in the performance of its obligations to the extent such failure or delay is due to Force Majeure. Notwithstanding the foregoing, each Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under these terms and conditions. The Affected Party shall resume performance of its obligations under these terms and conditions once the Force Majeure has ended.
- 25.4 In the event that the Force Majeure event is continuing for a period at least one (1) month, then the other person in whose favour the affected obligation was to be performed may terminate the relevant Contract upon fourteen (14) days written notice to the Affected Party.
- 25.5 It is agreed that any failure by the Contractor to perform, or any delay by the Contractor in performing its obligations under these terms and conditions, which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Contractor has a contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise, as a result of circumstances of Force Majeure.

26) Publicity

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

27) Data Protection

- 27.1 The Contractor shall comply with its obligations under the Data Protection Acts 1988 and 2003 and all regulations made thereunder ("**Applicable Data Protection Legislation**"), in the collection and storage of data pursuant to these terms and conditions. In particular, the Contractor shall, where required, register with the Office of the Data Protection Commissioner and shall put in place safeguards sufficient to comply with its obligations under the Applicable Data Protection Legislation and must ensure that all staff are aware of and comply with the obligations imposed by the Applicable Data Protection Legislation.
- 27.2 The Contractor shall indemnify the Purchaser against all claims and proceedings and all liabilities, losses, costs, claims, actions, proceedings, demands by third parties and expenses incurred in connection therewith made or brought by any person in respect of any loss, damage

or distress caused to that person as a result of the Contractor's unauthorised or unlawful processing or the Contractor's destruction of or damage to any personal data held by the Contractor, its employees or agents or due to any failure by the Contractor to comply with this Clause 27).

28) Conflict of Interest

The Contractor shall ensure that neither the Contractor nor its Staff shall accept any professional or other commitment or engagement during the term of the Services which conflicts or might reasonably be expected to conflict with the duties and obligations undertaken by the Contractor hereunder ("**Conflict of Interest**"). The Contractor warrants that it has disclosed to the Purchaser any such Conflict of Interest as may already be in existence on the date hereof. The Contractor undertakes that it shall notify the Purchaser of any actual or potential Conflict of Interest arising during the period of the Contract. In particular, the Contractor shall note its obligations under Section 179 of the Local Government Act 2001 as amended by the Local Government Reform Act 2014. This Code is available for download from the Department of the Environment, Heritage & Local Government website <http://www.environ.ie/en/Publications/LocalGovernment/Administration/FileDownload,8776,en.pdf>

29) Freedom of Information

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

30) Governing Law

The governing law provisions are set out at clause 9 of the Contract.

31) Dispute Resolution

The dispute resolution provisions are set out at clause 10 of the Contract.

32) Health & Safety

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

SCHEDULE 1: GENERAL SPECIFICATION

1.1 General

- 1.1.1 This specification is compiled for the purposes of the Contract. The technical requirements set out in this Schedule 1 (General Specification) are non-specific and apply to Lot 1, Lot 2, and Lot 3 Contracts unless stated otherwise. All Services shall be in compliance with the technical standards as detailed and any further technical requirements as set out in the Requests for Tenders.
- 1.1.2 The categories of Plant including a breakdown of plant types that are part of this Contract are listed in Schedule 4.
- 1.1.3 Only those plant types included online in the product list are part of this Contract.
- 1.1.4 The serial number shall be the manufacturer's identification mark unique to the machine. If an identification number is not provided for an item, then it will not be eligible for inclusion in the Contract.

1.2 Insurances

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

Insurance of the Plant

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

Public Liability Insurance

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

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

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

Motor Policy Insurance

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

Insurances must specifically cover the supply of Plant and Operator.

Employers Liability Insurance

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

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

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

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

- a) Cover must apply to all employees of the Contractor 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 the Purchaser as principal and must include a non-vitiation clause
- d) Cover must be extended to cover the Contractor in respect of liability assumed by him under the Contract, i.e. the description of the insured's business must be unambiguous

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

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

1.2.10 If the Purchaser or Contractor becomes aware of any loss of or damage to Plant or any accident involving Plant during the Rental Period, it must notify the other as soon as possible.

1.2.11 Insurance of Subcontractors

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

1.2.12 Exclusions

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

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

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

or

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

1.3 Not Used

1.4 Plant/Operator Requirements & Conditions

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

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

- 1.4.2 Bad work, done as a result of not competently working Plant, will be repaired at the Contractor's own expense.
- 1.4.3 The Plant offered should be capable of carrying out the work for which it was made without any diminution of power or output from the minimum laid down by the makers of the machine. The Purchaser's engineering staff may monitor the performance, efficiency & suitability of all Plant. Such inspections in no way exonerate the supplier/operator from their responsibility to inspect, maintain and at all times provide safe equipment, regardless of plant age. Removal charges for Plant deemed unsuitable after monitoring by engineering staff and delivery charges for Plant replacing such items will be at the Contractor's own expense.
- 1.4.4 It should also be noted that any Plant tendered for and accepted for work by the Purchaser might be dismissed from a work site, if found on examination not to comply with the current Road Traffic and Health & Safety Legislation, or by non-compliance of any terms and conditions, in any particular instance. This will be at the discretion of the Purchaser.
- 1.4.5 The Purchaser will not provide storage of materials/machinery and the Purchaser will not accept any responsibility for any loss or damage to materials or Plant placed on or near any work site by the Contractor or his agents. The Contractor shall make his own arrangements for the protection of his Plant and materials. Plant or tools stored by the Purchaser by prior agreement, for the Contractor's convenience, will be stored at the Contractor's own risk.
- 1.4.6 Where Plant is hired with an Operator, the Plant shall be at the risk of the Contractor and the Purchaser shall not be liable to compensate the Contractor for damage sustained to the Plant, nor shall the Purchaser be liable to pay any hire charge in respect of any Plant which shall remain idle or inoperable as a result of damage to same.
- 1.4.7 **PLEASE NOTE** the terms and conditions in this Specification (Schedule 1) and in the *Standard Terms & Conditions for Contract Plant Hire* and in the Contract shall apply, to the exclusion of any terms and conditions which the Contractor may purport to apply at any time, whether contained in any invoice, delivery docket or other document produced by or furnished to the Purchaser by the Contractor, its agents or employers.
- 1.4.8 The Contractor engaged by the Purchaser shall provide the names and addresses of all Operators of Plant hired, in the "Driver's Details" section of www.Supplygov.ie and enter updates as the need arises during the Period of Validity.
- 1.4.9 Operator(s) in charge of Plant shall, at the date of hire and thereafter for the duration of the works - :
- a) hold the appropriate Construction Skills Registration Card(s) (CSCS ticket(s)),
 - b) demonstrate while operating the Plant, the necessary skills and competency required for safe operation of such Plant,
 - c) be capable of completing the specified work outlined by the Purchaser,
 - d) shall not pose a Health & Safety risk to himself, other persons present on or near the site, nor to any member of the Public,
 - e) shall not pose a Health & Safety risk when operating in the vicinity of existing services, and
 - f) shall not be employed to work more than any one machine on any day
- 1.4.10 In the event that the Operator with the hired Plant fails to meet any of the above requirements, the Purchaser reserves the right to seek immediate removal of said Operator from the site, to be replaced with a suitably competent Operator at the start of the next working day, or no later than 48 Hours. Failure of the supplier to address such a risk within this timeframe shall result in the immediate

termination of the relevant contract. In such an event, the Purchaser reserves the right to proceed with hiring the next highest ranked Tenderer from the Request for Tender or in hiring a Substitute Contractor in accordance with Clause 9 of the Contract.

- 1.4.11 The operator must remain in constant attendance on the Plant while it is employed and under no circumstances shall Plant be operated by any person other than those for whom the relevant documentation as required by these terms and conditions has been submitted.
- 1.4.12 All mechanically propelled Plant operating on public roads must have a valid registration plate applicable to that particular item of Plant.
- 1.4.13 A current Vehicle Registration Certificate in respect of each item of Plant entered may be required. The Purchaser reserve the right to seek proof of ownership prior to or during the hired period.
- 1.4.14 A valid and current Certificate of Roadworthiness must be submitted in respect of Goods Vehicles and Goods Trailers over one year old with a Design Gross Weight of more than 3,500kg. Goods vehicles and trailers, for which a current Certificate of Road Worthiness is not available, will not be hired. No alternatives will be considered.
- 1.4.15 In addition, Goods Trailers with a Design Gross Weight of more than 3,500kg must be registered with the Purchaser and be licensed.
- 1.4.16 In the case of tenders for lorries/haulage/etc. a photocopy of the current road freight licence must be submitted specifying which items are covered.
- 1.4.17 Hauliers are required by law to have a current road haulage operator's licence. All vehicles listed under the Contractor account on www.Supplygov.ie must be authorised on this licence.
- 1.4.18 All Plant 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. All Plant for which an "Insurance Disc" is required must display a current valid "Insurance Disc" correctly. All Plant hired will be required to have suitable flashing/warning beacons in working order at all times.
- 1.4.19 Trailers or attachments having a maximum gross vehicle weight exceeding 3,500Kgs shall be licenced and also have a current certificate of road worthiness.
- 1.4.20 Agricultural tractors and attachments (other than trailers) shall comply in all respects with the requirements of the current Road Traffic Acts and Road Transport Acts and all Regulations made under those Acts. Where agricultural tractors are hired with Operators, such Operators shall hold driving licences of the classes required under the Road Traffic Acts. All road going items of Plant must comply with the requirements of the various Road Traffic Acts and Regulations.
- 1.4.21 The Contractor is reminded that bitumen emulsion sprayers whether chassis or trailer mounted, are subject to the requirements of the European Communities (Vehicle Testing) Regulations 2004 (Revocation) Regulations 2013 where used to transport bitumen emulsion on public roads. Certificate of Roadworthiness shall therefore be required in respect of such items where it is intended that they be used to transport bitumen emulsion from storage depots to work sites. The serial number, name of Issuing Authority and the date of the Certificate of Roadworthiness should be included in respect of each such Plant item.
- 1.4.22 All transport vehicles, earth-moving machinery, materials-handling machinery and locomotives used for the purposes of construction work must comply with all legislative requirements including Part 11 of the Safety, Health and Welfare at Work (Construction) Regulations 2013.
- 1.4.23 Vehicles utilised by the Purchaser shall comply with the Purchaser's vehicle policy. The Contractor must comply with and abide by the safety management system of the Purchaser awarding a contract under the DPS.

- 1.4.24 It shall be the responsibility of the Contractor to ensure that they comply with all of the following statutory Legislation/Regulations or any other statutory Legislation/Regulations, including but not limited to -:
- (i) The Wildlife Act 1976 and as amended
 - (ii) Waste Management Act 2006
 - (iii) Waste Management Amendment Act 2001
 - (iv) Litter Pollution Act 1997
 - (v) Protection of the Environment Act 2003
 - (vi) The Road Traffic Act 1961
 - (vii) The Sustainable Use of Pesticides Directive
- 1.4.25 The Purchaser may require GPS tracking capability – this will be specified at the Request for Tender stage.
- 1.4.26 Road sweepers tendered for shall be 'dual sweep'.
- 1.4.27 For construction work on roads the Contractor shall ensure compliance with section 1.6.6 below.
- 1.4.28 If the Purchaser makes space available for storage, the Contractor may use the space entirely at its own risk, without recourse to the Purchaser in any circumstances whatsoever.

1.5 Health & Safety (Safety Statement)

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

1.6 Health & Safety (Legal/Paperwork)

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

1.7 Health & Safety (Plant/Equipment)

- 1.7.1 The operator in charge of Plant shall be provided with the necessary Personal Protective Equipment (P.P.E.) by the Contractor in order to safely carry out his duties; e.g. safety boots, reflective vests, helmets etc.
- 1.7.2 All Plant must be fitted with a reverse alarm which cannot be disabled.
- 1.7.3 Check valves are required on machines as per the guidance of the HSA or particular requirement of the Purchaser.
- 1.7.4 All Plant using L.P.G. as a means to heat bituminous materials shall be supplied with a certificate of thorough examination issued by a certified Liquid Petroleum Gas Engineer, certifying that all pipe

work, tanks, burners, flame failure valves and temperature probes meet with all the relevant safety standards.

- 1.7.5 Plant must comply with requirements for Auxiliary Devices and Visual Aids under Regulation 87 and Schedule 7 of the Construction Regulations 2013 - SI No. 291.
- 1.7.6 A Roll Over Protection System (ROPS), shall be provided on all earth moving machines and rollers. ROPS shall comply with Machinery Directive 98/37 and subsequent revisions and shall be designed, manufactured and tested to recognised standards. The machines in question shall be labelled to show compliance with recognised standards and these labels shall display the following information.
- 1) Name and address of ROPS manufacturer
 - 2) ROPS Identification mark
 - 3) Machine make/model that ROPS is suited for
 - 4) Machine mass that ROPS is designed for

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

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

1.9 Terms and Conditions

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

1.10 Contract Performance

- 1.10.1 It is intended that the Contractor's performance will be monitored by the Purchaser during the execution of the Contract.
- 1.10.2 A Performance Evaluation Report will be completed by the Purchaser at the end of the Contract or earlier if necessary, that will record the performance of the Contractor on the Contract. Such reports will be copied to the Contractor and consideration of such reports may be incorporated into the award criteria for future centralised procurement competitions for Plant Hire Services. A copy of the Performance Evaluation Reports are included in Schedule 3.
- 1.10.3 Where any Contractor fails to satisfactorily perform an Contract, the Contract may be terminated and the Purchaser shall have the right to re-tender the contract.

1.10.4 Please refer to the *Standard Terms & Conditions for Contract for Plant Hire* for full details of the contract and performance review mechanism.

SCHEDULE 2: CONTRACTING AUTHORITIES (DPS PURCHASERS)

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

SCHEDULE 3: PERFORMANCE EVALUATION REPORT (Lot 1)

Plant Hire Contract Performance Evaluation (Lot 1)		
Details of Contract		
Purchaser:		
Purchaser :		
RFT Reference No.:		
Name of Contractor:		
Supplygov I.D of Contractor		
Contractor Contact Name:		
Contractor Ranking:		
Details of Contract Awarded:		
Total Out-turn Cost (incl. VAT):	€	
Comments:		

Evaluation Completed By -	
Purchaser Name:	
Purchaser Contact No:	
Purchaser email address:	
Date of Review:	
Signature:	

Performance Evaluation of Plant Hire (Lot 1)

Performance Evaluation of Plant Hire (Lot 1)					
Rating	Excellent	Very Good	Good	Moderate	Poor
Please give one rating for each criteria. Add comments as required to justify your rating.					
Evaluation Criteria					Rating
1	Provision of the tendered items(s) of plant without undue delay				<div style="background-color: #e0ffe0; height: 20px; width: 100%;"></div>
	<i>Did the Contractor make the tendered plant item(s) available in the time frame requested?</i>				
	<i>Were any other difficulties or Delays encountered?</i>				
	Comments				
2	Quality and Operating Condition of the hired plant item(s)				<div style="background-color: #e0ffe0; height: 20px; width: 100%;"></div>
	<i>What was the overall condition of the tendered plant item(s) supplied?</i>				
	<i>Was the plant item(s) sufficiently capable of performing the required works?</i>				
	<i>Did the plant item operate without any difficulty?</i>				
	Comments				
3	Cost effectiveness and Supplier Responsiveness				<div style="background-color: #e0ffe0; height: 20px; width: 100%;"></div>
	<i>Did the plant item negatively impact on the final out-turn cost for the works? Was this final cost in line with planned budget?</i>				
	<i>Level of the Contractor's cooperation? Were all issues arising addressed in a professional and timely manner by the Contractor?</i>				
	<i>Was it necessary to issue any requests for corrective action(s)?</i>				
	Comments				
4	Compliance with the requirements of Health & Safety Legislation				<div style="background-color: #e0ffe0; height: 20px; width: 100%;"></div>
	<i>Did the item of plant item(s) comply with all relevant regulations/ legislation?</i>				
	<i>If applicable - Was the Plant item(s) fitted with a reverse alarm and check Valves?</i>				
	Comments				
5	Compliance with the Road Traffic Acts, Road Transport Acts and their associated Regulations				<div style="background-color: #e0ffe0; height: 20px; width: 100%;"></div>
	<i>As applicable to the hired plant item(s), were the following (valid and current) provided -:</i>				
	<i>Registration plate; Vehicle Registration Certificate; Certificate of Road Worthiness; Road freight licence; Road Fund Licence (Tax Disc) etc.?</i>				
	Comments				
Overall Rating					<div style="background-color: #e0ffe0; height: 20px; width: 100%;"></div>

SCHEDULE 4: PLANT HIRE CATEGORIES

Sub Category	Product	Product Item
Bulldozers	Bulldozers	Bulldozers
Cars	Cars	Cars
Cranes	Cranes	Cranes
Crushing Plants	Crushing Plants	Crushing Plant
Draglines	Draglines	Dragline
Drilling Rigs	Drilling Rigs	Drilling Rig
Dumpers	Dumpers	Articulated Dumper
Dumpers	Dumpers	Rigid Dumper
Edging Machines	Edging Machines	Edging Machine
Working Platforms/Hoists/Elevations	Working Platforms/Hoists/Elevations	Working Platforms/Hoists/Elevations
Gritters/Chip Spreaders	Gritters/Chip Spreaders	Gritter/Chip Spreader
Excavators	Long Reach Steel Tracked Excavator 360°	Greater than 5 Tonne up to 20 Tonne
Excavators	Long Reach Steel Tracked Excavator 360°	Greater than 20 Tonne
Excavators	Mini Excavator 360° with Buckets	Less than 5 Tonne
Excavators	Mini Excavator 360° with Buckets	Greater than 5 Tonne up to 20 Tonne
Excavators	Rubber Tracked Excavator 360°	Greater than 5 Tonne up to 20 Tonne
Excavators	Rubber Tracked Excavator 360°	Greater than 20 Tonne
Excavators	Rubber Wheeled Backhoe Excavator 180°	Less than 10 Tonnes
Excavators	Rubber Wheeled Excavator 360°	Greater than 5 Tonne up to 20 Tonne
Excavators	Rubber Wheeled Excavator 360°	Greater than 20 Tonne
Excavators	Steel Tracked Excavator 360°	Greater than 5 Tonne up to 20 Tonne
Excavators	Steel Tracked Excavator 360°	Greater than 20 Tonne
Landfill Compactors	Landfill Compactors	Landfill Compactors
Loading Shovels/Teleporters	All Terrain Telescopic Loadalls (Teleporters)	Rubber Tyred
Loading Shovels/Teleporters	All Terrain Telescopic Loadalls (Teleporters)	Tracked
Loading Shovels/Teleporters	Loading Shovels	Rubber Tyred
Loading Shovels/Teleporters	Loading Shovels	Tracked
Mobile Libraries	Mobile Libraries	Mobile Libraries
Tar Patching Machines/Units	Tar Patching Machines/Units	Tar Patching Machine Units
Pavers	Pavers	Paver
Pipe Jetting & Suction Machines	Pipe Jetting & Suction Machines	Pipe Jetting Machines
Pipe Jetting & Suction Machines	Pipe Jetting & Suction Machines	Pipe Jetting and Suction Machine
Pipe Line Cleaners	Pipe Line Cleaners	Pipe Line Cleaner
Pumps	Pumps	Sludge Pumps
Pumps	Pumps	Water Pumps
Pumps	Pumps	Truck-Mounted Concrete Pump
Refuse Collection Vehicles	Refuse Collection Vehicles	Refuse Collection Vehicles
Road Graders and Blade Graders	Road Graders and Blade Graders	Road Grader
Road Graders and Blade Graders	Road Graders and Blade Graders	Blade Graders
Sweepers	Sweepers	Road Sweeper
Sweepers	Sweepers	Footpath Sweeper
Rollers	Rollers	Vibrating Rollers
Rollers	Rollers	Static 3 Wheeled Rollers

Rollers	Rollers	Rubber Tyred Rollers for Surface Dressing
Rollers	Rollers	Remote Controlled Vibrating Roller
Skips	Skips	Skips
Skips	Skips for Sludge Cake Removal	Skips for Sludge Cake Removal
Vacuum Sludge Tankers	Vacuum Sludge Tankers	Rigid Trucks with Tank
Vacuum Sludge Tankers	Vacuum Sludge Tankers	Articulated Units with Semi Trailer
Tar Sprayers Binder Distributers & Combi Units	Tar Sprayers Binder Distributers & Combi Units	Tar Sprayers Binder Distributers
Tar Sprayers Binder Distributers & Combi Units	Tar Sprayers Binder Distributers & Combi Units	Combi Unit
Lorries/Trucks	Lorries/Trucks	Flat Body Rigid Lorry
Lorries/Trucks	Lorries/Trucks	Tipper Body Rigid Lorry
Lorries/Trucks	Lorries/Trucks	Tipper Body Rigid Lorry with Clam Shell Bucket
Lorries/Trucks	Lorries/Trucks	Articulated Unit
Lorries/Trucks	Lorries/Trucks	Dump Truck
Lorries/Trucks	Lorries/Trucks	Rigid Lorry for Bulk Haulage
Lorries/Trucks	Lorries/Trucks	Hook Loader Vehicle
Lorries/Trucks	Lorries/Trucks	Truck Mounted Hot Box
Tractor & Attachments	Tractor & Attachments	Tractor with Hedgecutter
Tractor & Attachments	Tractor & Attachments	Tractor only
Tractor & Attachments	Tractor & Attachments	Tractor with Bucket
Tractor & Attachments	Tractor & Attachments	Tractor With Trailer <3,500kgs
Tractor & Attachments	Tractor & Attachments	Tractor with Mowing Bar
Tractor & Attachments	Tractor & Attachments	Tractor with Cyclone Grass Cutter
Tractor & Attachments	Tractor & Attachments	Tractor with Rotavator
Tractor & Attachments	Tractor & Attachments	Tractor with Roller
Tractor & Attachments	Tractor & Attachments	Tractor with Harrow (chain)
Tractor & Attachments	Tractor & Attachments	Tractor with Brush
Tractor & Attachments	Tractor & Attachments	Tractor with Aerator
Tractor & Attachments	Tractor & Attachments	Tractor with Vacuum/Slurry Tanker
Tractor & Attachments	Tractor & Attachments	Tractor with Front Loader
Tractor & Attachments	Tractor & Attachments	Tractor with Garden Equipment
Tractor & Attachments	Tractor & Attachments	Tractor with Dump Trailer
Tractor & Attachments	Tractor & Attachments	Tractor with Hydraulic Grader
Tractor & Attachments	Tractor & Attachments	Tractor with Post Driver
Tractor & Attachments	Tractor & Attachments	Tractor with Transport Box
Tractor & Attachments	Tractor & Attachments	Tractor with Sidelining Plough
Tractor & Attachments	Tractor & Attachments	Tractor with Concrete Mixer
Tractor & Attachments	Tractor & Attachments	Tractor with Snow Plough
Tractor & Attachments	Tractor & Attachments	Tractor with Stone Cart
Tractor & Attachments	Tractor & Attachments	Tractor with Stone Rake
Tractor & Attachments	Tractor & Attachments	Tractor with Road Mulcher
Tractor & Attachments	Tractor & Attachments	Tractor with Sprayer
Tractor & Attachments	Tractor & Attachments	Tractor with Tar Trailer
Tractor & Attachments	Tractor & Attachments	Tractor with Low Loader
Tractor & Attachments	Tractor & Attachments	Tractor with Swamp Power Tracked Dumper
Tractor & Attachments	Tractor & Attachments	Tractor with Lime Spreader

Tractor & Attachments	Tractor & Attachments	Tractor with Grit Spreader
Tractor & Attachments	Tractor & Attachments	Tractor With Trailer >3,500kgs
Vans/Jeeps/Pickups	Jeeps	Jeeps
Vans/Jeeps/Pickups	Pickups	Crew Cab Pickup
Vans/Jeeps/Pickups	Pickups	Day Cab Pickup
Vans/Jeeps/Pickups	Pickups	Pickup with Box Cage
Vans/Jeeps/Pickups	Pickups	Pickup with Breadbin Body
Vans/Jeeps/Pickups	Vans	Light Commercial Vans
Vans/Jeeps/Pickups	Vans	Medium Commercial Vans
Vans/Jeeps/Pickups	Vans	Large Commercial Vans
Vans/Jeeps/Pickups	Vans	Crew Cab Van
Road Planers	Road Planers	Road Planer
Portable Canteens/Portaloos/Site Storage Containers	Portable Canteens/Portaloos/Site Storage Containers	Portable Canteens
Portable Canteens/Portaloos/Site Storage Containers	Portable Canteens/Portaloos/Site Storage Containers	Standard Portaloos
Portable Canteens/Portaloos/Site Storage Containers	Portable Canteens/Portaloos/Site Storage Containers	Site Storage Containers
Portable Canteens/Portaloos/Site Storage Containers	Portable Canteens/Portaloos/Site Storage Containers	Disabled Portaloos
Portable Canteens/Portaloos/Site Storage Containers	Portable Canteens/Portaloos/Site Storage Containers	Site Welfare Units(Combined Portaloo & Canteen)
Forklift Trucks	Forklift Trucks	Forklift Trucks
Mobile Welding Plants	Mobile Welding Plants	Mobile Welding Plant
Velocity Patcher	Velocity Patcher	Velocity Patcher
CCTV Pipe Surveying Equipment	CCTV Pipe Surveying Equipment	CCTV Pipe Surveying Equipment
Articulated Semi Trailers	Articulated Semi Trailers	Tipping Trailer
Articulated Semi Trailers	Articulated Semi Trailers	Flat Body Trailer
Articulated Semi Trailers	Articulated Semi Trailers	Vacuum Tanker Trailer
Articulated Semi Trailers	Articulated Semi Trailers	Low Loader Trailer
Articulated Semi Trailers	Articulated Semi Trailers	Curtain-sider Trailer
Water Tanker	Mobile Potable Water Tankers	Mobile Potable Water Tankers
Tree Cutting & Branch Lopping	Branch Lopping	Branch Lopping
Tree Cutting & Branch Lopping	Tree Cutting	Tree Cutting
Ride-on Lawnmower	Ride-on Lawnmower	Ride-On Lawnmower
Compressors	Compressors	Mobile Air Compressors
Compressors	Compressors	Hydraulic Compressors
Generators	Generators	Greater than 20kVA
Traffic Management	VMS Signs	Trailer Mounted VMS Sign
Traffic Management	VMS Signs	Standalone VMS Sign
Traffic Management	Traffic Management Vehicles	Lorry Mounted Crash Cushion
Traffic Management	Traffic Management Vehicles	Advance Warning Vehicle – Demount/Impact Protection Vehicle
Trench Supports	Trench Supports	Trench Boxes – non hydraulic strut support
Trench Supports	Trench Supports	Drag Boxes – non hydraulic strut support