

DATED

2017

**LOCAL GOVERNMENT OPERATIONAL
PROCUREMENT CENTRE**

and

[

]

MULTI-PARTY FRAMEWORK AGREEMENT

for

Plumbing Services for Local Authorities

Lot 1 - (EXCLUDING Gas Works and EXCLUDING Role of PSCS)

THIS FRAMEWORK AGREEMENT is made on 2017

BETWEEN

1. The Local Government Operational Procurement Centre (LGOPC) of The Reeks Gateway, Killarney, County Kerry as Central Purchasing Body (CPB) under the auspices of Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry a Local Authority of the One Part and
2. [] having its registered office at
[] (hereinafter referred to as "**the Service Provider**") of the other part.

WHEREAS:

- A. LGOPC is a central purchasing body within the meaning of Directive 2014/24/EC of the European Parliament and Council (as amended). LGOPC enters into this Framework Agreement on its own behalf and on behalf of other Framework Purchasers as listed in Schedule 3 hereto that may wish from time to time to procure Plumbing Services for Local Authorities.
- B. The Service Provider is engaged in the business of providing Plumbing Services. The Service Provider submitted the Tender Submission (as defined below) in response to LGOPC's tender competition and, following an assessment and evaluation of the Tender Submission, LGOPC wishes to appoint the Service Provider to its multi-party framework to provide Plumbing Services for Local Authorities, if instructed to do so from time to time by Framework Purchasers, subject to and in accordance with the terms and conditions of this Framework Agreement.
- C. The Service Provider has agreed to be appointed to the framework on the terms and conditions set out in this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:-

Definitions and Interpretation

In this Framework Agreement the following terms shall have the following meanings unless the context otherwise provides:

"Commencement Date" means May 2017 or the date when the Framework Agreement is signed and returned to the LGOPC

"Contract Period" means the period of duration of this Framework Agreement as set out in Clause 2;

"Delivery Date" means the date or dates stated by the Framework Purchaser in the Mini-Competition Contract as the date or dates upon which Plumbing Services are to be delivered;

"Framework Agreement" means:

- (i) these terms and conditions, including the Schedules; and
- (ii) the Tender Submission

In the event of any inconsistency or conflict between the documents identified at (i) to (ii) above, precedence shall be given to the above documents in descending order.

"Framework Service Providers" or "Service Providers" means those service providers who have been appointed to the framework;

“Framework Purchaser” means those bodies listed in Schedule 3 hereto that may wish from time to time to procure Plumbing Services from Framework Service Providers pursuant to this Framework Agreement;

“Mini-Competition Contract” means the agreement to be entered into by the Framework Purchaser and the Service Provider under and pursuant to which the Service Provider will provide Plumbing Services in accordance with the terms and conditions contained therein;

“Mini-Competition” means a tender competition between the Framework Service Providers conducted in accordance with Clause 3;

“Mini-Competition Request for Tender or Request for Tender (RFT)” means an invitation to submit a Proposal issued by the Framework Purchaser pursuant to Clause 3.

“Price” shall have the meaning given to it by Clause 5;

The “Plumbing Services” means Plumbing Services in line with the Specification attached at Schedule 1 to this Agreement and any particular requirements detailed in the Mini Competitions

“Proposal” means the proposal submitted by the Service Provider to the Framework Purchaser in response to a Mini-Competition Request for Tender (and the term “Framework Service Provider’s Proposal” shall be construed accordingly);

“Request for Applications” means the request for applications as issued by the LGOPC on **19th January, 2017** together with any clarifications issued in respect of same;

“Specification” means the General Specifications or other information relating to the Plumbing Services over the Contract Period, attached at Schedule 1 hereto;

“Tender Submission” or “Application” means the Service Provider’s application for admittance to the Framework submitted to Corporate Affairs, Kerry County Council on **24th February, 2017**.

“Ceiling/ Key Rate” means the rates tendered by the Service Provider in the Form of Tender completed at application stage. Key Rates form part of this Framework Agreement. These rates remain preserved for the initial 12 month period from the Framework Application Closing Deadline only and for any Mini Competition carried out during that period, Service Providers will not be able to charge hourly rates higher than the corresponding rates submitted in the Form of Tender.

1. Entire Agreement

- 1.1 This Framework Agreement constitutes the entire agreement between the parties and contains all the terms which the parties have agreed with respect to its subject matter and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Service Provider and any Framework Purchaser. Without prejudice to the generality of the foregoing, the Framework Agreement shall apply to the exclusion of any terms and conditions which the Service Provider may purport to apply at any time, whether contained in any acknowledgement of a purchase order or otherwise.
- 1.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
- 1.3 The Service Provider acknowledges that it has not been induced to enter into this Framework Agreement by a statement or promise which this Framework Agreement does not contain. The LGOPC is not liable in equity, contract or tort or in any other way for a representation that is not set out in this Framework Agreement.

2. Scope of Appointment and Framework Period

- 2.1 In consideration for payment by the LGOPC of the sum of €1 and for other good and valuable consideration to the Service Provider (receipt of which is hereby acknowledged by the Service Provider) and subject to the terms and conditions set out in this Framework Agreement, the LGOPC hereby appoints the Service Provider on a non-exclusive basis to provide Plumbing Services if instructed to do so from time to time pursuant to Clause 3, and the Service Provider hereby accepts such appointment, in each case upon the terms and subject to the conditions of this Framework Agreement.
- 2.2 The appointment of the Service Provider to the framework does not constitute a commitment or guarantee by any of the Framework Purchasers to procure Plumbing Services from the Service Provider and does not confer any exclusivity on the Service Provider. The Framework Purchasers may procure Plumbing Services in other ways outside of the framework from any provider or from other national/regional/local frameworks/tenders in place.
- 2.3 The Framework Agreement shall take effect on the Commencement Date and shall continue in full force and effect for a period of up to twenty four (24) months from and including the Commencement Date (the "Contract Period"), unless it is otherwise terminated in accordance with the provisions of this Framework Agreement or otherwise lawfully extended in line with the provisions of the Instructions Document as defined in the Request for Applications. For the avoidance of any doubt, the term of a Mini-Competition Contract may last longer than the Contract Period. Notwithstanding the expiry of the Contract Period, a Mini-Competition Contract that is not completed prior to the end of the Contract Period shall be governed by this Framework Agreement.

3. Mini-Competition Contracts

- 3.1 Where a Framework Purchaser wishes to acquire Plumbing Services pursuant to the Framework Agreement, it will do so by means of a Mini-Competition. The Framework Purchaser shall issue a Mini-Competition Request for Tender to all Framework Service Providers capable of performing the contract via the Supplygov system, inviting each to submit a Proposal.
- 3.2 The Service Provider shall comply with any procedures, processes, time limits, instructions or other requirements issued by the Framework Purchaser in relation to the Mini-Competition and shall bear any and all costs associated therewith.
- 3.3 If the Service Provider is awarded a Mini-Competition Contract during the initial 12 month period from the Framework Application Closing Deadline it shall provide the Plumbing Services at the Key Rates or such lower rates tendered pursuant to a Mini-Competition Request for Tender. For the avoidance of

doubt, in the Proposals submitted in response to a Mini-Competition Request for Tender the Key Rates are the maximum hourly rates that can be charged.

- 3.4 Proposals received in response to a Mini-Competition Request for Tender will be evaluated on the basis of the most economically advantageous tender, identified on the basis of Price only.
- 3.5 The Framework Purchaser shall not be bound to accept the lowest priced or any proposal submitted in response to a Mini-Competition Request for Tender.
- 3.6 Pursuant to the Mini-Competition a Framework Purchaser may:
 - a) Award a Mini-Competition Contract to one Service Provider (the highest ranked Service Provider); or
 - b) Award a Mini-Competition Contract to two or more Service Providers in accordance with the Mini-Competition Request for Tender.
- 3.7 If following a Mini-Competition, a Framework Purchaser selects the Service Provider to provide the Plumbing Services, the Framework Purchaser may raise a purchase order and issue it directly by email to the Service Provider.
- 3.8 By signing and returning or otherwise acknowledging a Mini-Competition Contract, the Service Provider acknowledges and agrees that it shall have entered into a legally binding contract with the Framework Purchaser to provide the Plumbing Services referred to in the relevant Mini-Competition Contract to the Framework Purchaser. In any circumstance where the Service Provider does not formally accept a Mini-Competition Contract delivery of the Plumbing Services by the Service Provider pursuant to an instruction issued by the Framework Purchaser shall be deemed conclusive evidence of the acceptance of a Mini-Competition Contract and the terms and conditions of the Mini-Competition Contract thereby constituted.
- 3.9 Each Framework Purchaser shall be responsible for awarding Mini-Competition Contracts in accordance with the Mini-Competition procedure set out in this Framework Agreement and LGOPC shall not have any responsibility or liability whatsoever or howsoever arising from the award of any Mini-Competition Contract or the outcome of a Mini-Competition.
- 3.10 A sample Mini-Competition Contract is set out at Schedule 4. At Mini-Competition stage a Contracting Authority will indicate whether the sample Mini-Competition Contract or other form of contract will apply.
- 3.11 The Service Provider shall perform all Mini-Competition Contracts in accordance with the requirements of this Framework Agreement, the terms and conditions of the respective Mini-Competition Contracts and in accordance with Irish law.
- 3.12 Default by a Framework Purchaser or Service Provider in relation to any one Mini Competition Contract shall not entitle the other to treat such as a breach of the entire Framework Agreement and/or terminate this Framework Agreement.

4. The Service Provider's Obligations

- 4.1 The Service Provider shall provide the Plumbing Services meeting the Specification to the Framework Purchaser and shall ensure that its staff shall provide the Plumbing Services to the Framework Purchaser:
 - 4.1.1 in accordance with the terms of the Framework Agreement, including, for the avoidance of doubt the Tender Submission, the Proposal and the Mini-Competition Contract;
 - 4.1.2 diligently, conscientiously and in a professional manner and with all due care and skill;
 - 4.1.3 in compliance with all reasonable instructions of the Framework Purchaser in relation to the provision of the Plumbing Services;

- 4.1.4 in adherence with best industry standards as regards quality control and assurance
- 4.1.5 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;
- 4.1.6 in absolute co-operation with the Framework Purchaser;
- 4.1.7 maintaining the minimum quality level in relation to Plumbing Services as set out in the Specification appended at Schedule 1.
- 4.2 The Service Provider shall employ sufficient staff to provide the provision of the Plumbing Services that shall be properly trained, skilled and qualified.
- 4.3 The Service Provider shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to sick pay and pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act.
- 4.4 Failure by the Service Provider to meet its obligations under this Clause shall be considered a material breach of the Framework Agreement.

5. Price

- 5.1 Subject to 3.3 above the Price shall be as set out in the Mini-Competition Contract.
- 5.2 The Service Provider shall provide the Plumbing Services at the Price(s) tendered in the Proposal submitted pursuant to a Mini-Competition or pursuant to an instruction issued by the Framework Purchaser.
- 5.3 Unless otherwise stated, the Price shall be:
 - 5.3.1 exclusive of any applicable Value Added Tax (which shall be payable by the Framework Purchaser subject to receipt of a VAT invoice in accordance with the Mini-Competition Contract);
 - 5.3.2 payable in euro (€); and
 - 5.3.3 inclusive of any costs and/or expenses incurred by the Service Provider in the provision of the Plumbing Services and the Service Provider shall not seek to recover such costs and/or expenses from the Framework Purchaser.
- 5.4 As provided under clause 3.3, during the initial 12 month period from the Framework Application Closing Deadline the hourly rates in the Price must not exceed the Key Rates tendered by the Service Provider in its Tender Submission. The Key Rates are the maximum hourly rates that can be charged.

6. Terms of Payment

- 6.1 The Service Provider shall send an invoice to the Framework Purchaser on completion of the Plumbing Services or at such other time(s) as set out in the Mini-Competition Contract. Each invoice must include -:
 - 6.1.1 The Service Provider's name and address;
 - 6.1.2 The Service Provider's VAT Registration Number;
 - 6.1.3 Invoice number and date;
 - 6.1.4 The Framework Purchaser's purchase order number;
 - 6.1.5 The RFT number from the Supplygov system where the Mini-Competition Request for Tender is published;

- 6.1.6 The details of the Service(s) and the Price (less any retention amount).
- 6.1.7 Where materials are provided, information on the Product type, origin and quantity. A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance is required. The CE marking statement must reference the point of delivery of the product and distribution process as appropriate.
- 6.2 Subject to the Framework Purchaser being satisfied as to the due performance of the Mini-Competition Contract in line with clause 8, the Service Provider shall be paid the Price established through the Mini-Competition as set out in the purchase order and in the Mini-Competition Contract.
- 6.3 Each Framework Purchaser may retain or set off against the Price any amount owed to that Framework Purchaser by the Service Provider on any account whatsoever.
- 6.4 Discharge of any invoice shall be subject to the Framework Purchaser being in possession of the Service Provider's current tax clearance certificate. The Service Provider shall not be entitled to payment for and the Framework Purchaser shall not be obliged to pay any interest or penalties incurred as a result of late payment caused by the Service Provider's failure to provide a current tax clearance certificate in a timely manner.

7. Confidentiality

- 7.1 During the Contract Period and at any time after the termination or expiry of this Framework Agreement (for any reason) each of the Parties to this Framework Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained (whether in writing, orally or by another means and whether directly or indirectly) arising from their participation in this Framework Agreement ("Confidential Information") and shall not disclose same to any third party except -:
 - 7.1.1 to its professional advisors subject to the provisions of this clause 7; or
 - 7.1.2 as may be required by law; or
 - 7.1.3 as may be necessary to give effect to the terms of this Framework Agreement subject to the provisions of this clause 7; or
 - 7.1.4 in the case of the Framework Purchaser by request of any person or body or authority whose request the Framework Purchaser or persons associated with the Framework Purchaser (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- 7.2 The Service Provider undertakes that it will properly instruct its staff on the absolute need to maintain privacy and confidentiality of all matters affecting the business of the Framework Purchaser or any persons doing business with the Framework Purchasers or in any way arising from documents or records of any kind which may come under the hand of the Service Provider or its staff while engaged by a Framework Purchaser.
- 7.3 The Service Provider undertakes to comply with all reasonable directions of the Framework Purchaser with regard to the use and application of all and any Confidential Information. The Service Provider acknowledges that the security of the Local Authorities and the State and its information is of paramount importance to the Framework Purchaser. Accordingly the Service Provider confirms that it will from time to time, during the currency of this Framework Agreement as may be requested by the Framework Purchaser submit full personal details (including those of subcontractors) of persons who are assigned to provide the Plumbing Services under this Framework Agreement. The Service Provider further acknowledges that checks may be carried out in relation to all such personnel by authorities and the Service Provider shall comply with all reasonable directions of the Framework Purchaser arising therefrom.

8. Contract Performance Review

- 8.1 The Framework Purchasers may review the Service Provider’s performance at the conclusion of a contract or from time to time during the Contract Period or the term of the Mini-Competition Contract according to the below Performance Measurement Table.
- 8.2 On completion of a Mini-Competition Contract, if so requested by the Framework Purchaser, the Service Provider shall collate and provide to the Framework Purchaser the information required for the Framework Purchaser to review that Service Provider’s performance according to the Performance Measurement Table below. The Framework Purchaser will complete a Performance Evaluation Form in the manner described in section 1.11 of the General Specification included as Schedule 1 hereto and shall also record performance against the Performance Measurement Table below.
- 8.3 The Service Provider 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”.
- 8.4 If the Service Provider has reached Level 1, the Framework Purchaser will give that Service Provider a written notification and the Service Provider must demonstrate to the Framework Purchaser’s satisfaction that it has implemented steps to redress the problem.
- 8.5 If the Service Provider has reached Level 2, the Framework Purchaser will exclude that Service Provider from each Mini-Competition in which it is due to participate until the Service Provider has demonstrated to the Framework Purchaser’s satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, Mini-Competitions may be run without prejudice as if the Service Provider was excluded and the Framework Agreement had been terminated with the Service Provider.
- 8.6 Only the LGOPC has authority to terminate a Service Provider from this Framework Agreement. The Framework Purchaser may notify the LGOPC if a Service Provider has reached Level 3 and the LGOPC may terminate the Framework Agreement as between the LGOPC and that Service Provider pursuant to clause 9 below.

Performance Measurement Table

Employers Objective	Indicator	Measurement Period	Level 1 (Rule 8.4)	Level 2 (Rule 8.5)	Level 3 (Rule 8.6)
Health and Safety					
Management of Safety	Failure to maintain safety measures as set out in the Safety and Health Plan and/or Service Provider’s Safety Documentation	Contract/Term	N/A	2	3
	Requirement for immediate cessation of services delivery 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/Term	N/A	1	2
	Requirement for immediate cessation of services delivery on foot of failure to comply with reasonable Direction(s) issued by the PSCS or Framework Purchaser’s Representative or HSA	Contract/Term	N/A	1	2
Performance					
General	Failure of the Service Provider to proceed regularly and diligently with the execution of the works	Contract/Term	N/A	2	3
	Failure of the Service Provider to comply with its obligations under the Contract, and if applicable, failure to put matters right following issuance of direction by	Contract/Term	2	3	5

	the Purchaser				
Service Delivery	Failure to commence works by the nominated start date identified in the RFT	Contract/Term	2	1	2
	With respect to Response Maintenance/Emergency Works, failure to commence works within the nominated response time identified in the RFT	Contract/Term	2	1	2
Personnel	Requirement for immediate removal of Service Provider’s personnel on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Service Provider’s obligations under the Contract	Contract/Term	N/A	1	2
Legal Requirements	Requirement for immediate cessation of services delivery on foot of committing or causing the Purchaser to commit a serious breach of Legal or Statutory requirements concerning the project	Contract/Term	N/A	1	2
Quality of Work					
Workmanship during hire	Failure of the Service Provider to execute the required services 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

8.7 The Service Provider shall implement such recommendations and comply with any Framework Purchaser’s findings to the extent necessary to ensure that the Service Provider continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.

8.8 In addition to the performance review as may be conducted by the Framework Purchasers pursuant to Clause 8.1 above, the performance of the Service Provider under this Framework Agreement may be subject to review on an annual basis by the LGOPC, at its discretion. Annual evaluation meetings may be held during the term of this Framework Agreement. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for the Framework Purchaser, LGOPC and the Service Provider to review performance and other key issues in connection with the Framework Agreement. The LGOPC, the Framework Purchasers and the Service Provider shall be committed to continuously improving the Service Provider/Framework Purchaser relationship.

8.9 The Service Provider shall implement such recommendations and comply with the LGOPC’s findings to the extent necessary to ensure that the Service Provider continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.

8.10 The Service Provider 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 this Framework Agreement and shall allow the LGOPC and/or each Framework Purchaser and any auditors of or other advisers to the LGOPC and/or a Framework Purchaser to access at any time and from time to time any of the Service Provider’s premises, personnel and such records and documents for the purposes of -:

8.10.1 fulfilling any legally enforceable request by any court, tribunal or regulatory body; or

8.10.2 undertaking verifications of the accuracy of the Price or identifying suspected fraud; or

8.10.3 undertaking verifications that the Plumbing Services are being (and has been) provided in accordance with this Framework Agreement.

8.11 Conduct of Audits:

8.11.1 The requirement for audits is not applicable to this Framework Agreement

9. Termination

- 9.1 Without prejudice to any other rights or remedies to which it may be entitled, the LGOPC shall be entitled at any time to terminate this Framework Agreement without liability to the Service Provider by giving written notice to the Service Provider to take effect immediately or on the date specified in the said notice if -:
- 9.1.1 the Service Provider commits a material breach of any term or condition of this Framework Agreement or the relevant Mini-Competition Contract or fails to perform any obligation or responsibility hereunder, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Framework Purchaser or the LGOPC requiring the Service Provider to do so;
 - 9.1.2 the Service Provider provides Plumbing Services which do not meet the requirements of this Framework Agreement, the Specification and/or a Mini-Competition Contract including the Delivery Date;
 - 9.1.3 the Service Provider contravenes any of Clause 4;
 - 9.1.4 the Service Provider contravenes Clause 7;
 - 9.1.5 the Service Provider reached Level 3 under the Performance Measurement Table as described in Clause 8;
 - 9.1.6 the Service Provider becomes bankrupt, or convenes a meeting for the purposes of, proposes to make 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 Service Provider, 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 LGOPC), or if a receiver or examiner is appointed over any of its assets, or if the Service Provider is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014 or the Service Provider takes or suffers any analogous action under any other applicable law;
 - 9.1.7 the LGOPC reasonably believes that any of the events mentioned in the clause above or any analogous event is about to occur in relation to the Service Provider in any jurisdiction and notifies the Service Provider accordingly;
 - 9.1.8 the Service Provider ceases or threatens to cease to carry on business;
 - 9.1.9 the Service Provider is struck off the register of companies;
 - 9.1.10 any representation or warranty made by the Service Provider in connection with this Framework Agreement or a Mini-Competition Contract shall in the opinion of the LGOPC prove to be untrue or incorrect in a material respect as of the date when made;
 - 9.1.11 the Service Provider has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Framework Agreement or a Mini-Competition Contract; or
 - 9.1.12 the LGOPC has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Service Provider or any agent or representative of the Service Provider, to any employee of the LGOPC or the Framework Purchaser with a view towards securing any agreement for the provision of the Plumbing Services or any other contract. Paying the expenses of normal business meals shall not be prohibited by this provision;
 - 9.1.13 the LGOPC suspects that the Service Provider 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 Act 2002 – 2014 in which case the Service Provider may be reported by the LGOPC or the Framework Purchaser to the Competition Authority of Ireland;

- 9.1.14 there is a direct or indirect change of control of the Service Provider to which the LGOPC reasonably objects; or
 - 9.1.15 without cause, the LGOPC also terminates its agreements with the other Framework Service Providers.
- 9.2 Should conditions arise which, in the opinion of the LGOPC in its absolute discretion, necessitate the termination of this Framework Agreement and/or a Mini-Competition Contract, the LGOPC may terminate the Framework Agreement and/or a Mini-Competition Contract upon written notice to the Service Provider.
 - 9.3 Should conditions arise which, in the opinion of a Framework Purchaser in its absolute discretion, necessitate the termination of a Mini-Competition Contract, the Framework Purchaser may terminate the Mini-Competition Contract upon written notice to the Service Provider. Such termination shall take effect on the date specified in the said notice and shall be without prejudice to any claims which either party may have against the other party under this Framework Agreement and/or a Mini-Competition Contract.
 - 9.4 Neither the LGOPC nor any Framework Purchaser shall be liable to the Service Provider 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 Service Provider arising out of or in connection with this Framework Agreement or any Mini-Competition Contract.
 - 9.5 In the event of the Framework Agreement being terminated by the LGOPC on any of the grounds listed above during a Mini-Competition Contract, the Service Provider shall be liable for any loss incurred by the LGOPC or the relevant Framework Purchaser as a result of such termination including the cost of finding an alternative Service Provider to carry out the Service Provider’s uncompleted Plumbing Works.
 - 9.6 Termination of this Framework Agreement or any Mini-Competition Contract pursuant to the above clauses shall not relieve or discharge either party from any obligations which have accrued prior to such termination. Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Mini-Competition Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Mini-Competition Contracts to terminate automatically. For the avoidance of doubt, all Mini-Competition Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.

10. Assignment, Transfer and Sub-Contracting

10.1 The Service Provider shall not:

- 10.1.1 sub-contract, assign or transfer (whether voluntarily or involuntarily, by operation of law or otherwise) this Framework Agreement or any part thereof or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under this Framework Agreement; or
- 10.1.2 purport to transfer, sub-contract or delegate any of its obligations under this Framework Agreement

to any third party without the prior written consent of the relevant Framework Purchaser or LGOPC. Save as expressly permitted by clause 10.2 any purported sub-contracting, assignment or transfer in breach of this clause 10.1 shall be void.

- 10.2 In the event of consent to sub-contract being given, the Service Provider shall ensure that the sub-contractor is a reasonable and prudent service provider and that the sub-contractor shall carry out its obligations in accordance with the terms of this Framework Agreement. Notwithstanding the foregoing, the Service Provider acknowledges that it remains fully liable and responsible for the provision of the Plumbing Services and the acts and omissions of the sub-contractor as if they were its own.
- 10.3 The Service Provider shall also maintain during the term of this Framework Agreement and for 6 years thereafter records and documentation relating to the sub-contractor and the Plumbing Services provided by it and shall make same available to the LGOPC upon request.
- 10.4 This Framework Agreement shall be binding upon successors and assigns of each Framework Purchaser and the Service Provider and the name of a party appearing in this Framework Agreement 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.
- 10.5 The Service Provider shall notify the LGOPC in writing immediately upon the occurrence of a direct or indirect change of control of the Service Provider.

11 Waiver

Failure or neglect by any Framework Purchaser to enforce at any time any provision of this Framework Agreement or any Mini-Competition Contract shall not be construed or deemed to be a waiver of that Framework Purchaser's rights hereunder, nor in any way affect the validity of the whole or any part of this Framework Agreement, nor prejudice the Framework Purchaser's rights to take subsequent action.

12 Force Majeure

- 12.1 No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure, as defined in clause 12.2. Unless otherwise instructed by Framework Purchasers, the Service Provider shall recommence performance as soon as possible after the Force Majeure has ceased.
- 12.2 Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: - acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity; local or national emergency, sabotage or riots; floods, unusually severe weather conditions which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Service Provider's workforce.
- 12.3 If any delay or failure in performance, as set out above, persists for 14 days or more, Framework Purchasers shall have the right to terminate the relevant Mini-Competition Contract by giving 7 days' notice in writing to the Service Provider.

13 Conflicts Registrable Interests and Corrupt Gifts

- 13.1 The Service Provider confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the provision of Plumbing Services and its obligations undertaken under this Framework Agreement. The Service Provider hereby undertakes to advise the Framework Purchaser forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Framework Agreement and to comply with the Framework Purchaser's directions in respect thereof. Any registrable interest involving the Service Provider (and any subcontractor or agent as the case may be) and the Framework Purchaser, or their relatives must be fully disclosed to the Framework Purchaser immediately upon such information becoming known to the Service Provider

and to comply with the Framework Purchaser's directions in respect thereof, to the satisfaction of the Framework Purchaser.

- 13.2 The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995. The Service Provider shall not offer or agree to give any public servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 10 or the commission of any offence by the Service Provider, any sub-contractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Framework Purchaser to terminate this Framework Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Service Provider of the amount or value of any such gift, consideration or commission.

14 Delivery of Plumbing Services

- 14.1 The Service Provider shall provide the Plumbing Services on or before the Delivery Date, unless otherwise agreed to in writing by the Framework Purchaser in accordance with the Framework Purchaser's requirements.
- 14.2 If a Delivery Date cannot be met by the Service Provider, the Service Provider shall promptly notify the Framework Purchaser. Notwithstanding such notice, unless a substitute delivery date for the Plumbing Services has been expressly agreed by the Framework Purchaser in writing, the Service Provider's failure to effect the provision of the Plumbing Services on the Delivery Date shall entitle the Framework Purchaser, without prejudice to any other remedy it may have, to terminate the Mini-Competition Contract.
- 14.3 The Framework Purchaser shall not be deemed to have taken delivery of the Product until a delivery note has been signed by a duly authorised representative of the Framework Purchaser. For the avoidance of doubt, the taking of delivery of the Product shall not infer that the Framework Purchaser has satisfied itself as to the quality and conformance to Specification of the Product.

15 Insurance

- 15.1 The Service Provider shall maintain in force during the term of this Agreement full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Service Provider in connection with the provision of the Plumbing Services in accordance with the requirements in the Specification and any Mini-Competition Contract including but not limited to:
- 15.1.1 Employers liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to each Framework Purchaser as principal.
- 15.1.2 Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to each Framework Purchaser as principal.
- 15.1.3 Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to each Framework Purchaser as principal.
- 15.2 The Service Provider shall ensure that its insurance policies are taken out with reputable insurers acceptable to the LGOPC within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Framework Purchasers.
- 15.3 The Service Provider shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Service Provider is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Service Provider shall notify the LGOPC without delay.

- 15.4 It shall be the Service Provider’s responsibility to ensure that any agent or sub-contractor of the Service Provider effects and maintains all insurance required by law and all such other insurance as are necessary for the provision of the Plumbing Services. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Service Provider.
- 15.5 The Service Provider shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

16 Risk and Title

Omitted.

17 Miscellaneous Provisions

- 17.1 Any amendments to the terms of this Framework Agreement shall be signed by the Parties to this Framework Agreement and endorsed on this Framework Agreement.
- 17.2 If any provision of this Framework Agreement is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of this Framework Agreement and the remainder of the provision in question shall not be affected thereby.
- 17.3 It is acknowledged by all parties that the Service Provider will at all times be an independent contractor, and nothing in this Framework Agreement will be construed (and the Service Provider will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between any Framework Purchaser and the Service Provider.
- 17.4 This Framework Agreement and any contractual obligations or disputes arising out of or in connection with this Framework Agreement shall be governed and construed in accordance with the laws of Ireland. The Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Framework Agreement.
- 17.5 This Framework Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

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

Signed on behalf of LGOPC by:

_____ *A duly authorised representative*

_____ *Date*

Signed on behalf of the Service Provider by:

_____ *A duly authorised representative*

_____ *Date*

SCHEDULE 1: GENERAL SPECIFICATION

1.1 Specifications and Guidelines

- 1.1.1 This specification is compiled for the purposes of establishing a Multiparty Framework Agreement for Plumbing Services for Local Authorities. The technical requirements set out in this General specification are non-specific and apply to all Lots unless stated otherwise.
- 1.1.2 The technical requirements set out in this General Specification are non-specific. All works will be undertaken in compliance with the technical standards as detailed and any further technical requirements as set out in Mini Competitions.
- 1.1.3 **NOTE:** the terms and conditions in this Specification and in the Framework Agreement shall apply, to the exclusion of any terms and conditions which the Service Provider may purport to apply at any time, whether contained in any invoice, delivery docket or other document produced by or furnished to the Contracting Authorities by the Service Provider, its agents or employers.

1.2 Works, Supplies and/or Services

- 1.2.1 Plumbers install, upgrade, maintain and repair the plumbing system and fittings within Local Authority owned properties.
- 1.2.2 Maintenance and repair work includes routine servicing and emergency repairs, which involves finding faults, replacing or repairing damaged parts, carrying out tests and ensuring that the system works properly.
- 1.2.3 The framework will consist of 4 Lots as follows:
- **Lot 1 - Plumbing Services (EXCLUDING Gas Works and EXCLUDING Role of PSCS)**

This will involve Planned and Unplanned/Emergency/Out-of-Hours plumbing works such as;

 - Servicing and Maintenance of water, sanitary, drainage & rain-water systems and Oil/Solid Fuel burning devices and associated systems in domestic applications.
 - Installation, replacement and/or repair of domestic plumbing applications.
 - Inspection and/or testing of domestic plumbing applications.
 - Commissioning and/or provision of appropriate certification of domestic plumbing applications
 - **Lot 2 - Plumbing Services (EXCLUDING Gas Works but INCLUDING Role of PSCS)**

This will involve Planned and Unplanned/Emergency/Out-of-Hours plumbing works such as;

 - Servicing and Maintenance of water, sanitary, drainage & rain-water systems and Oil/Solid Fuel burning devices and associated systems in domestic applications.
 - Installation, replacement and/or repair of domestic plumbing applications.
 - Inspection and/or testing of domestic plumbing applications.
 - Commissioning and/or provision of appropriate certification of domestic plumbing applications
 - Provision of Service as Project Supervisor for the Construction Stage (PSCS)
 - **Lot 3 – Plumbing Services (INCLUDING Gas Works but EXCLUDING Role of PSCS)**

This will involve Planned and Unplanned/Emergency/Out-of-Hours plumbing works such as

 - Servicing and Maintenance of Gas burning devices and associated systems in domestic applications.
 - Installation, replacement and/or repair of Gas burning devices and associated systems.
 - Inspection and/or testing of Gas burning devices and associated systems.

- Commissioning and/or provision of appropriate certification of Gas burning devices and associated systems.
 - **Lot 4 - Plumbing Services (INCLUDING Gas Works and INCLUDING Role of PSCS)**
This will involve Planned and Unplanned/Emergency/Out-of-Hours plumbing works such as;
 - Servicing and Maintenance of Gas burning devices and associated systems in domestic applications.
 - Installation, replacement and/or repair of Gas burning devices and associated systems.
 - Inspection and/or testing of Gas burning devices and associated systems.
 - Commissioning and/or provision of appropriate certification of Gas burning devices and associated systems.
 - Provision of Service as Project Supervisor for the Construction Stage (PSCS)
- 1.2.4 Service Providers must nominate the areas within which they want to be considered for the provision of the Services – refer to the Nomination Schedule/ Contracting Authorities (Purchasers) attached to Form of Tender & Pricing Schedule.

1.3 Technical Standards of Materials and Workmanship

- 1.3.1 Service Providers will have to have an appropriate qualification and adequate relevant experience with regard to the particular Lot to which they have confirmed an interest.
- 1.3.2 It is the absolute responsibility of the Service Provider to be able to unambiguously demonstrate:-
- (i) that a proper standard of workmanship has been executed, and
 - (ii) that the persons who have undertaken the Plumbing Services are competent, possessing sufficient training, experience and knowledge appropriate to the nature of the work that has been performed and having particular regard to the size and complexity of such works.
- 1.3.3 Plumbing installations shall be carried out in accordance with all relevant technical standards.
- 1.3.4 Service Providers will be fully liable for all material(s)/product(s) supplied and placed by them through the course of any Mini-Competition Contract. All works must comply with the requirements of the Building Regulations (1997 – 2016).
- 1.3.5 All Material(s)/Product(s) supplied shall comply with the Technical Specifications set out in this section and shall comply with the requirements of the following:-
- Must meet the specification(s) set out by the Contracting Authorities as outlined in the Mini Competition
 - Various tests and CE certification may be required and will be communicated at Mini Competition stage
- 1.3.6 Proof of compliance with Work Requirements set out during a Request for Tender may be sought at any time during the contract. When requested, Service Providers shall confirm -:
- that all construction products associated with harmonised Standards will be CE marked and have a Declaration of Performance
 - that the Service Provider by submitting a Declaration of Performance (even if prepared by others) is assuming full legal responsibility for the conformity of the construction product with its declared performance
 - that together with the technical specification, the Declaration of Performance will give all the information needed to judge whether the product(s) meets the essential characteristics in accordance with the applicable harmonised technical specifications
 - that the CE mark shall be followed by the two last digits of the year in which it was first affixed, the name and the registered address of the manufacturer, or the identifying mark

allowing identification of the name and address of the manufacturer easily and without any ambiguity

- That certification of an organisation’s factory production control system by a notified body will be available if so required under the regulation and requested

1.3.7 The proposed Plumbing Services include but are not limited to those as described in this specification.

1.3.8 Any gas appliance under 70 KW rating is considered as a domestic appliance. Current legislation covers ‘gas works’ in any domestic premises on either Natural Gas or LPG Systems. All ‘gas works’ must be carried out to conform with Irish Standard I.S. 813 and, where relevant, a Declaration of Conformance must be issued and signed by the registered gas installer after each job is completed.

- Annex C of is I.S. 813 regulates requirements when a gas appliance is being **serviced** as part of an ongoing maintenance programme.
- Annex E of I.S.813 regulates requirements when a gas installation **safety check** is being carried out.

1.3.9 Any electrical control work which requires access to the gas appliance by means of a tool is only permitted to be carried out by a registered gas installer.

1.3.10 The Irish Standard for gas works carried out in caravans, Leisure Activity Vehicles or mobile Homes is IS EN 1949.

1.3.11 All works will be undertaken in compliance with the technical standards set out in this Schedule and any further technical requirements as set out in the Request for Tender.

1.4 Technicians or Technical Bodies responsible for Quality Control

1.4.1 When requested, the Contractor shall provide evidence of adequate skill, training, experience and resources available to carry out the duties of Contractor and PSCS in compliance with Safety Health and Welfare at Work Act 2005 and the Safety Health and Welfare at Work (Construction) Regulations 2013. This includes providing the names of any group, body or organisation that the Applicant’s company is a member of and which promotes and has an involvement in Health and Safety matters.

1.4.2 The Service Provider may call on the RGII or any other competent person or entity in relation to quality control/certification for their work in the Republic of Ireland.

1.5 Insurances

1.5.1 Applicants entering into the Framework Agreement will be required to get their insurance brokers/company to complete the insurance questionnaires online at www.Supplygov.ie prior to award of a contract at Mini-Competition stage.

1.5.2 The following insurances are required if awarded a Mini-Competition Contract.

1.5.3 Public/Product 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 €6,500 for property only with no excess for death, injury or illness.

The policy shall include an indemnity to principals clause.

The successful Service Provider will be required to include the Contracting Authority as joint insured and may be required to include a non-vitiation clause.

The Service Provider will also be required to extend a public liability policy to include for products liability insurance to indemnify the Contracting Authority in relation to defective products supplied whether manufactured, altered or just sold by the Service Provider.

Public Liability Insurance must specifically be extended to include all motor vehicles to which the Road Traffic Acts does not apply (such as rollers, pavers, off site vehicles, etc.), alternatively such vehicles should be scheduled (by Reg or VIN) in the motor policy.

1.5.4 Employer's Liability Insurance

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

The Employers Liability Insurance will meet the following requirements :

- Cover must apply to the employees of the Service Provider engaged on the Mini-Competition Contract
- The liability for death or injury to employees must be covered on an unlimited basis
- The cover must indemnify the Contracting Authority as principal and may be required to include a non-vitiation clause
- Cover must be extended to cover the Service Provider in respect of liability assumed by him under the Mini-Competition Contract, e.g. the description of the insurer's business must be unambiguous

1.5.5 Insurances must also cover the Contractor's role as Project Supervisor for the Construction Stage (PSCS) if advised of the need for appointments in a Mini Competition.

1.5.6 The Service Provider shall be liable for and shall indemnify the Contracting Authority for and in respect of all and any losses, claims, demands, damages or expenses which a Contracting Authority 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 Service Provider, its employees, sub-contractors or agents or any of them.

1.5.7 Service Providers do not need to have the insurances outlined above in place at the time of submitting an Application but will be required to put those insurances in place should they be successful in a Mini Competition. The Contracting Authority will not be responsible for any cost incurred by Service Providers in putting in place the required insurances.

1.5.8 Insurance of Subcontractors

Service Providers who are successful in being invited to participate in the Framework Agreement must confirm that their insurance will cover the acts and omissions (including negligence) of any subcontractor employed by them in connection with any Mini-Competition Contract awarded under the Framework Agreement. Subcontractors cannot be employed by the Service Provider to carry out activities that are specifically excluded from the Service Provider insurance policies.

1.5.9 Exclusions:

If Service Providers are successful in being invited to participate in the Framework and have specific exclusions noted in their insurance policies which restrict or prohibit their ability to carry out certain works of any contract (working at heights etc.) under the Framework Agreement, the Service Provider at the time of Mini-Competition 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 Service Provider's insurance policy.

or

- Have the specialist subcontractor included with the Framework Service Provider as a full joint insured on the subcontractor’s insurance policy and have the Framework Purchaser joint insured on the subcontractor’s insurance policy. Service Provider should note that the Contracting Authority will not be responsible for any cost incurred by the Service Provider in complying with the insurance requirements outlined above.

- 1.5.10 No Framework Service Provider shall be awarded a contract unless satisfactory evidence of insurance is submitted prior to contract award by the insurance broker/company. Where the insurance policy in question lapses prior to the end of the period of the Framework it shall be the responsibility of the Service Provider to ensure that said policy is renewed and to ensure that the insurance details are updated on www.SupplyGov.ie as noted above.
- 1.5.11 The onus is on the Service Provider to advise the LGOPC and/or the Contracting Authority when their insurance has lapsed or has been cancelled. All Service Providers must notify the LGOPC and the Contracting Authority of alterations, cancellations and confirm renewal of policies. Any failure to do so may result in immediate barring of the Service Provider for the duration of the Framework.
- 1.5.12 Insurances must also cover the Service Provider/subcontractor/3rd party consultant’s role as Project Supervisor for the Construction Stage (PSCS) if this service is provided.

1.6 Payment, Tax Clearance, etc.

- 1.6.1 The Service Provider will be required to produce a current Tax Clearance Certification from the Revenue Commissioners and comply with the new RCT systems that were introduced on the 1st of January 2012. For further details on this system please logon to www.revenue.ie
- 1.6.2 Payment will be made at the rates agreed in the Mini-Competition.
- 1.6.3 The Service Providers invoice shall show the following information:
- The Service Provider’s name and address
 - The Service Provider’s VAT Registration Number
 - Invoice number and date
 - The Contracting Authorities’ Order number
 - The RFT (Request For Tender) reference number from the www.SupplyGov.ie system
 - Details of Services completed and Price
 - Where materials are provided, information on the Product type, origin and quantity. A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance is required. The CE marking statement must reference the point of delivery of the product and distribution process as appropriate
- 1.6.4 Payment: A number of the Contracting Authorities only pay via EFT (Electronic Fund Transfer) and the remittance is sent to the Service Provider via email.
- 1.6.5 The Service Provider or his/her agent will take their instructions from the Contracting Authority, or authorised employees.
- 1.6.6 Where Contracting Authorities request clarification or further information on any matters relating to the tender or supporting documentation, such information shall be submitted no later than the date specified in the request.
- 1.6.7 Service Provider and their employees are expected to adhere to acceptable standards of behavior, i.e. standards expected of Contracting Authority staff.

1.7 Health & Safety – Safety Statement

- 1.7.1 When requested, prior to the appointment to the Framework Agreement, successful Applicants must provide a current 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.
- 1.7.2 The Safety Statement shall be prepared in accordance with Section 20 of the Safety, Health & Welfare at Work Act 2005, and implementing Regulations.
- 1.7.3 The Safety Statement must be signed, dated and Companies Registration Office Company Name referenced where applicable.
- 1.7.4 Where the Service Provider 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 Service Provider 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.
- 1.7.5 The minimum requirement is that the evidence provided will demonstrate compliance with the Safety, Health and Welfare at Work Act 2005, including but not limited to the Safety, Health and Welfare at Work (General Application) Regulations 2007, and the Safety Health and Welfare at Work (Construction) Regulations 2013.
- 1.7.6 The requirements under Health and Safety legislation will only be evaluated by the relevant Contracting Authority at Mini-Competition Stage when the Service Provider is being evaluated in response to a Mini-Competition Request for Tender. Please refer to the Mini-Competition Evaluation Criteria included in Schedule 2.

1.8 Health & Safety (Legal/Paperwork)

- 1.8.1 All Service Providers shall comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations, Codes of Practice and Guidance arising thereunder. 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.
- 1.8.2 All employees or agents of Service Providers entering local authority sites shall have a Safe Pass Card, with SOLAS accreditation or equivalent. Where applicable, plant operators, as listed in the Schedule 5 of Safety, Health and Welfare at Work (Construction) Regulations 2013, must be in possession of the appropriate Construction Skills Certification Scheme (CSCS) card. The Safe Pass card and CSCS equivalent in Northern Ireland (CSR card) will also be accepted.
- 1.8.3 It shall be the responsibility of the Service Provider to ensure that all details in relation to Safe Pass Cards and CSCS cards (or equivalent) be entered into the www.supplygov.ie database under '**Checklist**' and kept up-to-date for the duration of the Framework.
- 1.8.4 All employees operating plant/vehicles shall also possess 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.
- 1.8.5 Details submitted online and original cards must be available upon request on site on any given day.

1.9 Health & Safety - Project Supervisor for the Construction Stage (PSCS)

- 1.9.1 Successful Service Providers who are subsequently awarded contracts under Lot 2 and/or Lot 4 may, where applicable, be appointed Project Supervisor for the Construction Stage (PSCS) in accordance with the Safety, Health and Welfare at Work (Construction) Regulations 2013. (Any costs associated with the provision of PSCS role by a Service Provider are to be accounted for in the Request for Tender).
- 1.9.2 The Service Provider must be a competent person as defined in the Safety, Health and Welfare at Work (Construction) Regulations 2013 to carry out the Services and has allocated and will allocate sufficient resources to enable itself to comply with the requirements and prohibitions imposed on the Service Provider by or under the relevant statutory provisions.
- 1.9.3 Service Providers are permitted to outsource the PSCS role to a third party. This third party resource must be available to them for the purposes of meeting this requirement for the duration of the Framework Agreement, including site involvement and not just in preparation of Health & Safety documentation.
- 1.9.4 If the role of PSCS is required, the Service Provider will be assessed at Request for Tender stage to demonstrate their competence or their outsourced nominee's competence to carry out the role of PSCS. The Service Provider would be required to satisfy the required minimum standards specified in the Request for Tender to undertake the role of PSCS.
- 1.9.5 Service Providers entering or working on a site where they are not the nominated PSCS must comply with any directions issued by a PSCS in relation to Health & Safety issues

1.10 The Service Provider's Materials, Vehicles and Plant

- 1.10.1 The Contracting Authority will not provide storage of materials/vehicles/plant and will not accept any responsibility for any loss or damage to materials, plant or vehicles placed on any work site by the Service Provider or his agents. The Service Provider(s) must make their own arrangements for the protection of their vehicles, plant and materials.
- 1.10.2 If applicable, all vehicles/plant used by the Service Provider (or by employees/agents working on behalf of the Service Provider) must comply with current Road Traffic Acts and Health and Safety Legislation. For example vehicles/plant must:-
- display a current "Insurance Disc" correctly (if applicable)
 - Display a current Tax Disc correctly (if applicable)
 - Have a valid and current Certificate of Road Worthiness (CRW) available (if applicable)
 - Have suitable flashing/warning beacons in working order at all times
- 1.10.3 Where applicable, the Service Provider (or any employee/agent working on behalf of the Service Provider) must possess a valid Construction Skills Certification Scheme (CSCS) card and the appropriate driver/operator license relating to the item of plant/vehicle they are operating
- 1.10.4 The Service Provider must ensure that Operator(s) and/or Banksman in charge of vehicles, including delivery vehicles, are provided with the necessary Personal Protective Equipment (P.P.E.) in order to safely carry out his duties; e.g. safety boots, reflective vests, helmets etc.

1.11 Qualifications

- 1.11.1 All plumbers proposed by the Service Provider for services under any of Lots 1 to 4 must have a **Level 6 National Craft Certificate in Plumbing**, as awarded by FAS/Solas, or its equivalent.
- 1.11.2 All plumbers proposed by the Service Provider for Gas Work services under Lots 2 and 4 must be registered as a **full** Registered Gas Installer member with RGII.

- 1.11.3 The Commission for Energy Regulation (CER) has appointed the RGII (Register of Gas Installers of Ireland) as the Gas Safety Supervisory Body (GSSB).
- 1.11.4 Depending on the nature of the works, Purchasers reserve the right to seek proof of additional qualifications/training that are either statutory or deemed necessary for undertaking the works. Such proof will need to be provided in response to Contract Evaluation Criteria No. 4 (Qualifications of the proposed Project Team) as applicable for each Lot and as specified in the Mini-Competition Evaluation Criteria included in **Schedule 2**.
- 1.11.5 The following is a non exhaustive list of additional qualifications/training that may be sought by Framework Purchasers:
- (i) Evidence of competence to work with Oil-fired burning devices (e.g. Staff are registered to carry out such works with the Oil Firing Technical Association (OFTEC) or equivalent)
 - (ii) Maintaining and Installing Domestic Heating Systems
 - (iii) Domestic Heating and Plumbing
 - (iv) Renewable Energy technologies' installations and maintenance
 - (v) Boiler Servicing

1.12 Services Terms & Conditions

- 1.12.1 The Service Provider is responsible for ensuring that the supplied materials and services meet the required Specification as detailed in this schedule and in any Mini-Competition.
- 1.12.2 The Service Provider may be required to produce evidence of a quality control plan and quality control documentation to prove testing against and compliance with the required specification. The materials and workmanship shall be in accordance with the relevant Specification for each particular operation. Should the material and/or workmanship not conform to the standards, the Service Provider will be excluded from the Framework. All samples specified here and in the Mini-Competition shall be provided free of charge, when required, to the Contracting Authority.
- 1.12.3 A Material Safety Data Sheet (MSDS) must be supplied with all hazardous substances.
- 1.12.4 The Service Provider or his/her agent are only to take their instructions from the Director of Services or from employees of the Contracting Authority who have been **authorised in writing** to issue instructions – except in relation to issues of Health & Safety where separate requirements may apply e.g. where there is a requirement to comply with directions issued by a PSCS or imminent danger to safety or health or of damage to property.
- 1.12.5 Where Contracting Authorities request clarification or further information on any matters relating to the tender or supporting documentation, such information shall be submitted no later than the date specified in the request.
- 1.12.6 Contracting Authorities operate a core time 39-hour, 5day week. Payment for time worked will only be made on the basis of the Contracting Authorities time records of hours/days worked – and not on the Supplier's own time sheets. No allowance will be made for Church Holidays, Bank Holidays, Annual Holidays or other holidays recognized by Contracting Authorities.
- 1.12.7 Delivery of materials shall be made as and where required by the Contracting Authority (Framework Purchaser). No material shall be delivered on site by a Supplier unless there is an authorized representative of the Contracting Authority (Framework Purchaser), on site to receive, check and sign for the material.
- 1.12.8 Where the Contracting Authority (CA) is satisfied that a particular Service Provider cannot provide the plumbing service so as to enable the work on hand to be carried out expeditiously and with such convenience as may be required, the CA may decide to purchase from such other Service Provider as he considers appropriate.
- 1.12.9 Service Provider(s) and their employees are expected to adhere to acceptable standards of behavior, i.e. equivalent to standards expected of Contracting Authority staff.

- 1.12.10 Contracting Authorities are subject to the provisions of the Freedom of Information (FOI) Act 1997 and the Freedom of Information (Amendment) Act 2003. If a Service Provider considers that any of the information they supply is either commercially sensitive or confidential in nature, this should be highlighted and the reasons for its sensitivity specified. In such cases, the relevant material will, in response to FOI requests, be examined in the light of the exemptions provided for in the Act.

1.13 Contract Performance

- 1.13.1 It is intended that Service Provider performance will be monitored during the Framework Agreement and during the execution of all Mini-Competition Contracts.
- 1.13.2 A **Performance Evaluation Report** will be completed by the Framework Purchaser at the end or at any time during the Mini-Competition Contract, that will record the performance of the Service Provider on the Mini-Competition Contract. Such reports will be copied to the Service Provider and the content of such reports may be considered when formulating new award criteria for future centralised procurement competitions for plumbing works. A copy of the **Performance Evaluation Report** is included in **Schedule 5**.
- 1.13.3 Where any Service Provider fails to satisfactorily perform a Mini-Competition Contract awarded, the Mini-Competition Contract may be terminated and the Framework Purchaser shall have the right to re-tender the contract. Please refer to the Framework Agreement for full details of the Mini-Competition Contract and performance review mechanism.

1.14 Coordination with Stakeholders

- 1.14.1 The Contracting Authority will be responsible for engaging with tenants for the purpose of arranging Service Provider access to complete initial inspections, and to schedule access during the course of the service.
- 1.14.2 Prior to the commencement of any works, the Service Provider shall provide a dedicated on-site contact number/person to deal with queries and matters arising during the execution of the works.

SCHEDULE 2: MINI-COMPETITION CONTRACT EVALUATION AND AWARD CRITERIA – LOT 1 (EXCLUDING GAS WORKS AND EXCLUDING PSCS)

2.1 Contract Evaluation Criteria (Lot 1)

- 2.1.1 Service Providers submitting a response to a Mini-Competition Request for Tender must submit the information listed in the table hereunder, that will be assessed on a Pass/Fail basis. Service Providers should note that not all of the criteria listed may apply to every Mini-Competition Request for Tender.
- 2.1.2 Only those Service Providers passing all of the following contract evaluation criteria will proceed for assessment in accordance with the contract award criteria set out in part 2.2 below.

Contract Evaluation Criteria (Lot 1)		Weighting
1	<p><u>Compliance with Site specific Requirements</u></p> <p>Submit confirmation in writing confirming compliance with the requirements of the General Specification set out in Schedule 1 to the Framework Agreement and as more specifically set out in the particular Plumbing Services requirements of the Mini Competition</p>	Pass/Fail
2	<p><u>Proposed Resources Availability</u></p> <p>Submit confirmation in writing that the Service Provider has sufficient resources and availability to provide the requested plumbing service(s) within the specified timeframe(s), respecting the nominated start and finish dates outlined in the Request for Tender documents.</p> <p>In doing so, Service Providers will be asked to clearly identify the names of the resources that they intend to allocate to the Mini-Competition contract.</p>	Pass/Fail
3	<p><u>Health & Safety Competency of Project Team</u></p> <p>For each resource proposed in 2 above, details of the following must be entered on www.supplygov.ie under 'My Checklist' -:</p> <ul style="list-style-type: none"> ▪ Solas/Fás Safepass Card, or equivalent ▪ A valid CSCS card for any additional skill covered under the Construction Skills Certification Scheme required for the proposed Plumbing Service(s) as defined in the Request for Tender. 	Pass/Fail
4	<p><u>Qualifications of the proposed Project Team</u></p> <ul style="list-style-type: none"> ▪ The Service Provider must submit evidence that all plumbers proposed currently hold a Level 6 National Craft Certificate in Plumbing as awarded by FAS/Solas or its equivalent such as an award by a recognised International Body. ▪ Any additional qualifications required for the proposed Plumbing Service(s) as defined in the Request for Tender, for example; <ul style="list-style-type: none"> (i) Evidence of competence to work with Oil-fired burning devices (e.g. Staff are registered to carry out such works with the Oil Firing Technical Association (OFTEC) or equivalent) 	Pass/Fail
5	<p><u>Safety Statement</u> (Code of Practice for 3 or Less Employees)</p> <p>The company's Safety Statement or equivalent document submitted prior to admittance to the Framework Agreement will be assessed for compliance with the provisions set out in the Safety, Health & Welfare at Work Act 2005 and enforcing Regulations.</p>	Pass/Fail

2.1.3 Service Providers that pass the Pass/Fail criteria above will proceed for assessment in accordance with the award criteria set out below.

2.2 Mini-Competition Contract Award Criteria (Lot 1)

2.2.1 The Service Provider that achieves the highest ranking score by reference to the criteria below will be awarded the Mini-Competition Contract, subject to Clause 2.2.11 below.

Contract Award Criteria for Mini Competitions	Weighting	Maximum Marks Available
Most Economically Advantageous Tender: Price	100%	1,000

2.2.2 Depending on the nature of the required services, the Price may comprise one or more of the following:

- Provision of Plumbing Services
- Green Procurement
- Response Time (to account for costs related to fuel, travel time, etc.)
- Additional Resources

The Price component(s) will be specified by the Framework Purchaser at Request for Tender stage.

2.2.3 The Service Provider’s Proposals submitted in responses to a Mini-Competition Request for Tender must not exceed the Key Rates tendered by the Service Provider in its Tender Submission for similar items (**Key Rates**).

2.2.4 The lowest lump sum price tendered for completion of the works will be awarded 100% of the **1,000** marks available for price.

2.2.5 The remaining Service Providers for that Mini-Competition will receive a pro rata mark for price based on the difference between their total tendered cost and that of the lowest priced tenderer, expressed as a percentage of the lowest cost, i.e.

$$\text{Marks Awarded} = \frac{\text{Lowest Price}}{\text{Price being evaluated}} \times \text{Available Marks For Price (1,000)}$$

2.2.6 The marks awarded above will determine the highest scoring Service Provider who will be ranked No. 1 for the Mini-Competition. The remaining Service Providers will be ranked in descending order, i.e. the next highest mark ranked No. 2, etc.

2.2.7 The Plumbing Services will be completed in accordance with the sample, Mini-Competition Contract attached as Schedule 4 to the *Framework Agreement for Plumbing Services for Local Authorities Lot 1*.

2.2.8 The acknowledgement of receipt of any Mini Competition Request for Tender shall not constitute an actual or implied agreement between the Service Providers and the Contracting Authority.

2.2.9 Where, after a competition, two or more Service Providers are level on marks the Contracting Authority reserves the right to either;

- (i) Ask the equally ranked Service Providers to resubmit prices and continue this process until there is a winner, or
- (ii) To divide the works between the equally ranked Service Providers , or
- (iii) Award the contract by random selection concluded in an open and transparent forum, or
- (iv) To re-tender the works

2.2.10 All Service Providers submitting a tender in response to a Mini-Competition Request for Tender will be informed of the outcome of the competition without delay following conclusion of the Mini-Competition evaluation process.

2.2.11 Following an evaluation of the tenders, a Framework Purchaser may either:

- a) Award a Mini-Competition Contract to one Service Provider (the highest ranked Service Provider); or
- b) Award a Mini-Competition Contract to two or more Service Providers in accordance with the Mini-Competition Request for Tender.

In all cases, the Plumbing Services are to be provided by the highest ranked Service Provider (by application of the award criteria set out in the Framework Agreement and Mini-Competition Request for Tender) unless the highest ranked Service Provider cannot confirm acceptance of an instruction from a Framework Purchaser within the time specified or is otherwise unable to perform the requested Plumbing Services. In such a scenario, the Framework Purchaser may issue an instruction to the next highest ranked Service Provider, following the procedure above, until the instruction is accepted.

2.3 Information to be provided by the preferred Tenderer prior to Contract Award

2.3.1 In addition to the information to be provided when submitting a tender in response to a Mini-Competition Request for Tender (as outlined in part 2.1 above), the preferred Service Provider must provide to the Contracting Authority, for their review and approval, prior to the formal award of the contract (if not already submitted), the specific information listed below or any other relevant information as requested by the Contracting Authority:

- Satisfactory evidence of insurance submitted online by the Insurance Broker/Company
- Site Specific Risk Assessment
- Site Specific Method Statement

SCHEDULE 3: FRAMEWORK PURCHASERS

The Framework Purchasers are as follows -:

Ref	Contracting Authorities
1	Cavan County Council
2	Carlow County Council
3	Clare County Council
4	Donegal County Council
5	Dun-Laoghaire-Rathdown County Council
6	Fingal County Council
7	Galway City Council
8	Galway County Council
9	Kerry County Council
10	Kildare County Council
11	Kilkenny County Council
12	Laois County Council
13	Leitrim County Council
14	Longford County Council
15	Louth County Council
16	Mayo County Council
17	Meath County Council
18	Tipperary County Council
19	Offaly County Council
20	Roscommon County Council
21	Sligo County Council
22	Waterford City and County Council
23	Wexford County Council
24	Wicklow County Council

SCHEDULE 4: SAMPLE MINI-COMPETITION CONTRACT

[Mini-Competition Contract Number: [●]]

Any purchase orders issued are for administrative purposes only

CONTRACT AGREEMENT

THIS CONTRACT is made on 201[]

BETWEEN

1. [NAME OF LOCAL AUTHORITY] having its registered office at

[] (hereinafter called "**the Employer**") of the one part
and

2. [NAME OF SERVICE PROVIDER] having its registered office at

[] (hereinafter referred to as "**the Service Provider**")
of the other part.

WHEREAS:

- A. The Service Provider submitted a tender submission in response to a tender competition for plumbing services and, following an assessment and evaluation of the tender submission, the Service Provider was appointed to the Framework Agreement dated [Insert date] (the "**Framework Agreement**").
- B. [*Insert name of Local Authority*] issued a Mini-Competition Request for Tender in accordance with the Framework Agreement and invited a Proposal for the provision of [●] on [●] (the "**Proposal**").
- C. The Service Provider submitted a Proposal on [●], which is attached at Appendix 1 hereto. [*Insert name of Local Authority*] now wishes to enter into a contract with the Service Provider subject to and in accordance with the provisions as set out below (the "**Contract**").

This Contract is for the Service Provider to execute work according to task orders that may be issued from time to time by the Employer. The Employer may procure that work in other ways, and does not guarantee the Service Provider that any particular work will be procured under this Contract.

If the Framework Purchaser wishes to instruct the Service Provider to provide the services it will issue a task order (the "**Task Order**").

1. Plumbing Services

The Service Provider shall provide the Services as set out in the Task Order:

2. Delivery

The Service Provider shall deliver the Services as set out in the Task Order:

3. Other terms and conditions

See the terms and conditions set out at Appendix 2 and any other terms and conditions set out in the Task Order, as applicable.

4. Price and Payment

See Task Order.

No contract in respect of the Plumbing Services described in this Mini-Competition Contract shall exist until this Mini-Competition Contract is signed by both parties.

We would be obliged if you would kindly counter-sign and return this letter to acknowledge acceptance of the terms outlined above.

Yours faithfully,

SIGNED by

a duly authorised representative
for and on behalf of the [*insert name of Framework Purchaser*]
in the presence of:-

COUNTER-SIGNED in acceptance of the above instructions by:

For and on behalf of [*insert name of the Service Provider*]
in the presence of:-

Date:

*[Insert Proposal as Appendix 1 of this Mini-Competition Contract
Insert Terms and Conditions as Appendix 2 of this Mini-Competition Contract
Insert the Request for Tender specific Specification/works requirements as Appendix 3 of this Mini-Competition Contract
Insert Template Task Order as Appendix 4 of this Mini-Competition Contract]*

Appendix 1

[Insert Service Providers Proposal]

APPENDIX 2

TERMS AND CONDITIONS OF CONTRACT FOR THE SUPPLY OF PLUMBING SERVICES

SCOPE

These terms and conditions of contract (the “**Conditions**”) (together with the Contract Agreement, any Task Order shall govern the provision of any Plumbing Services by the Service Provider pursuant to the Framework Agreement from time to time.

1. DEFINITIONS

The **Building Control Regulations** means the Building Control Regulations 1997-2014 and any amendments thereto;

The **Contract** means this services contract as defined in clause 2.2;

The **Framework Agreement** means the multi-party framework to provide Plumbing Services for Local Authorities issued by the LGOPC and dated [Insert date];

The **Employer’s Representative** means an engineer, architect, surveyor, or other person notified by the Employer, or if none, the Employer;

The **Intellectual Property** means all intellectual property of whatever nature anywhere in the world and the rights subsisting therein, including, without prejudice to the generality of the foregoing: discoveries; inventions; improvements; designs; processes; research; know-how; confidential and proprietary knowledge and information and any rights protecting same; works of authorship; computer software; databases; database rights; performances; trade or business names; domain names; patents, utility models and short term patents (and applications for same); trademarks and trade mark applications; rights (registered or unregistered and applications for same) in any design; copyright (including rights in computer software and semi-conductor topographies); business goodwill and reputation and rights protecting same; rights of use of allocated telephone numbers and all intellectual property rights and forms of protection of a similar nature to any of the foregoing or having equivalent effect anywhere in the world;

The **LGOPC** means the Local Government Operational Procurement Centre of The Reeks Gateway, Killarney, County Kerry as Central Purchasing Body (CPB) under the auspices of Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry;

The **Mini-Competition Request for Tender or Request for Tender (RFT)** means an invitation to submit a Proposal issued by the Employer;

The **Pricing Document** is the document identified as such in Appendix 1;

The **Proposal** means the proposal submitted by the Service Provider to the Employer in response to a Mini-Competition Request for Tender and as attached at Appendix 1;

The **Services** means the plumbing services the Service Provider is to provide as described in the Specification and the Task Order(s);

The **Service Provider's Personnel** means the Service Provider's:

- representative and supervisor
- subcontractors and suppliers of any tier and
- employees and other persons working for the Service Provider, subcontractors or suppliers of any tier or otherwise assisting the Service Provider for the Services;

The **Specification** means the document identified as such in Appendix 3;

A **Site** means a place where the Service Provider is to carry out a Task according to a Task Order and anywhere else a Task Order says is part of a Site;

A **Task** means work described in a Task Order

A **Task Order** means a written order given to the Service Provider under clause 4.1 in the form included in Appendix 4;

The **Term** means the period delimited in clause 3.

2. INTERPRETATION

2.1 Unless the context indicates otherwise

2.2.1 References to clause numbers are to the clauses of these conditions.

2.2.2 Words in the singular also mean the plural and the other way around.

2.2.3 Words in a gender also mean other genders.

2.2.4 **Person** includes incorporated and unincorporated organizations.

2.2.5 References to a **month** are to a calendar month and to a **day** are to a calendar day.

2.2.6 References to the parties are to the Employer and the Service Provider.

2.2.7 References to a law include amendments and replacements.

2.2 The Contract is the entire agreement between the parties about the Services and consists of:

2.2.1 the Contract Agreement;

2.2.2 Task Order;

2.2.3 these Conditions;

2.2.4 the appendices; and

2.2.5 the Proposal.

2.3 In the event of any ambiguity between or conflict between the documents comprising the Contract, the order of precedence shall be as follows:

2.3.1 Task Order;

2.3.2 these Conditions;

2.3.3 the appendices; and

2.3.4 the Proposal.

If a party discovers a discrepancy within the documents, it must notify the other as soon as practicable, and the Employer's Representative may resolve the discrepancy.

- 2.2 Any quantities in the Pricing Document are notional quantities only, included only for tender assessment purposes. They do not describe the extent of the Services to be executed under this contract.
- 2.3 The Contract commences when the Employer sends the Service Provider written acceptance of the Service Provider's Proposal or issues a Task Order.
- 2.4 The Service Provider must perform this Contract at its own expense, complying with this Contract, the Specification, each Task Order, the Employer's Representative's instructions, and the law.
- 2.5 The Service Provider may not assign this Contract or any part of it without the Employer's consent.
- 2.6 The Service Provider should have given the Employer the documents listed below before the Employer sends the Service Provider written acceptance of the Service Provider's Proposal for this Contract or issues a Task Order, failing which the Service Provider must do so within 7 days after the Employer has sent the Service Provider written acceptance of the Service Provider's tender or issued a Task Order
 - 2.6.1 The appointment of project supervisor for the construction stage executed by the Service Provider (if the Proposal provides for the Service Provider to be so appointed);
 - 2.6.2 Evidence of insurance as required under clause 16;
 - 2.6.3 The Service Provider's tax clearance certificate;
 - 2.6.3 Any other documents requested by the Employer.
- 2.7 Prior to the commencement of the Services, the parties must execute the Contract Agreement.
- 2.8 Neither the Employer nor the Service Provider has relied on any agreement, understanding, or statement that is not written or referred to in this Contract.
- 2.9 This Contract can only be changed in writing, signed by authorised representatives of the Employer and the Service Provider.
- 2.10 The Service Provider must inform the Employer if there is any material change in any information provided by the Service Provider to the Employer in connection with the award procedure for this Contract. The Service Provider must provide any updates to such information requested by the Employer.
- 2.11 If any provision of this Contract is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of this Contract and the remainder of the provision in question shall not be affected thereby.
- 2.12 It is acknowledged by all parties that the Service Provider will at all times be an independent contractor, and nothing in this Contract will be construed (and the Service Provider will not hold out its relationship) as constituting a partnership, joint the Employer and the Service Provider.

3 DURATION OF TERM

- 3.1 The Term starts on the date the Employer accepts the Service Provider's Proposal or issues a Task Order and ends on the completion of the Services as specified in a Task Order to the reasonable satisfaction of the Employer unless otherwise terminated in accordance with this Contract.
- 3.2 When the Term ends the Service Provider must complete any outstanding Task Orders given during the Term unless otherwise instructed by the Employer's Representative.
- 3.3 The Employer may terminate the Term at any time, without cause, by written notice to the Service Provider. The Term will end on the date stated in the notice. The Employer's only liability on termination of the Term will be to pay amounts due under clause 7.

4 TASK ORDERS AND INSTRUCTIONS

- 4.1 The Employer's Representative may issue a Task Order to the Service Provider. If the Task Order states a time for starting or completing the Task or both, the Service Provider must start and, as far as practicable, complete the Task within the time stated.
- 4.2 If the Employer's Representative gives the Service Provider an instruction in relation to a Task the Service Provider must implement the instruction. This can include an instruction changing a Task Order.
- 4.3 The Employer's Representative must give the Service Provider any further instructions that are necessary for the Service Provider to do the Services, if the Service Provider asks for them in writing. The instruction must be given within a reasonable time, taking into account when the Service Provider asked for it and when the Service Provider needs it to avoid delay.
- 4.4 Instructions are normally given in writing (which can include email). In an emergency, the Employer's Representative may give the Service Provider an oral instruction, in which case the Employer's Representative must confirm it in writing within 48 hours after it was given, failing which the Service Provider must confirm the instruction in writing to the Employer's Representative within 72 hours after the oral instruction was given.
- 4.5 Except as this Contract says otherwise, all communications provided for in this Contract must be in English or Irish and in writing.
- 4.6 Task Orders and instructions given according to order management procedures in the Works Requirements are considered to be given by the Employer's Representative. The Service Provider must comply with those procedures.

5 COMPLETING TASKS

- 5.1 Promptly after completing a Task the Service Provider must return the Task Order to the Employer's Representative with the certificate of completion of the Task completed.
- 5.2 The Service Provider must comply with the requirements outlined in this clause, the Specification and any other requirements of the Employer, as notified to the Service Provider.
- 5.3 Within 7 days after receiving the Task Order back from the Service Provider with the certificate of completion of the Task completed, the Employer's Representative must send it back to the Service Provider with either:

5.2.2 acknowledgement of receipt of the certificate of completion; or

5.2.3 notification that the Employer's Representative does not consider the Task complete or disagrees with the stated completion date, with reasons.

Neither acknowledgement of receipt of the certificate nor notification that the Employer's Representative does not consider the Task complete (or reasons given) relieves the Service Provider of any responsibility or liability.

- 5.3 If completion of a Task is or will be delayed, the Service Provider must notify the Employer's Representative of the delay within 24 hours after becoming aware of the delay and keep the Employer's Representative informed of progress.
- 5.4 If the Service Provider fails to comply with a Task Order or with this Contract in relation to a Task, or if the Service Provider ceases to meet the minimum requirements for selection for tender for this Contract, or if an **insolvency event** occurs, the Employer may terminate any uncompleted Task Order and have the Task completed by others. In this event no further payment for the Task will be due to the Service Provider until the Task has been completed, and the Service Provider will be liable for the Employer's additional costs of completing the Task. **Insolvency event** means any of the following: a petition being presented to wind up the Service Provider; a meeting of the Service Provider's creditors or members being held for the purpose of considering a petition to wind it up; the Service Provider entering or proposing to enter an arrangement for the benefit of its creditors; a petition being presented to appoint an examiner of the Service Provider; a liquidator, examiner, supervisor, receiver, administrative receiver, trustee, encumbrancer, or similar being appointed for the Service Provider or any of its assets; the Service Provider ceasing or threatening to cease its business or becoming insolvent or unable to pay its debts as due or becoming bankrupt or incapable of performing this Contract.

6 QUOTATIONS FOR TASKS

- 6.2 The Employer's Representative may give the Service Provider details of a proposed Task Order (or a proposed instruction changing a Task Order) with a request for a quotation.
- 6.3 If so requested, the Service Provider must give the Employer a lump sum fixed price quotation for the proposed Task described by the Employer, using Contract rates and prices if they apply, together with a detailed programme and any other information requested by the Employer's Representative. The Service Provider must give this quotation to the Employer's Representative within the time specified by the Employer's Representative and, if no time is specified, within 10 days after the Employer's Representative sends the request.
- 6.4 After receiving the quotation the Employer's Representative may do one or more of the following:
- 6.4.2 issue a Task Order including the Service Provider's quotation;
 - 6.4.3 request the Service Provider to revise the quotation, following which Employer's Representative may take any of the other steps in this Clause 6;
 - 6.4.4 issue a Task Order as though there had been no quotation; or
 - 6.4.5 abandon the process and issue no Task Order.

7 PAYMENT

- 7.1 Subject to this Contract and in accordance with the provisions of this clause and the Specification, the Employer will pay the Service Provider the value of completed Services according to this Contract.
- 7.2 For Task Orders including a price quoted by the Service Provider, the value of the Services is that price as stated in the Task Order. Services carried out by a specialist named in the Task Order are valued at rates in the Task Order. For other Task Orders the Services are valued using the rates and prices in the Proposal and if there is no rate or price in the Proposal, by making a fair valuation or, if the Employer's Representative so instructs, on the basis of the labour rates tendered in the Proposal and the time properly spent by workers executing the Services, the reasonable cost of materials properly used plus the markup tendered in the Proposal, and the reasonable cost of plant properly used, all as documented to the Employer's satisfaction.
- 7.3 Each month the Service Provider must give the Employer's Representative a detailed statement of the Contract value of the Services in those Tasks for which the Service Provider has received in the previous month an acknowledgement of receipt of the certificate of completion of the Task under clause 5.2 (less any interim payment for these Services). The statement must be broken down by Task, and show details of how the value is calculated.
- 7.4 The Employer has no liability whatsoever in connection with any Task for any amount not detailed in statements given to the Employer's Representative within 2 months after work on the Task ceased.
- 7.5 The Employer's Representative may state in a Task Order that the Employer will make interim monthly payments. In that case the Service Provider may include in its monthly statements the scheduled percentage of the Contract value of completed Services in the Task, less previous payments for those Services.
- 7.6 Within 14 days after receiving the Service Provider's statement the Employer's Representative must give the Service Provider and the Employer a written response stating the amount that the Employer's Representative considers due for the Services covered by the statement. After receiving the response the Service Provider may send the Employer an invoice. The Employer must pay the Service Provider the amount due on the invoice within the scheduled period after receiving the invoice. Each invoice must include :
- 7.6.2 The Service Provider's name and address;
 - 7.6.3 The Service Provider's VAT Registration Number;
 - 7.6.4 Invoice number and date;
 - 7.6.5 The Employer's purchase order number;
 - 7.6.6 The RFT number from the Supplygov system where the Mini-Competition Request for Tender is published; and

7.6.7 The price of the Services as set out in the Proposal.

- 7.7 Within 28 days after receiving the Employer's Representative's response under clause 7.6 (or within 28 days after the Employer's Representative's time to respond expired with no response given, in which case the response will be taken to be that no payment is due) the Service Provider or the Employer may notify the other that it disputes the response and refer the disputed issue for resolution under clause 19. If neither party does so within the time allowed the Employer's Representative's response is final and binding on the parties.
- 7.8 The Employer reserves the right to retain from any payment to the Service Provider a percentage of the value of the completed services as stated in the Task Order ("**the retention amount**").
- 7.9 Prior to the expiry of any defects period stated in the Task Order, the Service Provider shall make good any defects. The Employer shall release the retention amount when it is satisfied that any defects have been made good. The Service Provider shall invoice the Employer's Representative for such amount.
- 7.10 If a payment is not made within the time allowed in this Contract, it carries interest at the rate in the European Communities (Late Payment in Commercial Transactions) Regulations 2002.
- 7.11 The rates and prices in the Proposal exclude VAT. The Employer must pay the Service Provider (or the Revenue Commissioners when required by law or their practice) any VAT applicable to the Services.
- 7.12 The Employer may withhold and deduct any amount on account of tax required by law or the practice of the Revenue Commissioners
- 7.13 The Employer may deduct from amounts due to the Service Provider any amount that the Employer considers is due, or likely to become due, to the Employer from the Service Provider under this Contract or another Contract.

8 PROVISION OF SERVICES

- 8.1 The Service Provider shall devote to the Employer and the Services such of its time, attention and abilities as may be necessary for the proper performance of its duties under this Contract.
- 8.2 The Service Provider shall provide the Services according the Task Order, the terms of this Contract and in accordance with the Specification to the Employer and shall ensure that its staff shall provide the Services to the Employer in accordance with the terms of this Contract, the Specification, and including, for the avoidance of doubt the Proposal:
- 8.2.1 diligently, conscientiously and in a professional manner and with all due care and skill;
 - 8.2.2 in compliance with all reasonable instructions of the Employer in relation to the provision of the Services;
 - 8.2.3 in adherence with best industry standards as regards quality control and assurance;
 - 8.2.4 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;
 - 8.2.5 in absolute co-operation with the Employer; and
 - 8.2.6 maintaining the minimum quality level in relation to Services as set out in the RFT.
- Failure by the Service Provider to meet its obligations under this clause 8.2 shall be considered a material breach of this Contract.
- 8.3 The Service Provider shall employ sufficient staff to provide the provision of the Services that shall be properly trained, skilled and qualified.
- 8.4 The Service Provider shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to sick pay and pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act.
- 8.5 The Service Provider shall secure in advance the Employer's approval in respect of all prospective employees, agents, Service Providers and sub-contractors of the Service Provider who will be involved in the discharge by the Service Provider of its contractual obligations under the Contract and the Service Provider will comply with the Employer's reasonable requests in this

regard.

- 8.6 Without prejudice to any other right of the Employer, if at any time the Employer is not satisfied with the quality of the Services or any part thereof, having regard to the terms of the Contract, it may so notify the Service Provider and the Service Provider shall promptly use its best endeavours and dedicate such resources as are required to remedy the quality issues without delay. Any remedial work so required by the Employer shall be carried out at the Service Provider's expense.

9 NOT USED

10 WARRANTIES, REPRESENTATIONS AND UNDERTAKINGS

- 10.1 The Service Provider represents, warrants and undertakes that:

- 10.1.1 it has complied and in performing the Contract will comply with all applicable laws, rules and regulations including but not limited to those relating to business permits, work permits and licences that may be required to provide the Services hereunder and those relating to employment law, employment of the Service Provider Staff or any of them, health and safety or taxation;
- 10.1.2 it will provide the services in a good and workmanlike manner with due skill, care and diligence, at a minimum consistent with the standards of care exercised by a nationally recognised provider of similar services and best industry practices for the performance of similar services, and in accordance with all applicable laws, rules and regulations and with the Contract;
- 10.1.3 it holds and at all times during the Term shall maintain all licences, permits and certifications required to carry out the Services;
- 10.1.4 it will comply with and such policies as may be notified to it by the Employer from time to time and/or undergo any training as required by the Employer;
- 10.1.5 it has the power and authority to enter into the Contract and perform its obligations hereunder, and is not a party to any other agreement or subject to any obligation under legislation or otherwise howsoever that would prohibit, restrict or limit in any way its performance of the Services in accordance with the Contract or that might enable another person to claim any rights in any technology, materials, data or information developed pursuant to the Contract;
- 10.1.6 all necessary action has been taken (and not revoked) to authorise the execution and performance by the Service Provider of the Contract, the Contract is executed by a duly authorised representative of the Service Provider and the Contract constitutes valid and legally binding obligations of the Service Provider enforceable in accordance with the terms hereof, except as enforcement may be limited by any relevant bankruptcy, insolvency, administration or similar laws affecting creditors' rights generally;
- 10.1.7 the Service Provider has no direct or indirect conflict of interest with respect to the Contract or its appointment to provide the Services to the Employer hereunder and no such conflict of interest will arise during the Term;
- 10.1.8 any Intellectual Property subsisting in any works or materials of any nature developed, drawn, created or adapted by the Service Provider during the term of the Contract does not and will not, and the Employer's use of any such Intellectual Property does not and will not, infringe any other person's Intellectual Property and is not, and so far as the Service Provider is aware will not be, the subject of a claim or opposition from a person as to title, validity, enforceability, entitlement to compensation or otherwise; and
- 10.1.9 all information supplied by the Service Provider in the Proposal is true and accurate in all respects as at the date of the Proposal, save as otherwise disclosed in writing to the Employer and expressly acknowledged by the Employer prior to execution of the Contract.

- 10.2 The Service Provider shall procure that there is no change in the control of the Service Provider

without the prior written consent of the Employer, such consent not to be unreasonably withheld .

11 SITE OPERATIONS AND SERVICES

- 11.1 The Employer must allow the Service Provider access to the relevant parts of the Site as necessary for the Service Provider to execute a Task.
- 11.2 The Service Provider is responsible for the safety of the Services, and of all operations on the Site connected with the Services, including temporary services.
- 11.3 The Service Provider (including Service Provider's Personnel) must carry out the Services according to the terms of this Contract, the Specification and according to good practice in conformance with the Building Regulations and any applicable legislation, and must only use goods and materials that are of good quality and (unless this Contract or a Task Order says otherwise) new. Where requested by the Employer's Representative, the Service Provider shall provide the certification necessary to comply with the Building Control Regulations.
- 11.4 From when the Employer allows the Service Provider access to any part of the Site, the Service Provider must (in relation to parts to which access is allowed):
- 11.4.1 as far as practicable, secure the Site and keep off the Site persons not entitled to be there;
 - 11.4.2 keep the Site in good order and free from unnecessary obstructions;
 - 11.4.3 as far as practicable, secure the safety of persons on the Site and protect them and users, owners and nearby areas from hazards and interference resulting from the Services;
- 11.5 As far as practicable, the Service Provider must not, and must ensure that Service Provider's Personnel and the Services do not unnecessarily or improperly:
- 11.5.1 cause a nuisance or inconvenience to the public or users, owners, occupiers of land, roads, or footpaths on or near the Site; or
 - 11.5.2 interfere with the use of land, roads, or footpaths.
- 11.6 The Service Provider must not, and must ensure that Service Provider's Personnel do not, damage the Site or property on or near the Site, unless that is the unavoidable consequence of executing a Task.
- 11.7 The Service Provider must set out the Services by reference to any points, lines, and levels in a Task Order or instructions of the Employer's Representative. Before setting out the Services, the Service Provider must make all reasonable efforts to verify the accuracy of these points, lines, and levels. The Service Provider is responsible for the correct positioning of all parts of the Services.
- 11.8 The Service Provider must ensure that the Employer, any residents of the Site, and persons authorised by the Employer, are able to have access to the Site and other places where the Services are being carried out.
- 11.9 The Service Provider must give the Employer's Representative an opportunity to inspect the Services if requested.
- 11.10 The Employer may arrange for work to be done on the Site by the Employer's personnel or other Service Providers.
- 11.11 At any time during the Term the Employer's Representative may instruct the Service Provider to uncover, dismantle, re-cover, or re-erect work, test, inspect, or provide facilities for testing and inspection, or any combination of these. If it is found that the Services complied with this Contract and the instruction was not required because of the Service Provider's breach of this Contract the instruction will be considered an instruction changing the Task Order, otherwise the Service Provider must bear the cost of complying with the instruction.
- 11.12 At any time during the Term the Employer's Representative may instruct the Service Provider to remove from the Site and replace any Services, or goods or materials for the Services, that do not comply with this Contract, or otherwise to put right (in a manner instructed by the Employer's

Representative) any part of the Services that do not comply with this Contract. The Service Provider must bear the cost of complying with such an instruction. If the Service Provider fails to comply with the instruction promptly, the Employer may do the work itself, or have it done by others, and the Service Provider must pay or allow the Employer's cost of the work.

- 11.13 If the Service Provider encounters physical conditions (including contamination) on the Site that could not reasonably have been foreseen by an experienced Service Provider, taking into account the information about the Site in this Contract, the Service Provider must notify the Employer's Representative as soon as practicable, and give the Employer's Representative details of any anticipated effects of the condition, and how the Service Provider proposes to deal with them.
- 11.14 Unless otherwise stated in a Task Order, the Service Provider, and not the Employer, is responsible for the suitability and availability of access routes to and through the Site, and any required maintenance and upgrading of them, and charges for their use. The Service Provider is also responsible for obtaining and providing all facilities, power, water, and other services it requires to complete the Services, other than those a Task Order states the Employer will provide.

12 CONTRACTOR'S PERSONNEL

- 12.1 The Service Provider must ensure that Service Provider's Personnel are suitably qualified, trained, and experienced, are competent to carry out their tasks and, when required by the Task Order, have Garda Síochána clearance. The Service Provider must ensure that Service Provider's Personnel carry out their tasks in compliance with the Service Provider's obligations under this Contract. The Service Provider is liable for acts and omissions of Service Provider's Personnel as if they were acts or omissions of the Service Provider.
- 12.2 The Service Provider must ensure that the specialists named in the Proposal or a Task Order (or others to whom the Employer's Representative has agreed in advance) perform the work types for which they are named. [If so required by the Employer's Representative, the Service Provider must ensure that specialists enter into collateral warranties with the Employer.] The collateral warranties must be in the form as required by the Employer. They must require the specialist to have professional indemnity insurance as specified in the Specification.
- 12.3 The Service Provider must remove from the Tasks and the Site any Service Provider's Personnel that the Employer's Representative instructs be removed.
- 12.4 The Service Provider may not subcontract part of the Services without the Employer's Representative's consent, unless the subcontracting is allowed or required by this Contract.
- 12.5 The Service Provider must indemnify the Employer against claims, liability, and proceedings resulting from any worker or other person claiming to be an employee or former employee of the Service Provider or Service Provider's Personnel relating to employment or non-employment or engagement or non- engagement by the Service Provider or Service Provider's Personnel, including claims for breach of Contract, wrongful or unfair dismissal, loss of office, redundancy, or loss or earnings and also including claims, liability, and proceedings of any kind under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003. The Employer holds this indemnity for the benefit of itself and any other Service Provider it appoints to replace the Service Provider.
- 12.6 When so required by the Employer, the Service Provider must, to the extent allowed by law, give the Employer details of people employed or engaged wholly or mainly for work under this Contract, including their job titles, ages, length of service, and terms of employment.

13 PAY AND CONDITIONS OF EMPLOYMENT OF WORKERS

- 13.1 The Service Provider must ensure that the rates of pay and the conditions of employment (including in relation to pension contributions) of each worker comply with all applicable law, and that those rates and conditions are no less favourable than those for the relevant category of worker in any employment agreements registered under the Industrial Relations Acts 1946 to 2004.
- 13.2 The Service Provider must, and must ensure that the employers of all workers, do all of the following:
- 13.2.1 pay all wages and other money due to each worker

- 13.2.2 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
 - 13.2.3 pay all pension contributions and other amounts due to be paid on behalf of each worker
 - 13.2.4 make all deductions from payments to workers required by law, and pay them on as required by law
 - 13.2.5 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 Employer, whenever required by the Employer
 - 13.2.6 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 Employer, whenever required by the Employer
 - 13.2.7 respect the right under the law of workers to be members of trade unions
 - 13.2.8 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 2004, the National Minimum Wage Act 2000 and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those laws.
- 13.3 If the Employer so requests, the Service Provider must, within 7 days after the request, give to the Employer 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 Service Provider, ensure that their employer or the person for whom they are working does the same.
- 13.4 The Employer 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 information provided under the above provisions of this clause will be returned to the person providing it or destroyed if the Employer is satisfied that the person providing the information has complied with legal obligations to workers.
- 13.5 If the Service Provider has not complied with this clause, the Employer 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 Employer may withhold the estimated amount from any payment due to the Service Provider, until the Employer is satisfied that the required amounts have been paid. If it has still not been paid by the time of the final payment, the estimated amount is deducted from the Price.
- 13.6 The Service Provider must give the Employer's Representative with each statement under clause 7 a certificate that, for the work to which the statement relates, the Service Provider has complied in full with this clause. If there is a form for the statement included in this Contract, the certificate must be in that form. Payment due for the work covered by the statement will only be due if the certificate is given. If the certificate has still not been given by the time of the final payment, the portion (of the value of work that the Service Provider has not given a certificate for) that the Employer determines is the labour portion is deducted from the Price.
- 13.7 If the Service Provider does not comply with this clause, it must pay to the Employer any costs the Employer incurs in investigating and dealing with the non-compliance.

14 PERFORMANCE BOND

Omitted.

15 LOSS AND DAMAGE

- 15.1 The Service Provider must indemnify the Employer against claims, liability, and proceedings, that happen in the course or as a result of the Services. This indemnity does not apply to the Employer's liability under this Contract to the Service Provider, nor to the extent that the matter is

covered by the Employer's indemnity in clause 15.2.

15.2 The Employer must indemnify the Service Provider against claims, liability, and proceedings that happen in the course of the Services and are for:

15.2.1 death, injury or illness of any person or loss of or damage to physical property caused solely by the Employer's negligence; or

15.2.2 loss of or damage to physical property that is the unavoidable result of executing the Services in accordance with this Contract.

16 INSURANCES

16.1 During the entire Term the Service Provider shall maintain in force full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Service Provider in connection with the provision of the Services in accordance with this clause and the Specification, including but not limited to:

16.1.1 Employers liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to the Employer as principal.

16.1.2 Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.

16.1.3 Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.

16.2 The Service Provider shall ensure that its insurance policies are taken out with reputable insurers acceptable to the Employer within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Employer.

16.3 The Service Provider shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Service Provider is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Service Provider shall notify the Employer without delay.

16.4 It shall be the Service Provider's responsibility to ensure that any agent or sub-contractor of the Service Provider effects and maintains all insurances required by law and all such other insurances as are necessary for the provision of the Services. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Service Provider.

16.5 The Service Provider shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

17 PROPERTY

17.1 The Service Provider must ensure that goods and materials for the Services become the property of the Employer when they are delivered to the Site, if owned by the Service Provider, and, in any event, when they are incorporated in the Services or the Employer pays for them, whichever is first.

17.2 The Service Provider must ensure that the Employer is entitled to use, copy, modify, adapt, and translate for any purpose the documents that the Service Provider is to provide to the Employer under this Contract. The Service Provider has no liability for the Employer's use of the Service Provider's reports or documents for any purposes other than those for which they were provided.

17.3 The Service Provider must indemnify the Employer against claims, liability, and proceedings resulting from any of the following infringing the property (including intellectual property) rights of any person:

17.3.1 anything that the Service Provider does for the Services; or

17.3.2 use by the Employer of the Services (including goods, materials, reports, and

documents provided by the Service Provider for the Services) for the purposes for which they were provided.

- 17.4 Subject to complying with the law and this Contract, the Service Provider must not disclose the Employer's confidential information.

18 ETHICS IN PUBLIC OFFICE

- 18.1 The Service Provider warrants to the Employer that neither the Service Provider nor any person on the Service Provider'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 Services, and nor will they commit any such offence.

19 LAW AND DISPUTES

- 19.1 This Contract and any contractual obligations or disputes arising out of or in connection with this Contract shall be governed and construed in accordance with the laws of Ireland. The parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Contract.
- 19.2 Without prejudice to the Construction Contracts Act 2013, the parties agree to observe the following conciliation procedure:
- 19.2.1 If a dispute arises under this Contract, either party may, by notice to the other, refer the dispute for conciliation. Within 10 working days of the referral of a dispute to conciliation, the parties must jointly appoint a conciliator, and if they fail to do so, or if a person appointed refuses to act or becomes unable to act, the conciliator will be appointed by the president or vice-president of Engineers Ireland. If there is a fee for making the appointment, the parties share it equally. If one party pays the entire fee, it is entitled to reimbursement of the other party's share from the other party on demand.
- 19.2.2 Each party must, within the period set by the conciliator, send to the conciliator and the other party brief details of the dispute stating its contentions about the facts and the parties' rights and obligations concerning the dispute. The conciliator may, for this purpose, suggest further actions or investigations that may be of assistance. The parties must promptly make available to the conciliator all information, documents, access to the Site, and appropriate facilities that the conciliator requires to resolve the dispute.
- 19.2.3 The conciliator will consult with the parties in an attempt to resolve the dispute by agreement.
- 19.2.4 The conciliator may meet the parties separately from each other or together and consider documents from one party not sent or shown to the other, conduct investigations in the absence of the parties, make use of specialist knowledge, establish the procedures to be followed in the conciliation and make recommendations to the parties.
- 19.2.5 The conciliator will not be an arbitrator and the Arbitration Act 2010 and the law of arbitration will not apply to the conciliation.
- 19.2.6 If the dispute is not resolved by agreement within 42 days after the conciliator was appointed, or a longer period proposed by the conciliator and agreed by the parties, the conciliation will be taken to have ended.
- 19.2.7 The conciliation will be confidential, and the parties must respect its confidentiality. All documents provided by a party in connection with conciliation must be returned when the conciliation ends.

20 SERVICE PROVIDER'S RISK OF LOSS AND DAMAGE TO THE SERVICES AND EMPLOYER'S EXISTING FACILITIES

- 20.1 The Employer bears the risk of loss of or damage to the Site (and any Employer's property to be altered or extended by the Services) caused by war, invasion, act of foreign enemies, hostilities (whether war is declared or not), civil war, rebellion, revolution, insurrection, military or usurped power, pressure waves caused by aircraft or other airborne objects travelling at sonic or supersonic speeds, contamination by radioactivity or radioactive, toxic, explosive or other hazardous properties of any explosive nuclear assembly or its components, terrorism, use or

occupation of the Site or facilities by the Employer (except as provided for in this Contract or to the extent that the loss or damage is caused by the negligence of the Service Provider or Service Provider's Personnel), and design of the Services by the Employer or by others for whom the Employer is responsible.

- 20.2 The Service Provider has full responsibility for the care of, and risk of loss of and damage to the goods and materials for the Services, and any existing facilities to be altered or extended by the Services, from the date the Service Provider starts work on the Task concerned (or an earlier date stated in its Task Order) until the date of completion stated in the Employer's Representative's acknowledgment of receipt of the certificate of completion of the Task. After that date the Service Provider is responsible for loss and damage due to defects, occurrences before that date, and activities of the Service Provider or the Service Provider's Personnel. The Service Provider's responsibility under this clause 20.2 excludes loss and damage at the Employer's risk under clause 20.1.
- 20.3 The Service Provider must promptly rectify any loss and damage for which it is responsible under clause 20.3 at its own expense (even if there are insufficient insurance proceeds).
- 20.4 The Employer may issue a Task Order for the Service Provider to rectify loss and damage at the Employer's risk under clause 20.1.
- 20.5 The Service Provider must indemnify the Employer against loss of and damage to the Employer's property, (including the Site and existing facilities to be altered or extended by the Services) arising from or in the course of the Service Provider's performance or non-performance of this Contract, unless the loss or damage is at the Employer's risk under clause 20.1.
- 20.6 From the date the Service Provider starts work on the Task concerned the Service Provider must insure the Services, goods and materials for the Services, and any Employer's facilities to be altered or extended by the Services against loss and damage. The Employer must be named as an insured. The insurance of the Services and goods and materials for the Services must be for the full reinstatement value of the property insured, including cost of demolition, removal of debris, delivery, Employer's professional fees, profit, and inflation during the construction and reinstatement periods. The sum insured for professional fees must be [at least 15% of the Contract value of the Services]. The Service Provider must maintain this insurance until the date of completion stated in the Employer's Representative acknowledgment of receipt of the certificate of completion of the Task.
- 20.7 The proceeds of the insurances required by this clause 20 (except the portion for the Employer's professional fees, which must be paid directly to the Employer) must be paid into a bank account in the joint names of the Employer and the Service Provider, and paid out to the Service Provider on completion of the reinstatement or, at the Employer's option, in instalments on the basis of the Contract value of the work done and goods and materials delivered to the Site for the reinstatement, and also paid out to the Employer for its costs. Any balance in the account after the work is done will be paid to the Employer.
- 20.8 Clause 16 (insurances) applies also in regard to the insurance required by this clause 20.

Appendix 3

[Insert copy of Request For Tender specific specification/works requirements]

Appendix 4

MINI-COMPETITION CONTRACT FOR PLUMBING SERVICES [WITH PSCS]

TASK ORDER TEMPLATE

To: [Insert Service Provider's Details]

Issue Date:	Contract Number: Purchase Order Number:
Description of the Services	
Description of the deliverables	
Any additional Terms and Conditions	
Relevant documents: Specification/project Services proposal	
Date for Commencement Services Location/Site	
Date for Completion	
Service Provider Core Team	
Charges	
Retention % (if applicable)	

In accordance with the provisions of the Contract, you are instructed to proceed with the Services as identified above. The provision of the Services is to commence on the Date for Commencement (as noted above) and are to be completed by the Date for Completion (as noted above). In the event that the Date for Commencement and/or the Date for Completion is/are not noted above you should commence the Services without delay and proceed with the Services with due diligence and complete same in a timely manner.

In undertaking the Services, as required under this Task Order, you are to comply with all requirements and the terms and conditions of the Mini-Competition Contract for Plumbing Services.

SCHEDULE 5: PERFORMANCE EVALUATION REPORT

Plumbing Services for Local Authorities Mini-Competition Performance Evaluation	
Details of Mini-Competition	
Lot No. :	Lot 1 Plumbing Services (excluding gas works & excluding PSCS)
Framework Purchaser:	
Framework Purchaser Contact Name:	
RFT Reference No.:	
Name of Service Provider:	
Service Provider Contact Name:	
Service Provider Ranking:	
Details of Contract Awarded:	
Total Out-turn Cost (incl. VAT):	€
Comments:	

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

Performance Evaluation of Plumbing Services for Local Authorities – Lot 1						
Ratings:		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	Adherence to the specified Project Programme					
	<i>Did the Service Provider complete the works within the specified timeframe?</i>					
	<i>Were any difficulties or delays encountered?</i>					
	<i>Were these difficulties or delays within the control of the Service Provider or his Project Team?</i>					
	Comments					
2	Quality of Workmanship					
	<i>Was the required work completed in a good workmanlike manner?</i>					
	<i>Did the Project Team demonstrate a desire to complete the work to a high quality?</i>					
	Comments					
3	Service Provider Responsiveness					
	<i>Could the Framework Purchaser communicate easily with the Service Provider?</i>					
	<i>Were all issues arising addressed in a professional and timely manner?</i>					
	<i>Did the Service Provider comply with RFT requirements regarding Response Time etc?</i>					
	<i>Did the Framework Purchaser have to issue any requests for corrective action(s)?</i>					
	Comments					
4	Compliance with the requirements of Health & Safety Legislation					
	<i>Did the Service Provider comply with the Safety, Health and Welfare at Work (Construction) Regulations 2013?</i>					
	<i>Did the activities of the Project Team demonstrate awareness of Health & Safety risks associated with the works?</i>					
	<i>Did the Service Provider's site activities create any Health & Safety risks?</i>					
	Comments					
Total Rating						