

## **TERMS AND CONDITIONS**

**(Version 1 - 2013)**

These terms and conditions (“**Conditions**”) are a legal document and should be fully read and independent legal advice obtained (if deemed necessary by the Supplier), prior to the acceptance of the Conditions.

### **1.1 DEFINITIONS**

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

<b>“Agreed Payment Provisions”</b>	has the meaning given to it in Clause 3.1 of these Conditions.
<b>“Bill of Materials”</b>	means a schedule of equipment and/or materials required for the provision of Services under the Contract, detailing the quantity, description and price, as set out in the Contract Form.
<b>“Charges”</b>	means the charges payable under the Contract, as set out in the Contract Form.
<b>“Coillte”</b>	means Coillte Teoranta having its registered office at Dublin Road, Newtownmountkennedy, Co. Wicklow.
<b>“Companies Acts”</b>	means the Companies Acts 1963 to 2012.
<b>“Company”</b>	means, as relevant and appropriate, Coillte and/or Medite and/or SmartPly.
<b>“Company Internal Policies”</b>	means all internal policies and requirements which are notified to the Supplier or sought from the Supplier, by the Company from time to time and which ordinarily will apply to the Supplier, its employees, servants, agents, contractors sub-contractors and so forth, including, where relevant but without limitation, policies relating to human resource matters, security, health and

safety, I.C.T issues, data privacy and the acceptable use of stationery, telephones, e-mail, intranet and internet.

**“Company Representative”**

means the Company representative, as nominated by the Company, to oversee the operation of the Services on Company’s behalf.

**“Company’s System”**

means the supplier management system of the Company, as amended, supplemented or replaced by or on behalf of the Company from time to time.

**“Contract”**

means each contract between the Company and the Supplier that is made in accordance with Clause 2.2 of these Conditions.

**“Contract Form”**

means the form setting out the principal terms of a Contract, as agreed between the Company and the Supplier in accordance with Clause 2.2 of these Conditions.

**“Destination”**

means the delivery destination or destinations set out in the Contract Form or as may be specified, from time to time, by the Company and notified to the Supplier.

**“Employment Laws”**

means all employment Laws, including but not limited to, the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, and other regulations, codes of practice, legally binding determinations of the Labour Court for the Republic of Ireland and registered employment agreements under applicable Laws.

**“Environmental Acts”**

means the Environmental Protection Agency Act 1992, the Waste Management Act 1996, the Waste Management (Amendment) Act 2001, the Local Government (Water Pollution) Act 1977, the Local Government (Water Pollution)(Amendment) Act 1990, the Air

Pollution Act 1987, the Protection of the Environment Act 2003.

**“Force Majeure Event(s)”**

means in relation to a party, any event or circumstance beyond the reasonable control of that party and which is not due to the act, error, omission, breach, default or negligence of that party or any of its employees, agents or contractors. Subject always to the foregoing, Force Majeure Events include:

- (a) acts of terrorists;
- (b) war declared or threatened, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
- (c) any strike, lock-out or other industrial action or labour dispute primarily or substantially aimed at a party or its suppliers, sub-contractors, agents or employees;
- (d) sabotage or acts of vandalism, criminal damage or the threat of such acts; and
- (e) natural disasters and phenomena including exceptional adverse weather or environmental conditions (being weather or conditions that are materially worse, than those encountered in the relevant place at the relevant time of year, during the previous 25 years, prior to the effective date of the relevant Contract), fire, flood, earthquake, meteorites, explosions including nuclear explosion, radioactive or chemical contamination or ionising radiation,

but does not include: (i) lack of funds; (ii) inability of a party to pay; (iii)

events affecting a contractor or supplier of the party that would not have constituted a Force Majeure Event under these Conditions; (iv) changes in market conditions; or (v) inability to make a profit.

**“Forestry Acts”**

means the Forestry Acts 1946 to 2009.

**“Health and Safety Acts”**

means the Safety, Health and Welfare at Work Acts 1989 to 2005, the Safety, Health and Welfare at Work (Construction) Regulations 2001 to 2006 and the Safety, Health and Welfare at Work (General Application) Regulations 2007.

**“Insurance Confirmation Form”**

means a form confirming the insurance cover of the Supplier, which is completed by a reputable insurance company or insurance broker, in a format which conforms to the latest available version of the Company’s standard insurance confirmation form.

**“Intellectual Property Rights”**

means patents, rights to inventions, copyright and related rights, trade marks, trade names and domain names, rights in get-up, rights in goodwill or to sue for passing off, rights in designs, rights in computer software, database rights, rights in confidential information (including know-how and trade secrets) and any other intellectual property rights (to include any design, specification, ideas, know-how, techniques, documentation, software, reports that may be developed herein and/or supplied herein), in each case whether registered or unregistered and including all applications (or rights to apply) for, and renewals or extensions of, such rights and all similar or equivalent rights or forms of protection which may now or in the future subsist in any part of the world.

<b>“Know-how”</b>	means unpatented business and technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the results of experiments, tests and trials, manufacturing processes, techniques and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;
<b>“Laws”</b>	means all laws (including common law), statutes, statutory instruments, directives, regulations, rules, regulations, codes, orders, decrees, judgments, consent decrees, settlement agreements, or other pronouncements, in each case having force of law.
<b>“Meditate”</b>	means Medite Europe Limited, registered number 80984, having its registered office at Redmondstown, Clonmel, Co. Tipperary.
<b>“Partnership Act”</b>	means the Partnership Act 1890.
<b>“Planning Acts”</b>	means the Planning and Development Acts 2000 to 2010 and the Building Control Acts 1990 and 2007 (the “Building Control Act”).
<b>“Registration of Business Names Act”</b>	means the Registration of Business Names Act 1963.
<b>“Road Traffic Acts”</b>	means the Road Traffic Acts 1961 to 2006, the Road Traffic and Transport Act 2006, the Roads Acts 1920 and 1993, the Finance Acts 1960 and 1976, the Finance (Excise Duties) (Vehicles) Act 1952 and the Road Safety Authority Act 2006.
<b>“Services”</b>	means the services to be provided by the Supplier under the Contract, as set out in the Contract Form.

<b>“Specifications”</b>	means the specifications of the Services to be provided under the Contract, as set out in the Contract Form.
<b>“Site”</b>	means the Company site (and/or sites), within its ownership and/or control, as more particularly specified to the Supplier or such other site as may reasonably be specified, from time to time, by the Company and notified to the Supplier.
<b>“SmartPly”</b>	means SmartPly Europe Limited, registered number 205747, having its registered office at Belview, Slieverue, Waterford.
<b>“Supplier”</b>	means the relevant person, party, company or other entity contracted by the Company to provide Services under the Contract, as set out in the Contract Form.
<b>“Tender Documents”</b>	means any tender documents relating to the Contract, including the Request for Tender, Proposal and any other documentation referred to in the Contract Form.
<b>“Term”</b>	means the term of the Contract, as set out in the Contract Form.

- 1.2 Words importing the singular includes the plural, the masculine include the feminine and vice-versa where the context requires.
- 1.3 In these Conditions headings are for convenience and ease of reference only and shall not affect interpretation.
- 1.4 In the event of any ambiguity or discrepancy within or between any of the documents comprising a Contract, the Company, acting reasonably, shall direct how such ambiguity or discrepancy shall be correctly interpreted.
- 1.5 A reference to a particular Law, is a reference to it as it is in force for the time being, taking account of and including any subsequent and any further Law, or any amendment, modification, extension, re-enactment or replacement and any subordinate Law for the time being in force or made under it.
- 1.6 Any words following the terms “including”, “include”, in particular, or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms.

1.7 Any reference to schedules and/or appendices to the Contract shall form part of and are incorporated into the Contract.

## **2. TERMS OF ENGAGEMENT**

2.1 These Conditions, the Contract Form and any Tender Documents apply to each Contract between the Company and the Supplier to the exclusion of all other terms and conditions that the Supplier seeks to impose or incorporate, or which are implied by trade, custom, practice or course of dealing, unless expressly agreed otherwise in writing by the Company.

2.2 The procedure for the formation of a Contract shall be as follows:

2.2.1 The Company may provide the Supplier with a draft contract form by electronic means via the Company's System setting out the terms upon which the Company may be willing to engage the Supplier to provide the Services set out in the draft contract form pursuant to these Conditions (a "**Draft Contract Form**"). A Draft Contract Form shall be an invitation to treat and shall not be a binding offer by the Company to enter into a Contract on such terms.

2.2.2 If the Supplier, or any person ostensibly having the necessary authority and power to act on the Supplier's behalf, indicates its intention to enter into a Contract on the terms set out in a Draft Contract Form by executing it and providing it to the Company (whether by signing it by hand and sending it by electronic means via the Company's System to the Company or by using an electronic signature in accordance with the Electronic Commerce Act 2000 or otherwise), such a Draft Contract Form executed on behalf of the Supplier and provided to the Company shall constitute an offer by the Supplier to enter into a Contract on the terms set out in the Draft Contract Form. A Draft Contract Form is a legal document and prior to its execution (as herein provided), the Supplier is responsible for obtaining its own independent legal advice (if deemed necessary by the Supplier).

2.2.3 Upon receipt of a Draft Contract Form executed on behalf of the Supplier, the Company may accept or reject the offer by the Supplier to enter into a Contract on the terms set out in such a Draft Contract Form. Thereafter, no Contract shall come into existence or be deemed to come into existence, unless and until the Company executes such a Draft Contract Form (subsequent to the Supplier) and notifies the Supplier thereof via the Company's System or otherwise in writing, whereupon a Contract, comprising the duly agreed Contract Form, any Tender Documents referred to therein and these Conditions, shall come into existence.

2.3 For the duration of the Term, in consideration of the payment by the Company of the Charges, the Supplier shall carry out, provide and complete the Services in

compliance with the Specifications and in accordance with the terms and conditions set out in the Contract.

- 2.4 Unless it has been specifically authorised to do so by the Company (pursuant to the provisions of the Contract or otherwise in writing), the Supplier shall not:
- 2.4.1 have any authority to incur any expenditure in the name of or for the account of the Company, save with the express consent in writing of the Company,
  - 2.4.2 hold itself out as having authority to bind the Company; or
  - 2.4.3 make any public reference to its engagement hereunder. A public reference includes but is not limited to the Supplier's dealings with third parties whether involved or not in carrying out the provision of the Services, whether verbally or by way of its own promotional or advertising material (to include, but not limited to, brochures and websites) and otherwise except where it is specifically required by the Contract or otherwise agreed by the parties.
- 2.4 The relationship of the Supplier to the Company will be that of an independent contractor and nothing in the Contract shall render the Supplier or any of its personnel engaged in the performance of the Contract an employee, worker, agent or partner of the Company and the Supplier agrees and undertakes that it and its personnel shall not hold itself out as such. The Contract constitutes a contract for the supply or provision of independent services only and is not a contract or agreement of employment nor is it to be construed as any other form of contract or agreement between the parties.
- 2.5 The Supplier shall bear the sole risk and responsibility for its own personnel, to include its/their employees, contractors, sub-contractors, servants and agents, as may be engaged in the performance of the Contract and for ensuring their compliance with and adherence to the terms and conditions of the Contract. The Supplier warrants that it shall comply with all relevant employment protection and working conditions, including the Employment Laws (which shall also include, but shall not be limited to those with and involving, the Revenue Commissioners, the Department of Social Protection and the Department of Justice and Equality) with regard to its aforesaid personnel and the Company shall not be under any duty, risk or responsibility and the Supplier hereby indemnifies, shall keep indemnified and hold harmless the Company, in this regard.
- 2.6 Nothing in the Contract shall prevent the Supplier from being engaged, concerned or having any financial interest in any capacity in any other business, trade, profession or occupation during the Term, provided always that it does not in any way interfere with and/or impact upon its performance of the Contract.
- 2.7 Any works undertaken, as part of the Services, pursuant to the Contract will be subject to an acceptance procedure (the "**Acceptance Procedure**"), which means the acceptance by the Company of test results (and any other tests that the Company may for itself, deem appropriate and/or necessary) for such works (the "**Test Results**"), pursuant to acceptance tests to be agreed by the parties (acting reasonably), to be produced to the



Company by the Supplier upon completion of such works (or such earlier period upon request by the Company). The Company shall be entitled, but not obliged, to supervise the testing procedure and upon completion of the agreed tests the Supplier will furnish a set of Test Results to the Company. The Company will expeditiously determine, but no later than 28 days from the date of being furnished with the Test Results or such further period as may be agreed by the parties (the “**Relevant Period**”), if the Test Results are to an acceptable standard and/or an acceptable industry standard and, if so, will accept the Test Results and sign off on the said works (“**Acceptance**”). In the event that there is not Acceptance of the Test Results or any part thereof by the end of the Relevant Period, then, the Company may notify the Supplier in writing of this fact. The Supplier will have 28 days (the “**Revised Relevant Period**”) in which to correct any malfunctions, errors or defects and to submit a revised set of test results (“**Revised Test Results**”). In the event that there is not Acceptance of the Revised Test Results or any part thereof by the end of the Revised Relevant Period, then without prejudice to any other rights or remedies to which the Company may be entitled, the Company may, at its sole discretion:

- 2.7.1 by written notice to the Supplier elect to accept and retain some elements of the relevant works, subject to payment of the relevant Charges in respect thereof, or such other amount as may be agreed by the parties and require the Supplier to carry out, at its own cost and expense, such decommissioning and reinstatement works as the Company may deem to be reasonably necessary in respect of the works which are not accepted and upon completion thereof, to terminate the Contract; or
  - 2.7.2 by written notice to the Supplier elect to reject all of the relevant works, to require the Supplier to refund all Charges paid by the Company under the Contract and to require the Supplier to carry out, at its own cost and expense, such decommissioning and reinstatement works as the Company may deem to be reasonably necessary in respect of such works and, upon completion thereof, to terminate the Contract.
- 2.8 The Supplier shall not offer, give or agree to give, whether directly or indirectly, any person or party in the service of Company any gift or consideration of any kind as an inducement or reward in relation to the obtaining or execution of the Contract, or any other agreement or contract, for or with Company. Any breach of this condition by the Supplier, or by anyone employed or engaged by it, purporting to represent its interests or acting on its behalf (whether with or without the knowledge of the Supplier) shall render the Contract void and shall entitle Company to immediately recover from the Supplier the amount of any resulting loss.
- 2.9 The Supplier shall comply with all reasonable Company Internal Policies which, without prejudice, shall include, as relevant and required:
- 2.9.1 adherence to a maximum speed limit of 25 kilometres per hour (the “**Maximum Speed Limit**”), for drivers of all and any cars, lorries, trucks, motorbikes and any other mechanically propelled vehicles, on the road

network or otherwise within any Site or such other property of the Company, subject always to the proviso that the Supplier shall be responsible for ensuring that drivers shall always take reasonable care to limit their speed to a speed, which may be lower than the Maximum Speed Limit, that is suitable having regard to other users, weather conditions, surface conditions, traffic conditions or any other relevant conditions,

- 2.9.2 adherence to the security requirements of the Company, for any operation within any Site or such other property of the Company; and
  - 2.9.3 furnishing, upon execution of the Contract Form (or within such other period, as may be agreed with the Company), an environmental impact appraisal form (or such other appropriate and necessary documentation pursuant to the Environmental Acts), the site development plans, harvesting site plans or relevant work specifications.
- 2.10 The Company reserves the right, at any time, to revise, enhance, modify, amend, alter or delete the Conditions and/or any of them (to also include, but not limited to, the Contract Form and/or Insurance Confirmation Form).

### **3. PAYMENT**

- 3.1 The Charges shall be paid by the Company to the Supplier in accordance with the payment terms set out in the Contract Form (the “**Agreed Payment Provisions**”) and in accordance with these Conditions. All sums payable under the Contract are exclusive of VAT.
- 3.2 The Supplier shall invoice the Company or the Company will automatically generate an invoice for the Supplier, pursuant to the Company’s System (“**Company’s System Invoice**”), in accordance with and as provided for in the Agreed Payment Provisions. Subject to Clause 3.4.1 and 3.4.2, any invoiced amount that is not disputed by the Company or any Company’s System Invoice that is not disputed by the Supplier shall be payable within the time frame stipulated by the Agreed Payment Provisions, following the date of receipt of the properly due and properly submitted invoice, by electronic transfer to such bank account of the Supplier, to be notified to the Company (or alternative arrangement as agreed by the parties in writing).
- 3.3 If the Company fails to pay any non-disputed amount by its applicable due date under the Contract, the Supplier shall be entitled (but not obliged) to charge the Company interest on the said overdue amount only, from the due date up to the date of payment, pursuant to the provisions of The European Communities (Late Payments in Commercial Transactions) Regulations 2012 (S.I. No. 580/2012).
- 3.4.1 The Company shall have the right to query and/or dispute, in good faith, any invoice received from the Supplier, provided that such right is utilised within the time frame stipulated by the Agreed Payment Provisions, following receipt by Company of that invoice, and that such right by Company shall not affect:

3.4.1.1 the obligation of the Company to pay any undisputed element of such invoice;  
or

3.4.1.2 the timing of such payment obligation, in relation to the undisputed element of such invoice.

For the avoidance of doubt, it is hereby agreed by the parties to a Contract that they shall use reasonable endeavours to resolve any dispute pertaining to any invoice, with the intent that the dispute shall be resolved within the time frame as provided for in clause 3.2.

3.4.2 The Supplier shall have the right to query and/or dispute, in good faith, any Company's System Invoice, provided that such right is utilised within the time frame stipulated by the Agreed Payment Provisions, following receipt from the Company of that Company's System Invoice, and that such right by Supplier shall not affect:

3.4.2.1 the obligation of the Supplier to pay any undisputed element of such Company's System Invoice; or

3.4.2.2 the timing of such payment obligation, in relation to the undisputed element of such Company's System Invoice.

For the avoidance of doubt, it is hereby agreed by the parties to a Contract that they shall use reasonable endeavours to resolve any dispute pertaining to any Company's System Invoice, with the intent that the dispute shall be resolved within the time frame as provided for in clause 3.2.

3.5 In respect of any order(s) for the delivery of goods which may be requested by the Company in writing pursuant to the Services:

3.5.1 The Company's purchase order number must be quoted on all correspondence, advice notes and invoices. Failure to show the Company's order number on an invoice will result in return of the invoice to the Supplier and may result in delay in payment of the relevant Charges.

3.5.2 Advice of dispatch should be sent to the Company's designated Destination on the date of dispatch of any orders.

3.5.3 Unless otherwise agreed in writing, all orders made shall be supplied carriage paid to the Company's Destination.

3.5.4 The Company reserves the right to refuse acceptance of any orders delivered in excess of quantities ordered and accepts no responsibility in respect of payment or otherwise in relation to any orders so delivered in excess of the quantity so ordered.

3.5.5 The Supplier shall ensure that the whole of the order or any part thereof shall be made available to the Company for inspection and testing together with all

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

- 3.5.6 The Company reserves the right to cancel an entire order by notice in writing to the Supplier if the goods are not satisfactory or if deliveries are not made on time, save that such an extension of time as may appear to the Company to be reasonable may, at the Company's sole discretion, be allowed to the Supplier.
- 3.5.7 Any costs or expense incurred by the Company in respect of any rejected goods not replaced by the Supplier within the time specified by the Company, together with any additional expenditure reasonably incurred by the Company in obtaining other goods in replacement, may be dealt with by the Company pursuant to Clause 17 herein.
- 3.5.8 The Company reserves the right to make reasonable changes to an order, by notifying the Supplier in writing and the parties agree to act reasonably to agree the particulars of any such changes to an order.
- 3.5.9 It is understood that time is of the essence with regard to deliveries of orders and agreed delivery times.
- 3.6 The Supplier acknowledges that the Company maintains the right to retain, at its sole discretion, up to 10% of the Charges due pursuant to the Contract, until such time as Company is satisfied that the Supplier has carried out all its obligations under the Contract.
- 3.7 The Company reserves the right to charge (upon notification) and if such right is exercised, then the Supplier shall pay an amount by way of a penalty and/or specified liquidated damages to the Company, in respect of the matters set out and identified by the Agreed Payment Provisions.
- 3.8 For the avoidance of doubt, the parties have agreed that the Charges are fixed and that, save as otherwise expressly provided in the Contract, the Supplier shall bear the cost of any travel, expenses and/or other costs that may be incurred in the performance of the Contract.
- 3.9 The Supplier acknowledges that the Company is obliged to deduct Professional Services Withholding Tax ("PSWT"), if applicable, from payments made in respect of professional services, pursuant to the provisions of the Taxes Consolidation Act 1997. The rate at which PSWT, if applicable, is deducted will be at the standard rate of PSWT in force.

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

- 4.1 When requested, the Supplier shall furnish to the Company, in the format required by the Company, details of all employees, agents or any other person whatsoever who will have an involvement in the carrying out and providing the Services. The Supplier shall also provide the required information in respect of any additional or replacement personnel or any other personnel, whatsoever, who may be so involved.
- 4.2 If the Company reasonably determines at any time that any contractors, employees or agents of the Supplier are not suitable for carrying out and providing the Services, it shall notify and discuss this determination with the Supplier. Unless agreed otherwise by the parties in the context of such discussion, the Supplier shall immediately remove the contractors, employees or agents in question and propose further contractors, employees or agents.
- 4.3 In relation to the provision of the Services, the Supplier shall be solely responsible for any trespassers, protestors and/or others (to include their activities) that are not detailed and permitted, pursuant to this clause 4, and the Company shall have no responsibility or liability for their activities or presence.

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

If required and necessary pursuant to the Contract, the Company shall afford to the appropriate personnel of the Supplier at all reasonable times and upon receipt of adequate prior notice, such permitted access to the Site (subject to any reasonable requests of the Company) as may be necessary to enable the Services be provided and carried out, providing always that the Supplier shall ensure that its personnel shall comply with all Company Internal Policies notified to it by the Company and that the Company shall have the right to refuse admission to, or order the removal from the Site of any person who is in breach of any such Company Internal Policy or who, in the opinion of the Company, is under the influence of alcohol or drugs whilst on or at the Site. Any action taken pursuant to this clause shall be confirmed in writing to the Supplier by the Company, as soon as practicable. Any such person who has been expelled from the Site by the Company shall not be readmitted, without the prior written consent of the Company.

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

- 6.1 The Supplier shall take all reasonable care to ensure that, in carrying out and performing the Services, that it does not disrupt the operations of or, save as may be reasonably unavoidable, inconvenience the Company, its employees, agents or any other contractors or other person (including customers of the Company) to include on or at the Site and/or any other Company property. The Supplier shall not light fires on the Site without the express written consent and direction of the Company nor shall the Supplier deposit any litter or waste material on the Site and/or any other Company property.

- 6.2 The Supplier shall make good at its own expense, to the satisfaction of Company, any errors and/or defects in the Services. Failure by the Supplier in this regard, shall entitle (but not oblige) the Company, acting reasonably, to make good any such errors and/or defects and to defray any costs and expense associated from any amounts due to the Supplier by the Company pursuant to the Contract or any other contract or agreement.
- 6.3 Where relevant to the Contract, the Supplier shall expeditiously make good at its own expense, to the reasonable satisfaction of the Company, any damage caused to or on the Site and/or any other Company property or any part thereof (including, but not limited to any access, buildings, walls, gates, fences, hedges, trees, drains, roads, bridges, tracks, monuments, cultural and/or archaeological features) in the performance of the Services pursuant to the Contract. Failure by the Supplier in this regard, shall entitle (but not oblige) the Company, acting reasonably, to make good any such damage (where possible) and to defray any costs and expense associated from any amounts due to the Company by the Supplier pursuant to the Contract or any other contract or agreement.
- 6.4 The Supplier shall not do (or permit to be done) anything (save with the written consent of the Company), in, upon, over or under the Site and/or any other Company property or any part thereof (including access thereto) which shall be or become or cause a nuisance, damage, disturbance, injury or danger to the Company or to the owner or occupier of any adjoining or neighbouring property.

## **7. MATERIALS, EQUIPMENT AND INTELLECTUAL PROPERTY**

- 7.1 The Supplier shall be responsible for supplying and providing for its own vehicles, plant, tools, labour, material and equipment pursuant to the Contract and other than, as may be necessary for the provision of the Services, the Supplier shall not locate, retain, store or keep any vehicles, plant, tools, labour, material or equipment at the Site and/or any other Company property, without the prior consent in writing of the Company.
- 7.2 In the event that any plant, tools, material or equipment may be supplied to the Supplier by or on behalf of the Company for use in connection with the Services, such plant, material or equipment shall at all times remain the property of the Company and shall be returned to the Company forthwith upon request or if not so requested, then upon completion of the relevant Services, in a safe working condition and fit for their intended purpose, in accordance with good industry practice.
- 7.3 The Supplier shall ensure that the Services, where relevant, are carried out and conducted in a good and workmanlike manner using good quality materials and equipment in accordance with good industry practice, which are not in any way deleterious (by themselves, in conjunction with other materials, by virtue of location or passage of time), likely to cause damage or be a hazard to health and safety or capable of posing a threat to the stability, integrity, performance or normal life expectancy of the Services or any part thereof.

- 7.4 The Supplier warrants that the carrying out and provision of the Services or any part thereof, does not in any way infringe any Intellectual Property Rights.
- 7.5 All Know-how of the Company, Intellectual Property Rights and any other rights in all and any Company data and all parts and copies thereof shall remain vested in the Company.
- 7.6 The Supplier acknowledges and agrees that all and any Intellectual Property Rights arising in or developed from any material, equipment or any other manner in the provision of the Services and/or any other matter and all parts and copies thereof (“**Work Products**”) shall at all times vest or remain vested in Company, save where otherwise expressly agreed in writing by the Company. To the extent necessary to give effect to the foregoing, the Supplier (which shall mean and include all its personnel, to include its employees, directors, officers, professional advisors, contractor’s, sub-contractors, servants and agents):
- 7.6.1 hereby assigns to the Company by way of present assignment of future rights all Intellectual Property Rights for the full terms thereof throughout the world arising in any Work Products;
- 7.6.2 hereby waives all current or future moral or similar rights arising from any of the Work Products insofar as it may lawfully do so in favour of the Company and, for the avoidance of doubt, this waiver shall extend to the licensees and successors in title to the copyright in the Work Products; and
- 7.6.3 hereby irrevocably appoints the Company to be its attorney in its name and on its behalf to execute and do any such instruments or things and generally to use its name for the purpose of giving to the Company (or its nominee) the full benefit of the provisions of this clause and in favour of any third party a certificate in writing signed by any director or other officer of the Company that any instrument or act falls within the authority hereby conferred shall be conclusive evidence that such is the case.

## **8. APPLICABLE LAW**

The Supplier shall comply with all obligations and/or conditions imposed under or by virtue of any Laws, permits, licences or notices for the time being in force relating to the performance of the Services, including all and any relevant and accepted industry standards and/or codes of practice and without prejudice to the generality of the foregoing, the Supplier shall comply at all times with the Employment Laws, the Environmental Acts, the Forestry Acts, the Health and Safety Acts, the Road Traffic Acts, the Planning Acts, the Companies Acts, the Partnership Act and the Registration of Business Names Act.

## **9. INDEMNITY**

The Supplier acknowledges that the Company is relying on the Supplier’s skill, know-how, experience, expertise and diligence to implement, carry out and provide the

Services (and the Supplier's knowledge of acceptable standards of good industry practice). The Supplier hereby indemnifies and agrees to keep indemnified and hold harmless the Company, its servants, agents and all others so authorised by the Company, from and against all and any death, injury, disease, losses, expenses, costs, claims, proceedings, demands, waste, pollution, contamination, spoil, damages, breach of any Intellectual Property Rights and any other liabilities which may occur by reason of any act, omission, wrongful act, neglect, negligence, default, wilful default, criminal act, fraud or misrepresentation of the Supplier, its servants and/or agents (whether or not also partly due to the negligence, omission or default of the Company or any person for whom the Company may be responsible).

## **10. INSURANCE**

10.1 The Supplier shall effect and keep in force during the Term at its own cost, with a reputable insurance company, such levels of insurance cover as may be required to meet its potential liabilities under the Contract, which shall waive all rights of subrogation or claim for contributory negligence as against the Company and which shall include, without prejudice to the generality of the foregoing:

10.1.1 Public/Product Liability Insurance with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance. The Supplier shall ensure that, save as expressly agreed in writing with the Company, there shall not be any exclusions from such Public Liability Insurance except the following:

- War Exclusion
- Asbestos
- Cyber Liability
- Radioactive contamination / nuclear explosion
- Terrorism
- Bodily injury to persons under a contract of service or apprenticeship with the insured Property belonging to the insured or in the insured's custody or control, with exceptions
- Loss or damage due to design (more appropriately insured under a Professional Indemnity policy)
- Defective workmanship or materials but not damage resulting therefrom
- Mechanically propelled vehicles to which the Road Traffic Acts applies
- Gradual pollution
- Fines and Penalties / Punitive Damages



- Wrongful Arrest
- Defamation

10.1.2 Employers Liability Insurance (and Personal Accident Cover, where appropriate) with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €3,000,000 in respect of each and every occurrence and unlimited in the period of insurance. The Supplier shall ensure that, save as expressly agreed in writing with the Company, there shall not be any exclusions from such Employers Liability Insurance except the following:

- War Exclusion
- Off Shore work
- Asbestos
- Cyber Liability
- Radioactive contamination / nuclear explosion
- Terrorism
- Road Traffic Acts cover, which is compulsory insurable
- Employment Practices Liability (Claims for discrimination, bullying, unfair dismissal and so forth)
- Fines and Penalties / Punitive Damages

10.1.3 Motor Insurance (to include third party property damage) with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €5,000,000 in respect of each and every occurrence and unlimited in the period of insurance. The Supplier will note the additional motor insurance requirements for haulage and cartage, wherein the motor policy must provide for a specific indemnity to the Company, carriage for hire and reward, third party property damage Limit of €5,000,000, unauthorised use, unauthorised driving, loading and unloading beyond the limits of the carriageway, trailer cover and no passenger liability restrictions.

10.1.4 Professional Indemnity Insurance from the date of this Agreement until the sixth anniversary of the date that the Company Representative certifies substantial completion of the Services with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €5,000,000 in respect of each and every occurrence and unlimited in the period of insurance.

10.1.5 All Risks Insurance for loss or damage up to the value of the works pursuant to the Services until completion and hand over to the Company.

- 10.1.6 Carriers Liability with a minimum limit of indemnity provided by the Supplier (or on its behalf) of €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance.
- 10.2 The Supplier is required to furnish a completed Insurance Confirmation Form, to the satisfaction of the Company, prior to entering into a Contract Form and/or prior to the performance of any Services.
- 10.3 Without prejudice to Clause 10.2, the Supplier may also be required to confirm that the required relevant insurances are in place, upon request by the Company from time to time.

## 11. FORCE MAJEURE

- 11.1 Neither party shall be in breach or otherwise be liable to the other party in any manner whatsoever for any failure or delay in performing its obligations under the Contract, if and to the extent that it is prevented, hindered or delayed from or in performing such obligations by a Force Majeure Event provided that:-

11.1.1 the date for performance of the obligation which has been delayed by the Force Majeure Event shall be deemed suspended for so long as such obligation is affected by such Force Majeure Event;

11.1.2 the party seeking to exempt itself from liability by virtue of this clause (the “**Affected Party**”) must:-

11.1.2.1 give written notice to the other party as soon as reasonably practical (so far as the Affected Party is aware at the time of giving the notice) identifying:

11.1.2.1.1 the Force Majeure Event that has occurred;

11.1.2.1.2 the date from which the event has prevented, hindered or delayed the Affected Party in the performance of its obligations;

11.1.2.1.3 the obligation affected; and

11.1.2.1.4 its best estimate of the date or dates upon which it will be able to resume performance of the affected obligation.

11.1.2.2 at all times use all reasonable endeavours to mitigate the effect of the Force Majeure Event. For the avoidance of doubt, the Company is under no obligation to accept any alternative arrangement offered where a Force Majeure Event prevent, hinders or delays the Supplier in the performance of its obligations under the Contract;

- 11.1.2.3 give notice to the other party forthwith (upon becoming aware of the same) upon the Force Majeure Event ending or being removed or its existence no longer preventing performance of an obligation and must resume the full performance of those of its obligations no longer affected as soon as possible thereafter; and
- 11.1.3 the Affected Party shall not be entitled to payment from the other party in respect of extra costs and expenses incurred by virtue of a Force Majeure Event, save as provided hereunder.
- 11.2 If a party receiving a notice given under clause 11.1.2.1 raises any issue or matter regarding a Force Majeure Event having occurred, or the effect of such Force Majeure Event it shall give written notice to the party claiming Force Majeure within 7 days stating the grounds on which it disputes such claim and if neither the notice under clause 11.1.2.1 nor the notice of dispute under this clause has been withdrawn within 7 days of the date of the notice under this clause then the issue which is the subject of the notice under clause 11.1.2.1 and/or under this clause 11.2 shall be referred to the dispute resolution procedure at clause 12 herein.
- 11.3 If the Force Majeure Event is in effect for a period of time in excess of 30 days (not including the period referred to at clause 11.2 above) then either party may, by written notice to the other party during the period of 30 days after the expiry of that 30 day period, forthwith terminate the Contract provided that such notice shall be deemed not to have been given in the event that notice of the cessation of the Force Majeure Event given in accordance with Clause 11.1.2.3 is received by the party that gave notice of termination under this Clause before the expiry of such 30 day period.

## **12. DISPUTE RESOLUTION**

- 12.1 Any dispute arising under or in connection with the Contract or its subject matter or formation shall, except where otherwise expressly agreed in the Contract Form, be subject to the provisions of this clause 12.
- 12.2 If a dispute arises, appropriate management personnel from the Company and the Supplier shall use their reasonable endeavours to resolve the dispute within 14 days.
- 12.3 If any dispute is resolved pursuant to clause 12.2 a written memorandum (“Memorandum of Resolution”) shall be prepared jointly and signed by each party. The Memorandum of Resolution shall confirm the resolution is in full and final settlement of the dispute and shall record all matters in issue and all material factual details of the dispute and the terms of the resolution and a copy shall be supplied to both parties hereto.
- 12.4 If the representative of both parties fail to resolve any dispute pursuant to Clause 12.2 within 14 days of the referral of the dispute for resolution under Clause 12.2 either party may refer the dispute to mediation by a single suitably qualified and competent mediator that is mutually agreed by the parties within 14 days after written notice by

the party requesting such mediation. Neither party will unreasonably withhold consent to the selection of such mediator. The fees and costs of the mediator shall be shared equally by the parties, but otherwise each shall bear any of their own other relevant costs and expenses. In circumstances, where either party refuses to participate in mediation, where a mediator fails to be mutually selected and agreed or failing satisfactory resolution by mediation within 21 days of referral, then either party may refer the dispute to be carried out in accordance with the Arbitration Acts 2010 by a single arbitrator to be appointed by agreement between the parties or failing agreement within a period of 14 days from the date of the dispute to be appointed by or on behalf of the President for the time being of the Incorporated Law Society of Ireland upon the application of either party and the decision of such (save in the case of manifest error) shall be final and binding on the parties.

- 12.5 Nothing contained in this Clause shall restrict either party's freedom to commence legal proceedings where such proceedings are required urgently to preserve any legal right or remedy, to protect any Intellectual Property Rights or rights in confidential information or to otherwise prevent irreparable harm.

### **13. SUSPENSION**

- 13.1 The Company may suspend performance of some or all of the Services by the Supplier. The Company shall give at least 14 days written notice of such suspension to the Supplier and shall otherwise specify when such suspension is to become effective and the anticipated length of the suspension. If any such suspension lasts for a period in excess of 6 months then the Supplier shall, at the expiry of such period, be entitled upon 14 days' notice to the Company, to terminate the Contract.
- 13.2 From and upon the effective date of any suspension of the Services pursuant to Clause 13.1, the Supplier (unless directed by the Company) shall incur no further expense and/or obligations in connection with the suspended Services and shall cease performing the suspended Services except as otherwise directed in writing by the Company.
- 13.2.1 In any event the Supplier shall bring the provision of any aspect of the Services as may be in progress to such a suitable state of completion consistent with a future resumption as may be agreed with the Company.
- 13.2.2 If so directed in writing by the Company, the Supplier shall perform such aspect of the suspended Services as may be necessary and/or appropriate.
- 13.3 In the event of a suspension pursuant to Clause 13.1 the Supplier is entitled to request:
- 13.3.1 payment for the provision of the Services completed to prior to the effective date of the suspension in accordance with the Contract; and
- 13.3.2 payment for provision of any aspect of the Contract as still may be required by the Company

PROVIDED THAT any payment made to the Supplier shall be credited against any payment due, to the extent that such payment was made in respect of costs that were to be incurred by the Supplier beyond the date of the suspension.

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

#### **14. TERM AND TERMINATION**

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

- 14.2 The Company may for its own convenience, in its absolute discretion, terminate the Contract at any time upon 28 days' written notice to the Supplier. Such termination shall be effective in the manner specified in the said notice and shall be without prejudice to any claims which either party may have against the other. Upon receipt of the foregoing notice from the Company, the Supplier shall, unless the notice directs otherwise, immediately discontinue its operations pursuant to the Contract and shall make every effort to procure cancellation of all existing commitments upon terms satisfactory to the Company.

- 14.3 The Company may immediately terminate the Contract, without prejudice to any other right or remedy to which it may be entitled, by giving the Supplier written notice thereof to take effect on the day of its service on the Supplier or upon such other day as may be specified therein, if the Supplier:

14.3.1 fails to comply within 7 days of receipt of a notice requiring the Supplier to improve or repair the Services, being performed pursuant to the Contract;

14.3.2 commits a material breach of the Contract;

14.3.3 abandons the Contract;

14.3.4 fails to disclose any conflict of interest;

14.3.5 fails to notify Company of a change of control of the Supplier (where 'change of control' means a change in the possession, whether directly or indirectly, of the power to direct or cause the direction of the management or policies of the Supplier, whether through ownership of shares, by contract or by other means);

14.3.6 commits any act of fraud, misrepresentation, theft, criminal act or a deliberate or reckless misconduct or damage;

14.3.7 becomes bankrupt, or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy act to which the Supplier may be subject for a sequestration of its estate, or a trustee is appointed by him on behalf of their

creditors, or if the Supplier, being a company, enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation), or has a receiver or manager, or where an administrative receiver is appointed over any of its assets or the Supplier carries on business under an examiner or administrator, or anything analogous to the foregoing occurs in respect of the Supplier in any applicable jurisdiction; and/or

14.3.8 fails to provide certificates of insurance or certified copy policies pursuant to the Contract, when required.

14.4 The Supplier may terminate the Contract, by giving written notice to the Company, if the Company:

14.4.1 commits a material breach of the Contract and fails to remedy the material breach within 30 days of so being notified;

14.4.2 commits any act of fraud or deliberate or reckless misconduct in relation to the Contract;

14.4.3 enters into voluntary or compulsory liquidation (except for the purpose of reconstruction or amalgamation), or has a receiver or manager or administrative receiver appointed over any of its assets or carries on business under an examiner or administrator.

14.5 If the Contract is terminated early for any reason in accordance with its terms, then each party's further rights and obligations under the Contract shall cease upon the effective date of termination provided that the accrued rights of the parties as at termination, or the continuation after termination of any provision which, by its meaning or effect, is intended to continue to be effective after the expiration or termination, shall not be affected or prejudiced.

## **15. REPRESENTATIONS AND WARRANTIES**

The Supplier represents and warrants to the Company that:

15.1 it is duly organised and validly existing under the laws of jurisdiction of formation and is up to date on all and any payments and filings required in order to maintain such existence and good standing under the laws of its jurisdiction of formation.

15.2 it has all necessary power, authority, approval and consent to carry on its business as presently conducted and to perform its obligations and carry out, provide and supply the Services under the Contract and to bind the Supplier as herein provided.

15.3 it shall not (at any time) have exclusive use, possession, management or control of any part of the Site and/or any other Company property, which shall remain with the Company.

- 15.4 the Services shall be provided by appropriately experienced, qualified and trained personnel and shall be rendered with all due skill, care and diligence.
- 15.5 any goods ordered pursuant to Clause 3.5 shall be of merchantable quality and fit for their intended purpose.
- 15.6 it acknowledges that a felling licence from the Forest Service may be necessary for the removal of any trees and/or timber, as may be required, within the Site and/or other Company property pursuant to the Forestry Acts. Prior to the commencement of the any works pursuant to the Services, the Supplier shall liaise with the Company. On receipt of a felling licence(s), where required, the Company and the Supplier shall agree a programme of works in order to ensure that the carrying out of the felling and removal operations are coordinated and fully understood by both parties. The parties acknowledge that they shall act reasonably to agree the programme of works aforesaid.
- 15.7 it acknowledges that it is not permitted to enter onto a Site to carry out any works as may be envisaged under the Contract until such time as appropriate environmental compliance training is delivered to the Supplier, to include its/their employees, contractors, sub-contractors, servants and agents, as may be engaged in the performance of the Contract.
- 15.8 within two month of the completion of any works, pursuant to the Services, it shall restore the Site and any other Company property to a standard reasonably acceptable to the Company.
- 15.9 all consents, licences, permits, approvals and authorisations required in connection with its entry into and performance of the Contract have been obtained and shall be maintained in full force and effect for the duration of the Term.
- 15.10 prior to the execution of the Contract and where appropriate, the Supplier shall furnish to Company, the agreed design, plans and specifications, to include (but not be limited to):
- 15.10.1 A copy of the final grant of planning permission (if applicable) for the Services together with all other appropriate consents, licences or permits pursuant to the Planning Acts.
  - 15.10.2 General arrangement drawings in plan which demonstrate the proposed positioning of any works.
  - 15.10.3 Construction monitoring arrangements.
  - 15.10.4 Construction completion and site restoration proposals.

- 15.10.5 The specifications for all materials, components and equipment to be deployed in the construction of any works.
- 15.11 as soon as practicable and no later than 14 days following completion of the works pursuant to the Services, the Supplier will furnish the following, to the Company:
  - 15.11.1 “As built” information, design, specification and arrangements.
  - 15.11.2 Final Test Results for Company’s acceptance and approval, as per clause 2.7 of these Conditions.
- 15.12 after Acceptance, the relevant works, shall continue to conform in all respects to the Test Results for the duration of the Term and for any other further period as may be agreed in writing between the parties.
- 15.13 it will comply with all and any (reasonable) Company guidelines, rules and/or policies, as may be specified, from time to time, by the Company and notified to the Supplier.
- 15.14 the warranties by the Supplier set out in these Conditions are in addition to the statutory terms implied in favour of the Company by the Sale of Goods Act 1893, as amended by the Sale of Goods and Supply of Services Act 1980 and any other applicable Laws.

## **16. DESIGN AND PLANNING**

- 16.1 Where applicable to the Services, the Supplier shall have the sole responsibility, entirely at its cost and expense, for expeditiously planning, designing, preparing, submitting and applying for any application required with regards to compliance with the Planning Acts to the relevant planning authority (which may include, An Bord Pleanála or any judicial review as may be necessary, only after consultation and agreement with the Company), to include complying with any requests for further information or any public consultation as may be necessary.
- 16.2 Upon the completion of any works, or such earlier periods as appropriate, the Supplier shall obtain (entirely at its cost and expense) and furnish to Company copies of the relevant planning permission, appropriately vouched compliance with the Building Control Act and regulations and any other necessary statutory approvals, licences or consents that may be required and shall also furnish to the Company, an original of a suitably qualified and competent architect’s and/or engineer’s opinion or certificate of compliance with the Planning Acts (to include copy confirmations) and compliance with any financial conditions and/or any other conditions and assignment of all collateral warranties, or (where applicable) confirmation by means of a certificate from a suitably qualified and competent architect and/or engineer, that that no such compliance with the Planning Acts nor any other permission, licences, approvals or consents are required for the works as may be undertaken.



- 16.3 Where applicable, the Supplier shall comply with a quality assurance function, as may be required to be established by the Supplier, to ensure the all relevant quality standards are met with regard to the Supplier pursuant to the Contract and also a quality system as may be maintained by the Supplier and upon request, the Supplier shall furnish to Company, copies of its safety plan and safety statement (and those of any other personnel, as appropriate), in compliance with the Health and Safety Acts.

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

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

## **18. NOTICES**

- 18.1 For the avoidance of doubt, for the purposes of the Electronic Commerce Act 2000, the parties hereby consent to:

18.1.1 the provision of information in electronic form where information is required to be provided 'in writing' or in 'written' form under the Contract;

18.1.2 the use of electronic signatures (as defined in the Electronic Commerce Act 2000) for the formation of the Contract and any matter to be agreed under the Contract; and

18.1.3 the use of electronic communications as a means of communication pursuant to or in connection with the Contract.

- 18.2 Any notices and/or communications to be given pursuant to the Contract shall be in writing and shall be deemed duly given or made:

18.2.1 if delivered by hand or sent by post to the address and for the attention of the person set forth in the Contract Form in respect of the relevant party or to such other address and for the attention of such other person as such party shall communicate to the party giving the notice or communication

18.2.2 if sent by facsimile, to the correct facsimile number of the party to which it is being sent;

18.2.3 if sent by email, to the correct email address of the party to which it is being sent.

- 18.3 Every notice or communication given in accordance with this clause shall be deemed to have been received as follows:

<u>Means of Dispatch</u>	<u>Deemed Received</u>
Delivery by hand:	the day of delivery;
Post:	3 business days after posting;
Facsimile:	when sender receives a completed transmission sheet or otherwise receives a mechanical confirmation of transmission
Email:	24 hours after the email leaves the sender's email server

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

18.4 Each party shall notify the other of a change to its name, relevant addressee, address, facsimile number or email address for the purposes of this Clause. Such notification shall only be effective on:

18.4.1 the date specified in the notification as the date on which the change is to take place which must be at least 10 days from the date of notification unless otherwise agreed; or

18.4.2 if no date is specified or the date specified is less than 5 days after the date on which notice is given, the date falling 5 days after notice of any such change has been given.

## **19. ENTIRE AGREEMENT**

19.1 For each Contract, these Conditions, the Contract Form and any Tender Documents referred to in the Contract Form, together constitute the entire agreement between the parties and supersede any prior or contemporaneous written or oral agreement or understanding with respect to the subject matter of the Contract. The execution or delivery of any other documents contemplated to be executed or delivered hereunder shall not supersede or otherwise affect the provisions of the Contract.

19.2 Each of the parties acknowledges and agrees that, save as expressly set out in these Conditions, in entering into the Contract it does not rely on and shall have no remedies in respect of, any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to the Contract or not) relating to the subject matter of the Contract.

## **20. NO AMENDMENTS**

No amendments, additions or modifications to the Contract may be made unless in writing and signed by both parties.

## 21. WAIVER

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

## 22. RIGHTS CUMULATIVE

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

## 23. CONFIDENTIALITY

- 23.1 In this Clause 23, "Confidential Information" means all information obtained and/or disclosed (whether in writing, orally or by any other means and whether directly or indirectly and whether specifically designated as 'confidential' or which ought reasonably be regarded as confidential) under or in connection with the Contract by the Company (the "**Disclosing Party**") to the Supplier (the "**Receiving Party**") whether before or after the date of the Contract including, without limitation, information relating to these Terms and Conditions, Contract and Contract Form and/or Disclosing Party's products, services, operations, Know-how (and any other know-how), ideas, inventions, processes, plans or intentions, product information and development, schematics, design rights, trade secrets, market opportunities and other business, financial, technical and company information and affairs.
- 23.2 During the Term and after termination or expiration of the Contract for any reason the Receiving Party:
- 23.2.1 will not use Confidential Information for a purpose other than the performance of its obligations under the Contract;
  - 23.2.2 will not disclose Confidential Information to a person except with the prior written consent of the Disclosing Party or in accordance with Clauses 23.3 and 23.4; and
  - 23.2.3 shall make every effort to prevent the unauthorised use or disclosure of Confidential Information.
- 23.3 During the Term the Receiving Party may disclose Confidential Information to any of its directors, officers and employees (a "**Recipient**") to the extent that disclosure is reasonably necessary for the purposes of the Contract provided that the Receiving Party shall ensure that a Recipient is made aware of and complies with the Receiving Party's obligations of confidentiality under the Contract as if the Recipient was a party to the Contract.

- 23.4 The Receiving Party may disclose Confidential Information if and to the extent that:
- 23.4.1 this is required by the Laws of any relevant jurisdiction or pursuant to an order of a court of competent jurisdiction or that of a competent regulatory authority provided that any information disclosed pursuant to this clause shall be disclosed, where reasonably practicable, only after notice to the other party;
  - 23.4.2 the information is disclosed on a strictly confidential basis to the professional advisers, auditors and bankers of that party;
  - 23.4.3 the information has come into the public domain through no fault of that party;
  - 23.4.4 the information was in the possession of the Receiving Party before such disclosure by the Disclosing Party, as aforesaid;
  - 23.4.5 the information was obtained by the Receiving Party from a third party who was free to divulge the same;
  - 23.4.6 this is required to enable that party to enforce its rights under the Contract, or
  - 23.4.7 it is disclosed to bona fide current and/or potential buyer, investor and/or lender of the Receiving Party, and any legal and/or professional representatives thereof; provided that such potential buyer, investor and/or lender shall be subject to a confidentiality agreement (on terms usual to such transactions) covering such Confidential Information.
- 23.5 The obligations of the Receiving Party as to disclosure and confidentiality herein shall continue in force notwithstanding the termination of this Agreement.

## **24. DATA PROTECTION**

- 24.1 If and to the extent that the Supplier processes any personal data (as defined in the Data Protection Acts 1988 and 2003 (the “DPA”), on the Company’s behalf when performing its obligations under the Contract, the Supplier shall:
- 24.1 process such personal data solely in accordance with the written instructions of the Company and the terms of the Contract;
  - 24.2 implement and maintain such technical and organisational security measures as may be required to comply with the data security obligations in the DPA and shall permit the Company (or its authorised representative(s)), at reasonable times and on reasonable notice, to audit the technical and organisational security measures adopted by the Supplier to ensure that they comply with such obligations;
  - 24.3 report any incident which gives rise to a risk of unauthorised disclosure, loss, destruction or alteration of such personal data to the Company immediately upon becoming aware of such an incident and shall provide all reasonable co-

operation and assistance as may be necessary for the Company to comply with its obligations in respect thereof;

- 24.4 provide the Company with all reasonable co-operation and assistance as may be necessary to deal with any request for access to such personal data made under the DPA which is received by the Company or the Supplier; and
- 24.5 not transfer such personal data outside the European Economic Area, to a country which the European Commission does not regard as conferring an adequate level of data protection, without the prior written consent of the Company.

## **25. HAULAGE**

In the event that there is any haulage to be provided as part of the Services (and without prejudice to the generality of Clause 8), then the Supplier warrants for the duration of the Term,

- 25.1 that it will only use vehicles and trailers, where applicable, which are authorised, road worthy, compliant with all applicable Laws and fit for purpose (hereinafter “**Vehicles**”);
- 25.2 that it has (or there is in place), at all times, a valid and subsisting road freight carriers licence, vehicle registration and supply plate number for all its Vehicles pursuant to the Contract.
- 25.3 that without prejudice to the generality of Clause 25.1, all haulage for the provision of the Services will comply with:
  - 25.3.1 the Road Traffic (Construction and Use of Vehicles) Regulations 2003, (S.I. No. 5/2003),
  - 25.3.2 The European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62/2008), and
  - 25.3.3 the European Communities (Road Transport) (Amendment) Regulations 2006 (S.I. No. 561/2006).

## **26. TITLE AND RISK**

- 26.1 Where applicable, the Company shall retain full legal title to all its products, goods, materials and any other matter, which shall include (but shall not be limited to) any timber, trees, round log, saw log, pallet, stake, fire wood, pulpwood, panel products, energy wood and or brash at all times and the Company reserves the right to remove or recall the same at any time and from any location. The Supplier shall have no entitlement to exercise a right of retention on any products, goods, materials and any other matter of the Company nor exercise a lien over any of the Company’s property, which may be in the Supplier’s possession.

- 26.2 Where Clause 26.1 applies, then the Supplier is responsible for the security and risk of the items specified in Clause 26.1 above once it has been collected, pursuant to the Contract, from the Site and loaded onto the Vehicle(s), until such time as it has been delivered correctly and safely to the Destination and any Charges payable in respect thereof have been invoiced in accordance with Clause 3.
- 26.3 Where appropriate and within its power or control, the Company shall procure that appropriate personnel of the Supplier shall be permitted access (only) to the Destination, pursuant to the Contract, entirely at the risk and responsibility of the Supplier and the Company shall not be under any duty, risk or responsibility and the Supplier hereby indemnifies, shall keep indemnified and hold harmless the Company, in this regard.
- 26.4 Without prejudice to Clause 3.5, the property in all goods as so ordered by the Company and supplied by the Supplier under the Contract shall pass to the Company when it receives possession of same whether or not payment thereof has been made or is due.
- 26.5 Risk of damage to or loss of any goods (or any part thereof) pursuant to any order (as per Clause 3.5) shall pass to the Company when the Supplier's invoice has been discharged in full. Notwithstanding the foregoing, the Supplier shall be liable for any loss or damage discovered after transfer of title which is determined by the Company to be a result of negligence, faults, defects, faulty packaging or handling by the Supplier. All individual packages, crates and equipment shall be tagged or marked. All and any shipped units requiring special handling shall be clearly labeled so as to be clearly noticeable by the shipper and unloading crews.

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

- 27.1 The Supplier shall not assign, transfer, change control, novate, sub-contract, charge, encumber, hold in trust for another or in any manner share or part with possession of the Contract or any part, clause or provisions thereof, without the prior consent in writing of the Company, such consent shall not be unreasonably withheld and/or delayed.
- 27.2 In the event that the Supplier sub-contracts any of its obligations under the Contract in accordance with Clause 27.1, it shall remain responsible and liable to the Company for all acts and omissions of its sub-contractor as fully as if they were its own acts and omissions.

## **28. NON-SOLICITATION**

Each party agrees that, during the Term and for a period of 6 months after the termination of the Contract, it shall not (without the other party's prior agreement in writing, which shall not be unreasonably withheld or delayed) directly or indirectly offer to employ, engage as an independent contractor or induce any person who has been associated in a technical or managerial capacity with any aspect of the Contract during the preceding six months to leave the other party's employment.

## **29. TAX CLEARANCE**

Pursuant to the Department of Finance circulars 43/2006 and 44/2006, the Supplier warrants that it is and will be at all times for the duration of the Term, in possession of a valid Tax Clearance Certificate from the Revenue Commissioners.

## **30. SEVERABILITY**

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

## **31. GOVERNING LAW**

These Conditions and each Contract entered into in accordance with these Conditions shall be governed by and construed in accordance with the laws of the Republic of Ireland and, subject to Clause 12, the parties hereto submit to the exclusive jurisdiction of the Courts of the Republic of Ireland for the resolution of disputes hereunder.

## **32. CHAIN OF COMMUNICATION**

- 32.1 The Supplier and the Company Representative shall be the primary point of contact, with each other, for the purposes of these Conditions and a Contract (save where otherwise provided). The parties hereby agree that the Company, acting reasonably and in good faith, may change the Company Representative, at any time during the Term of a Contract, by 7 days notice in writing to the Supplier. Instructions received from or information given by either party shall not be valid unless received from, given by, or verified by the Company Representative.
- 32.2 The Supplier shall give the Company Representative monthly progress reports from the date of the Contract until the Supplier has completed all Services, to the satisfaction of the Company Representative (acting reasonably).
- 32.3. The Supplier and the Company Representative shall attend regular meetings, as often as necessary and as scheduled by the Company Representative and any special meeting called by the Company Representative to discuss a particular issue identified when calling the meeting. The Company Representative may invite other personnel of the Supplier (pursuant to Clause 4) to attend meetings and the Supplier shall arrange for the attendance at a meeting of any such personnel so requested. The time and place of meetings shall be set by the Company, after consulting the Supplier, acting reasonably.
- 32.4 Within 7 days after each meeting the Company Representative shall issue minutes of the meeting to both the Company and the Supplier. The Supplier shall notify the

Company Representative of any objection to the minutes within 7 working days of receiving them, otherwise, unless clearly wrong, they shall be considered correct.

- 32.5 Before commencing the Services, the Supplier shall submit to and agree with, the Company Representative a detailed programme and timeframe for the delivery and performance of the Services.

### **33. CHANGE MANAGEMENT PROCESS**

- 33.1 Any material change to the relevant Services for a Contract that may be requested by the Company (a “**Change**”) shall be dealt with in accordance with the following procedure:

33.1.1 The Company will provide the Supplier with a written request detailing the proposed Change (a “**Change Request**”) and the person within the Company’s undertaking to whom all correspondence in respect of the Change must be addressed (the “**Change Representative**”);

33.1.2 The Supplier will provide the Change Representative with an evaluation report on the Change Request which will cover the feasibility, impact on any time or other schedules contained or referred to in a Contract, resource requirements and a detailed breakdown of the cost associated with the proposed Change (the “**Evaluation Report**”);

33.1.3 the Change Representative will consider the Evaluation Report and will notify the Supplier in writing, within a reasonable time of receipt of the Evaluation Report having regard to the nature and extent of the proposed Change, of the Company’s decision whether or not to request the Supplier to proceed with the Change on the basis of the Evaluation Report.

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

33.1.5 The parties shall discuss reasonably and in good faith any difficulties that the Change Representative may have with the Evaluation Report and how they may be resolved with a view to achieving the Company’s requirements, but if no such agreement can be reached then the Evaluation Report and the issues surrounding it shall be referred to the dispute resolution procedure set out in Clause 12.