

TERMS AND CONDITIONS

(Version 4.1 – January 2023)

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. The Supplier acknowledges and accepts that it has had the opportunity to obtain independent legal advice in relation to the Conditions and that, whether or not it availed of that opportunity, it fully understands, accepts and freely enters into the terms hereof.

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:-

“Agreed Payment Provisions”	has the meaning given to it in Clause 3.1 of these Conditions.
“Appropriate Technical and Organisational Measures”	has the meaning given to such term in Data Protection Legislation (including, as appropriate, the measures referred to in Article 32(1) of the GDPR).
“Bill of Materials”	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.
“Business Day”	a day other than a Saturday, Sunday or public holiday in Ireland when banks are open for business.
“Business Purposes”	means the Services as defined herein
“Charges”	means the charges payable under the Contract, if any, as set out in the Contract Form.
“Coillte”	means Coillte Cuideachta Ghníomhaíochta Ainmnithe having its registered office at Dublin Road, Newtownmountkennedy, Co. Wicklow.
“Companies Acts”	means the Companies Acts 1963 to 2014.
“Company”	means, as relevant and appropriate, Coillte and/or Medite and/or SmartPly.
“Company Internal Policies”	means all internal policies and requirements which are notified to the Supplier or sought from the Supplier, by the Company from time to time and which ordinarily will apply to the Supplier, its employees, servants, agents, contractors sub-contractors and so forth, including, where relevant but without limitation, policies relating to human resource matters, security, health and safety, information and communication

technology, data privacy and the acceptable use of stationery, telephones, e-mail, intranet and internet.

“Company Representative”

means the Company representative, as nominated by the Company and notified to the Service Provider from time to time, to oversee the operation or provision of the Services on behalf of the Company who may also be referred as “Authorised Person” for the purposes of Clause 25 herein.

“Company’s System”

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

“Computer Virus”

means any undocumented malicious data, code, program, malware or other internal component (for example, computer worm, computer time bomb or similar component), which could damage, destroy, alter or disrupt any computer program, firmware or hardware or which could, in any manner, reveal, damage, destroy, alter or disrupt any data or other information.

“Contract”

means each contract (including a purchase order) between the Company and the Supplier that is made in accordance with Clause 2 of these Conditions.

“Contract Form”

means the form setting out the principal terms of a Contract (save for a purchase order), as agreed between the Company and the Supplier in accordance with these Conditions. For the avoidance of doubt, no Contract (pursuant to a Contract Form) shall come into existence or be deemed to come into existence, unless and until the Contract Form has been executed and exchanged by all (relevant parties), pursuant to clause 2.2.

“Customer”

The Customer shall mean Coillte, Medite or SmartPly as appropriate.

“Customer Data”

the non Personal Customer Data (NPD) and the Personal Customer Data (PD) provided by the Customer or any User to the Supplier or accessed by the Supplier on the Customer System in the course of providing the Services, and any other Personal Data Processed by the Supplier (as Data Controller) on behalf of the Customer.

“Customer Data (NPD)”

all non Personal Data supplied by the Customer to the Supplier from time to time other than the Customer Data (PD) during the Term.

“Customer Data (PD)”

the Personal Data supplied by the Customer to the Supplier from time to time during the Term.

“Customer System”

any information technology system or systems owned or operated by the Customer from which Customer

	Data is received (or accessed) by the Supplier in accordance with this Agreement.
“Data”	any data or information, in whatever form, including but not limited to images, still and moving, and sound recordings.
“Data Controller”	has the meaning given to such term in Data Protection Legislation.
“Data Processor”	has the meaning given to such term in Data Protection Legislation
Data Protection Legislation:	means the Data Protection Acts 1988 -2018 and Directive 95/46/EC, any other applicable law or regulation relating to the processing of personal data and to privacy (including the E-Privacy Directive and the European Communities (Electronic Communications Networks and Services) (Privacy and Electronic Communications) Regulations 2011 (“E-Privacy Regulations”), as such legislation shall be amended, revised or replaced from time to time, including by operation of the General Data Protection Regulation (EU) 2016/679 (“GDPR”) (and laws implementing or supplementing the GDPR, and laws amending or supplementing the E-Privacy Regulations).
“Data Protection Officer”	a data protection officer appointed pursuant to Data Protection Legislation.
“Data Subject”	an individual who is the subject of Personal Data
“Delete”	to remove or obliterate Personal Data such that it cannot be recovered or reconstructed.
“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 Unfair Dismissal Acts 1977-2017, the Employment Equality Act 1998 and 2004, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000, the European Communities (Protection of Employees on Transfer of Undertakings) Regulatory 2003, the Protection of Employees (Temporary Agency Work) Act 2012 and other regulations, codes of practice, legally binding determinations of the Labour Court for the Republic of Ireland and registered employment agreements under applicable Laws.

“EEA”

European Economic Area

“Environmental Acts”

means all environmental acts, including but not limited to, the Environmental Protection Agency Act 1992, the Waste Management Act 1996, the Waste Management (Amendment) Act 2001, the Local Government (Water Pollution) Act 1977, the Local Government (Water Pollution)(Amendment) Act 1990, the Air Pollution Act 1987, the Protection of the Environment Act 2003.

“Fault(s)”

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

“Force Majeure Event(s)”

means in relation to a party, any debilitating event 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 2014.

“Health and Safety Acts”

means all health and safety acts, including but not limited to, the Safety, Health and Welfare at Work Acts 1989 to 2005, the Safety, Health and Welfare at Work (Construction) Regulations 2001 to 2006 and the Safety, Health and Welfare at Work (General Application) Regulations 2007.

“Insurance Confirmation Form”

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

“Know-how”

means unpatented business and technical information (including, without limitation, information relating to inventions, discoveries, concepts, methodologies, models, research, development and testing procedures, the manufacturing of processes, techniques, trials and specifications, quality control data, analyses, reports and submissions) that is not in the public domain;

“Laws”

means all laws (including common law), statutes, statutory instruments, directives, regulations, rules, regulations, codes, orders, decrees, judgments, court decrees, settlements, agreements, or other pronouncements, in each case having force of law.

“Medite”

means Medite Europe, registered number 80984, having its registered office at Redmondstown, Clonmel, Co. Tipperary.

“Milestone Date(s)”

means the date or dates for the achievement of a Services related milestone of particular importance and

identified as such and set out in the timetable within the Agreed Payment Provisions.

“Normal Business Hours”

9.00 am to 5.30 pm GMT on a Business Day.

ODPC:

Office of the Data Protection Commissioner, Canal House, Station Road, Portarlinton, Co. Laois, R32 AP23, Ireland.

“Personal Data”

has the meaning set out in Data Protection Legislation and relates only to personal data, or any part of such personal data, in respect of which the Customer is the Data Controller, and in respect of which the Supplier is the Data Processor under this Agreement.

“Personal Data Breach”

means any “personal data breach” as defined in the GDPR in respect of the Personal Data caused by the Supplier.

“Processing”

has the meaning given to such term in Data Protection Legislation, and Processed and Process shall be interpreted accordingly

“Partnership Act”

means the Partnership Act 1890.

“Planning Acts”

means all planning acts, including but not limited to, the Planning and Development Acts 2000 to 2010 and the Building Control Acts 1990 and 2014 (the “Building Control Act”).

“Registration of Business Names Act”

means the Registration of Business Names Act 1963.

“Representatives”

a Party’s employees, officers, representatives, advisers or subcontractors involved in the provision or receipt of the Services.

“Restricted Transfer”

any transfer of Personal Data to countries outside of the EEA which are not subject to an adequacy decision by the European Commission, where such transfer would be prohibited by Data Protection Legislation.

“Road Traffic Acts”

means all road traffic acts, including but not limited to, 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.

“Services”

means the services, goods, products, works and or such other services to be provided by the Supplier under the Contract, as set out and provided in the Contract Form

	and/or by reference to the Request for Tender or Proposal and may also refer to the Processing of Customer Data by the Supplier for the Business Purpose
“Security Features”	any security feature, including any encryption, pseudonymisation, key, PIN, password, token or smartcard.
“Site”	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.
“SmartPly”	means SmartPly Europe, registered number 205747, having its registered office at Belview, Slieverue, Waterford.
“Supplier”	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.
“Supplier Delay”	means in respect of Milestone Dates, circumstances in which the material and principal cause of the relevant delay is due to the act, omission, failure or refusal to act (in accordance with the Contract) of and by the Supplier and/or any party for whom the Supplier is responsible, such that there is no other material cause for the delay.
“Specifications”	means the specifications of the Services to be provided under the Contract, as may be set out in the Contract Form and/or by reference to the Request for Tender or Proposal.
“Specific Instructions”	instructions meeting the criteria set out in Clause 25.2.2.
“Standard Contractual Clauses”	the contractual clauses dealing with the transfer of Personal Data outside the EEA, which have been approved by (i) the European Commission under Data Protection Legislation, or (ii) by the ODPC or an equivalent competent authority under Data Protection Legislation.
“Sub-processor”	has the meaning given to such term in Clause 25.15.2].
“Supplier System”	any information technology system or systems owned or operated by the Supplier to which Customer Data is delivered or on which the Services are performed in accordance with this Agreement.
“Tax”	means all forms of taxation, duties, imposts and levies, withholdings, rates and charges of whatsoever nature

whether of Ireland or elsewhere in any part of the world wherever or whenever arising, credited or imposed including, without prejudice to the foregoing, income tax (including income tax or amounts on account of income tax required to be deducted or withheld from or accounted for in respect of any payment), corporation tax (including any surcharge), advance corporation tax, gift tax, capital gains tax, capital acquisitions tax, inheritance tax, property tax, wealth tax, value added tax, PAYE deductions, national insurance, health levy, employment training levy, professional services withholding tax, relevant contractor tax, sub-contractors' tax, sales tax, rates, dividend withholding tax, deposit interest retention tax, customs and other import and export duties, duties of excise, petroleum revenue tax, environmental levies (including environment levy on plastic bags), stamp duty, capital duty, pay related social insurance or other similar contributions and generally all taxes, duties, imposts, withholdings, levies, rates and charges whatsoever on or in relation to income, profit, gains, sales, receipts, use or occupation and any taxes, duties, imposts, withholdings, levies, rates and charges whatsoever on or in relation to income, profits, gains, sales, receipts, use or occupation and any taxes, duties, imposts, withholdings, levies, rates and charges supplementing or replacing any of the foregoing and any interest, charges, surcharges, fines, penalties in connection with any of the foregoing and all other taxes on gross or net income, profits or gains, distributions, receipts, sales, use, occupation, franchise, value added and personal property, and any permanent whatsoever which the company may be or become bound to make to any person as a result of the discharge by that person of any tax which a party has failed to discharge, together with all penalties, charges and interest relating to any of the foregoing or to any late or incorrect return in respect of any of them, and regardless of whether any such taxes, levies, duties, imposts, charges, withholdings, penalties and interest are chargeable directly or primarily against or attributable directly or primarily to a party, or any other person and of whether any amount in respect of any of them is recoverable from any other person and reference to Taxation shall be construed accordingly;

“Tender Documents”

means any tender documents relating to the Contract, including the invitation to tender or request for tender or request for proposal or otherwise of the Company (hereinafter each is referred to as the

“Request for Tender”

the proposal of the Supplier (hereinafter the **“Proposal”**) and any other documentation referred to in the Contract Form.

“Term”	means the term of the Contract, as set out in the Contract Form or as may otherwise agreed in writing by the parties, within the Request for Tender or otherwise.
“Users”	means end users of the Customer’s app/website/products/services.
“Warranty Period”	means the period of any such warranty for the Services or any part thereof, from the Supplier to the Company, as agreed by the parties in writing and stipulated in the Contract, commencing from the date agreed by the parties or in absence of such agreement from the date of

1.2 Words importing the singular includes the plural, the masculine include the feminine, a natural person includes an entity and (all) vice-versa where the context requires.

1.3 In these Conditions headings are for convenience and ease of reference only and shall not affect interpretation.

1.4 Any defined terms used herein but not defined herein shall have the meaning ascribed to them in the Contract Form and/or the Tender Documents, as appropriate.

1.5 In the event of any ambiguity, inconsistency or discrepancy within or between any of the documents comprising a Contract, including these Conditions, any schedules, the Request for Tender and/or the Proposal, such conflict or inconsistency shall be resolved by giving the following precedence:

1.5.1 the Contract Form (including any schedules and/or appendices thereto);

1.5.2 these Conditions;

1.5.3 the Request for Tender;

1.5.4 the Proposal, and

1.5.5 any other Tender Documents.

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 The Contract Form, these Conditions 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 may seek 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, either by electronic means via the Company's System or otherwise, setting out the terms upon which the Company may be willing to engage the Supplier to provide the Services subject 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 avoidance of doubt and without prejudice to Clauses 2.1 and 2.2, at the discretion of the Company, the Services may be such that the Company requires the Supplier to enter into a different, more specific or specialised contract or framework contract for the Services (hereinafter referred to as the "Bespoke Contract") as opposed to the Contract Form, with terms and conditions that may be outside the scope of these Conditions and in such event, unless otherwise stipulated in writing by the Company, the Parties acknowledge and agree that the terms and conditions of and/or associated with the Bespoke Contract (as executed and exchanged) shall apply as therein stipulated and supercede certain or all of these Conditions for those Services (notwithstanding any prior acceptance by the Supplier of these Conditions for the Services and/or any other Services).
- 2.4 For the duration of the Term, in consideration of the payment by the Company of the Charges in accordance with the Agreed Payment Provisions, the Supplier shall carry out, provide and complete the Services in compliance with any Specifications. the Tender Documents and the terms and conditions set out in the Contract.
- 2.5 Unless it has been specifically authorised to do so by the Company (pursuant to the provisions of the Contract or otherwise in writing), the Supplier shall not:
- 2.5.1 have any authority to incur any expenditure in the name of or for the account of the Company, save with the express consent in writing of the Company,
- 2.5.2 hold itself out as having authority to bind the Company; or
- 2.5.3 make any public reference to its engagement hereunder. A public reference includes but is not limited to the Supplier's dealings with third parties whether involved or not in carrying out the provision of the Services, whether verbally or by way of its own promotional or advertising

material (to include, but not limited to, brochures and websites) and otherwise except where it is specifically required by the Contract or otherwise agreed by the parties.

- 2.6 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.
- 2.7 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 and in respect of all liabilities (including interest and penalties) arising from any claims relating to Tax or other levies that may be made by the relevant authorities against the Company in respect of fees paid to the Supplier hereunder or otherwise in respect of any claims that personnel of the Supplier is or is deemed to be an employee of the Company. For the avoidance of doubt, the Supplier shall be solely responsible for all payments including the payment of wages, expenses, social insurance, other insurances, taxes, and any compensation or other payments or benefits to which its aforesaid personnel, may be or may become entitled to under Irish or other applicable laws arising out of or in connection with the provision of the Services hereunder at common law or through the operation of any statutory provision, including but not limited to the Unfair Dismissals Acts 1977 to 2007, the Redundancy Payments Acts 1967 to 2007, the Minimum Notice and Terms of Employment Acts 1973 to 2005, the European Communities (Protection of Employees on Transfer of Undertakings) Regulatory 2003 and the Protection of Employees (Temporary Agency Work) Act 2012. In particular, it is agreed that if the aforesaid personnel of the Supplier or any individual directly or indirectly performing work on behalf of the Supplier is or shall become an employee of the Company or be in any direct contractual relationship with the Company, the Supplier shall be responsible for and shall hold the Company harmless in respect of any employee benefits to which such persons might become entitled, whether against the Company or otherwise. The Supplier shall be fully responsible for and shall indemnify the Company for and in respect of any liability for any employment-related claim or any claim asserting employment status (including reasonable costs and expenses) brought by any other party against the Company arising out of or in connection with a Contract and/or the provision of Services.
- 2.8 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.
- 2.9 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.

- 2.10 The Supplier shall comply with all reasonable Company Internal Policies which, without prejudice, shall include, as relevant and required:
- 2.10.1 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,
 - 2.10.2 adherence to the security requirements of the Company, for any operation within any Site or such other property of the Company; and
 - 2.10.3 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.
- 2.11 The Company reserves the right, at any time, to revise, vary, enhance, modify, amend, alter or delete the Conditions and/or any of them (to also include, but not limited to, the Draft Contract Form, as hereinafter referred to and/or the Draft 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 herein or, where different, in the Contract Form (the “**Agreed Payment Provisions**”). All sums payable under the Contract are exclusive of VAT.
- 3.2 The Supplier shall invoice the Company or the Company will automatically generate an invoice for the Supplier, pursuant to the Company’s System (“**Company’s System Invoice**”), in accordance with and as provided for in the Agreed Payment Provisions. In respect of a Contract, the Company shall for any goods (so ordered,) pay such invoiced Charges by no later than 60 days after the last day of the calendar month during which those goods were delivered to the Company and for any services supplied to the Company, no later than the 15th day of the calendar month after the calendar month during which the invoice was received (where the services have been satisfactorily supplied). Subject to Clause 3.4.1 and 3.4.2, any invoiced amount that is not disputed by the Company or any Company’s System Invoice that is not disputed by the Supplier shall be payable within the time frame stipulated by the Agreed Payment Provisions, following the date of receipt of the properly due and properly submitted invoice, by electronic transfer to such bank account of the Supplier, to be notified to the Company (or alternative arrangement as agreed by the parties in writing).
- 3.3 If the Company fails to pay any non-disputed amount by its applicable due date under the Contract, the Supplier shall be entitled (but not obliged) to charge the Company interest on the said overdue amount only, from the due date up to the date of payment, pursuant to the provisions of The European Communities (Late Payments in Commercial Transactions) Regulations 2012 (S.I. No. 580/2012).
- 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 the Company of that invoice, and that such right by the 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 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 purchase order number on an invoice will result in return of the invoice to the Supplier and may result in delay in payment of the relevant Charges.

3.5.2 Advice of dispatch should be sent to the Company's designated Destination 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.
- 3.5.10 The Supplier shall supply to the Company, free of charge, all technical drawings, service manuals, and maintenance specifications, including, where required by the Company, certificate of conformance of goods, certificate of analysis and material test certificates, written in the English language, with all relevant updating documents which relate to the goods.
- 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.
- 3.10 As may be relevant to the Services, the Agreed Payment Provisions may, where appropriate, set out or refer to a timetable (the “**Timetable**”) of delivery. The Timetable shall set out one or more Milestone Dates as agreed by the parties to a Contract and those parties acknowledge that the Timetable may be subject to change from time to time, which may be agreed by the Company and Supplier, provided that:
- 3.10.1 In respect of Supplier failure to achieve Milestone Dates, due to Supplier Delay and following a grace period of 5 days (the “**Grace Period**”) following a Milestone Date, then at the option of the Company (following the said Grace Period), an amount shall be deductible from the payment applicable to the relevant Service in which such Milestone Date occurs (the “**Relevant Stage**”) based upon the day that the relevant milestone attributable to such Milestone Date is actually achieved (the “**Achievement Date**”), which amount shall be calculated and set out in the Request for Tender.
- 3.10.2 The position as set out in Clause 3.10.1, shall operate as a deductible from the payments due and payable in respect of the Relevant Stage, and where no such payments are due and payable, then, the sums shall apply as a cash payment from the Supplier to the Company, payable within 30 days of the Company’s written demand;

- 3.10.3 In circumstances of Supplier failure to achieve Milestone Dates, due to Supplier Delay, following the application of Clause 3.10.1 as aforesaid, which remains in effect for a period of not less than 60 days of the Milestone Date, then, the Company may terminate the Contract upon service of prior written notice to the Supplier;
- 3.10.4 in the event of the Company serving notice in accordance with Clause 3.10.3, then: (a), the Supplier shall repay to the Company, within a period of 30 days of date of receipt of the notice (the "Period"), all and any payment (or any other such fees) paid pursuant to the Contract or reliance upon the Contract with respect to relevant Services and (b) the Company shall, within the Period, return, if so far as is possible, any relevant elements of the Services then supplied; and
- 3.10.5 the provisions of this Clause 3.10 shall be without prejudice to the rights and remedies of either Party under the Contract, including, but not limited to, the ability, where applicable, of the Company to refer the issue of Supplier Delay in respect of Milestone Dates to the Dispute Resolution Procedure herein.
- 3.11 The Supplier shall, at the request of the Company, assign to the Company, the benefit of all warranties, indemnities and other covenants received by the Supplier from any third party in connection with the provision of the Services.

4. EMPLOYEES, SERVANTS AND AGENTS OF THE SUPPLIER

- 4.1 When requested, the Supplier shall furnish to the Company, in the format required by the Company, details of all employees, servants, agents 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, servants 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, objectors, protestors and/or others (to include their activities) as against the Supplier for their practices and/or activities, and the Company shall have no responsibility and/or liability for the practices and/or activities of the Supplier in the provision of the Services provided it is in adherence with the Contract, nor shall it have any responsibility and/or liability for the activities or presence of any said trespassers, objectors, protestors and/or others, in this regard. For the avoidance of doubt, the Company reserves its right to rely on the relevant provisions of Clause 14, as it deems fit, with respect to any issue arising pursuant to this Clause 4.3.

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, permitted access to the Company's property (the "Site") (subject to adherence to any reasonable requests of the Company) as may be necessary to enable the Services be provided and carried out, providing always that the Supplier shall ensure that its personnel shall comply with all 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, 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 Where required, the Supplier shall make good at its own expense, to the satisfaction of Company, any errors and/or defects in the Services. Failure by the Supplier in this regard, shall entitle (but not oblige) the Company, acting reasonably, to make good any such errors and/or defects and to defray any costs and expense associated from any amounts due to the Supplier by the Company pursuant to the Contract or any other contract or agreement.
- 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 Where relevant to the Contract, the Supplier shall not do (or permit to be done) anything (save with the written consent of the Company), in, upon, over or under the Site and/or any other Company property or any part thereof (including access thereto) which shall be or become or cause a nuisance, damage, disturbance, injury or danger to the Company or to the owner or occupier of any adjoining or neighbouring property.

7. MATERIALS, EQUIPMENT AND INTELLECTUAL PROPERTY

- 7.1 Where relevant to the Contract and save as otherwise agreed, the Supplier shall be responsible for supplying and providing for its own vehicles, plant, tools, labour, material and equipment pursuant to the Contract and, other than as may be necessary for the provision of the Services and in locations agreed with the Company, the Supplier shall not locate, retain, store or keep any vehicles, plant, tools, labour, material or equipment at the Site and/or any other Company property, without the prior consent in writing of the Company.
- 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 Know-how, 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 the 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 WorkProducts;
- 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, the Registration of Business Names Act, and the Data Protection Legislation (as defined in Clause 24 of this Agreement).

9. INDEMNITY

- 9.1 The Supplier acknowledges that the Company is relying on the Supplier's skill, know-how, experience, expertise and diligence to implement, carry out and provide the Services (and the Supplier's knowledge of acceptable standards of good industry practice). 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, Tax, 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 any act, negligence, omission or default of the Company or any person for whom the Company may be responsible).

- 9.2 Other than provided by law, the Company has no liability to the Supplier, howsoever arising (whether for breach of contract, in tort, pursuant to statute, breach of duty, negligence or any other matter), whether directly or indirectly.

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 note a specific indemnity to the Company and/or note the Company as a joint insured, and which shall include, unless otherwise provided and agreed, without prejudice to the generality of the foregoing:

10.1.1 Public Liability Insurance with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance and Product Liability Insurance with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 on an aggregate basis per annum.

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 €13,000,000 in respect of each and every occurrence and unlimited in the period of insurance.

10.1.3 The Service Provider shall procure that the insurances referred to herein (inclusive) do not contain any condition(s) or exclusion(s) other than those which are standard in the Irish insurance market for contracts of this nature to be provided by the Service Provider to Coillte.

- 10.2 In addition to clause 10.1 and as required by a Contract, the following insurances may also be required for a Contract and which shall be stated in the Contract Form and/or the Tender Documents to include:

10.2.1 Motor Insurance (to include third party property damage) with the minimum limit of indemnity provided by the Supplier (or on its behalf) being no less than €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance. The Supplier will note the additional motor insurance requirements for haulage and cartage, wherein the motor policy must provide for a specific indemnity to the Company, carriage for hire and reward, third party property damage Limit of €6,500,000, unauthorised use, unauthorised driving, loading and unloading beyond the limits of the carriageway, trailer cover and no passenger liability restrictions.

10.2.1 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 €6,500,000 or such further amount as be required and agreed, in respect of each and every occurrence and unlimited in the period of insurance.

10.2.3 Property damage or 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.

10.2.4 Carriers Liability with a minimum limit of indemnity provided by the Supplier (or on its behalf) of €6,500,000 in respect of each and every occurrence and unlimited in the period of insurance.

- 10.3 The Supplier, or his/her Insurance Broker on the Suppliers behalf, is required to furnish a completed Insurance Confirmation Form to the satisfaction of the Company, prior to entering into a Contract Form and/or prior to the performance of any Services.
- 10.4 Without prejudice to Clause 10.3, 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.
- 10.5 The Service Provider acknowledges that Coillte may (acting reasonably and in good faith) wish for it to increase its insurance levels, from time to time, subject to specific work requirements or projects and the Service Provider shall use all reasonable endeavours to do so.
- 10.6 The Company shall be entitled to terminate this contract/agreement if it is not happy with the level of insurance maintained by the Service Provider.
- 10.7 In the event that a policy or any policy is cancelled, or is terminated prior to the expiry date of the contract/agreement, the Supplier will immediately notify the Company, and shall take all necessary steps to put in place insurance, to the satisfaction of the Company.

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;

11.1.2.1.3.1 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 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, repair and/or resolve any issue with the Services (where same are capable of improvement, repair and/or resolution), being performed pursuant to the Contract;
 - 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 and if the laws of jurisdiction of

formation are outside Ireland then it shall upon request by the Company, acting reasonably, furnish a written legal opinion on such formation and its status, from an appropriate and competent person authorised to practice law in that jurisdiction of formation of the Supplier;

- 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 to the Services, 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.
- 15.12 to the extent that the Supplier's contractors, employees, servants, agents or other personnel may have access to the Company's computer systems and information in performing the Services under a Contract, the Supplier shall not deliberately or negligently introduce any Computer Virus into those systems. The Supplier shall use recognised industry standard virus scanners (updated with the then-most current virus signatures and data sets) to scan all work product or software immediately prior to introducing it to any computer system of the Company. If a Computer Virus is found to have been introduced into the Company's computer systems by the Supplier, the Supplier shall expeditiously provide, free of charge or expense and a minimum of disruption, all necessary assistance to the Company in removing the effects of the Computer Virus;
- 15.13 if, within the Warranty Period, the Supplier notifies the Company and/or the Company notifies the Supplier, in writing, of any defect or fault in the Services in consequence of which it fails to conform in all material respects or to any agreed specification, the Supplier shall within a reasonable time period, as agreed with the Company and without charge or expense to the Company:
 - 5.14.1 repair same; or
 - 5.14.2 replace same; or
 - 5.14.3 by agreement of the parties hereto, terminate the Contract by notice in writing and refund the relevant payment paid by the Company as at the date of such termination.
- 15.14 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.
- 15.15 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 to a Contract 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 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:

_____	_____
Means of Dispatch	Deemed Received

Post:
Delivery by hand: the day of delivery;

3 business days after posting;

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 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 Save for the application of Clause 2.3, 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

Save as provided by Clause 2.12, no amendments, variations, additions or modifications may be made to a Contract unless in writing and signed by all the 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 Save for the provision of the Services for the Company, 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, affairs and information identified as commercially sensitive.

- 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. CUSTOMER DATA

The Supplier acknowledges that the Customer confidential information in Clause 23 includes any customer data in the following clause.

25. DATA PROTECTION

25.1 SERVICES

25.1.1 In consideration of the mutual obligations set out in the Agreement, during the Term the Supplier shall supply the Services to the Customer. For the purposes of this Agreement, the Customer is the Data Controller and the Supplier is the Data Processor. The Customer hereby grants a non-exclusive, non-transferrable, non-sub licensable licence to the Supplier to the use of all copyright and database rights in the Customer Data for the duration of the Term to enable the Supplier to provide the Services, and to transfer to the Supplier all the Customer Data for the same purpose, in accordance with the terms of this Agreement.

25.1.2 The Supplier shall not act on any specific instructions given by the Customer from time to time during the Term in respect of Processing unless they are:

25.2.2.1 in writing (including by electronic means); and

25.2.2.2 Given by an Authorised Person.

25.1.3 The Supplier shall Process the Customer Data (PD) for the Business Purpose only and in compliance with the Customer's instructions from time to time, which may be:

25.2.3.1 Specific Instructions; or

25.2.3.2 the general instructions set out in Part 2 of Appendix 1

unless required to do otherwise by law, in which case, where legally permitted, the Supplier shall inform the Customer of such legal requirement before Processing.

25.1.4 The types of Personal Data to be Processed pursuant to this Contract/Agreement shall include, but not limited to, users names, email addresses, phone numbers, and the categories of Data Subject to whom such Personal Data relates shall be users/employees.

25.1.5 The Customer reserves the right to alter the technical arrangements relating to the format, presentation and distribution of the Customer Data and it shall be a matter solely for the Supplier to adjust their systems and business accordingly. For the avoidance of doubt, it shall be the responsibility of the Supplier to ensure that the Customer Data format, presentation and provision by the Customer is suitable and satisfactory to meet the business requirements of the Supplier.

25.2 CONNECTION

25.2.1 Parties shall use reasonable efforts to establish connectivity between the Customer System and the Supplier System on the Commencement Date. Each party shall bear its own costs of establishing that connectivity.

25.2.2 The Customer shall promptly, after the Commencement Date, give the Supplier the necessary access to the Customer Data on the Customer System for Processing in accordance with this Agreement.

25.3 SUPPLIER'S OBLIGATIONS

25.3.1 The Supplier shall:

25.3.1.1 only make copies of the Customer Data to the extent reasonably necessary for the Business Purpose (which, for clarity, includes back-up, mirroring (and similar availability enhancement techniques), security, disaster recovery and testing of the Customer Data);

25.3.1.2 not extract, reverse-engineer, re-utilise, use, exploit, redistribute, re-disseminate, copy or store the Customer Data other than for the Business Purpose; and

25.3.1.3 not do anything that may materially damage the reputation of the Customer.

25.3.2 The Supplier shall notify the Customer in writing without delay of any situation or envisaged development that shall in any way influence, change or limit the ability of the Supplier to Process the Customer Data (PD) as set out in this Agreement.

25.3.3 The Supplier shall promptly comply with any request from the Customer requiring the Supplier to amend, transfer or Delete any of the Customer Data.

25.3.4 At the Customer's request, the Supplier shall provide to the Customer a copy of all Customer Data held by the Supplier in the format and on the media reasonably specified by the Customer.

25.3.5 At the Customer's request, the Supplier shall provide to the Customer such information and such assistance as the Customer may reasonably require, and within the timescales reasonably specified by the Customer, to allow the Customer to comply with its obligations under Data Protection Legislation, including but not limited to assisting the Customer to:

25.3.5.1 comply with its own security obligations with respect to the Personal Data;

25.3.5.2 discharge its obligations to respond to requests for exercising Data Subjects' rights with respect to the Personal Data;

25.3.5.3 comply with its obligations to inform Data Subjects about serious Personal Data Breaches;

25.3.5.4 carry out data protection impact assessments and audit data protection impact assessment compliance with respect to the Personal Data; and

25.3.5.5 the consultation with the ODPC following a data protection impact assessment, where a data protection impact assessment indicates that the Processing of the Personal Data would result in a high risk to Data Subjects.

25.3.6 Any proposal by the Supplier to in any way use or make available the Customer Data other than as provided for pursuant to this Agreement shall be subject to prior written approval of the Customer.

25.4 SUPPLIER'S EMPLOYEES

25.4.1 The Supplier shall ensure that access to the Customer Data is limited to those employees who need access to the Customer Data strictly to meet the Supplier's obligations under this Agreement and/or to

comply with Data Protection Legislation; and in the case of any access by any employee, such part or parts of the Customer Data as is strictly necessary for performance of that employee's duties.

25.4.2 The Supplier shall ensure that all employees that have access to the Customer Data:

25.4.2.1 are informed of the confidential nature of the Customer Data and are subject to an appropriate statutory obligation of confidentiality or have committed themselves to a binding duty of confidentiality in respect of such Customer Data;

25.4.2.2 have undertaken training in the laws relating to handling Personal Data; and

25.4.2.3 are aware both of the Supplier's duties and their personal duties and obligations under Data Protection Legislation and this Agreement.

25.4.3 The Supplier shall take reasonable steps to ensure the reliability of any of the Supplier's employees (or approved agents/contractors) who have access to the Customer Data.

25.5 RECORDS

25.5.1 The Supplier shall keep at its normal place of business detailed, accurate and up-to-date records (including in electronic form) relating to all categories of Processing activities carried out on behalf of the Customer containing;

25.5.1.1 details of the purposes of such processing;

25.5.1.2 a general description of the security measures taken in respect of the Personal Data, including details of any Security Features and the Appropriate Technical and Organisational Measures;

25.5.1.3 the name and contact details of the Supplier; any sub-processor; where applicable, the Supplier's representatives; and where applicable any Data Protection Officer appointed by the Supplier;

25.5.1.4 the categories of Data Subjects and categories of Personal Data Processed by the Supplier on behalf of the Customer;

25.5.1.5 the time limits for erasure of the Personal Data; and

25.5.1.6 details of any non-EEA Personal Data transfers, and the safeguards in place in respect of such transfers.

25.6 AUDITS

25.6.1 The Customer shall have the right to examine and review the use by the Supplier of the Customer Data provided to the Supplier by the Customer for the purposes of ascertaining that such Customer Data has been used and Processed in accordance with the terms of this Agreement.

25.6.2 The Supplier shall grant to the Customer (or representatives of the Customer) on reasonable advance notice a right of access to the Supplier's premises during Normal Business Hours for the purposes of such examination and review, and the Supplier shall give all necessary assistance to the conduct of such examinations/audits during the Term. The requirement to give reasonable advance notice will not apply if the Customer believes that the Supplier is in breach of any of its obligations under this Agreement.

- 25.6.3 The examination and review by the Customer of the use by the Supplier of the Personal Data may include, but shall not be limited to, a review of the existing internal compliance regime of the Supplier in relation to:
- 25.6.3.1 business processes and nature of interactions with customers;
 - 25.6.3.2 existing audit procedures on business activities and financial reporting, and the governance of such procedures;
 - 25.6.3.3 staff vetting, hiring and training procedures;
 - 25.6.3.4 data access requests and the purpose/duration for which Personal Data is Processed/kept;
 - 25.6.3.5 reporting of data breaches; and
 - 25.6.3.6 the named director or senior person (or Data Protection Officer (if applicable to the Supplier)) within the organisation with responsibility for audit and business process rigour.
- 25.6.4 After each audit, the Customer may (but shall not be obliged to) provide a report to the Supplier detailing the extent of compliance with the provisions of this Agreement. The Supplier shall respond as required to the findings and recommendations of any Customer audit report and shall provide information requested by the Customer on the implementation by the Supplier of any required actions.
- 25.6.5 In the event that the audit process determines that the Supplier is non-compliant with the provisions of this Agreement, the Customer may, by notice in writing, deny further access to the Customer Data and the termination provisions in the Agreement may be, by notice in writing, invoked.
- 25.6.6 Without prejudice to the Customer's right of audit under this Clause, to the extent permitted under Data Protection Legislation, the Supplier may demonstrate its and, if applicable its Sub-processors', compliance with its obligations under this Agreement through its compliance with a certification scheme or code of conduct approved under Data Protection Legislation.

25.7 DATA SUBJECT REQUESTS

- 25.7.1 The Supplier shall co-operate with and assist the Customer, including but not limited to employing Appropriate Technical and Organisational Measures, in respect of the fulfilment of the Customer's obligations to respond to requests from a Data Subject exercising his/her rights under Data Protection Legislation.
- 25.7.2 The Supplier shall notify the Customer within twenty four (24) hours if it receives:
- 25.7.2.1 a request from a Data Subject for access to that person's Personal Data;
 - 25.7.2.2 any communication from a Data Subject seeking to exercise rights conferred on the Data Subject by Data Protection Legislation in respect of the Personal Data; or
 - 25.7.2.3 any complaint or any claim for compensation arising from or relating to the Processing of the Personal Data.
- 25.7.3 The Supplier shall not disclose the Personal Data to any Data Subject or to a third party other than at the request of the Customer or as provided for in this Agreement, or as required by law, in which case

the Supplier shall to the extent permitted by law inform the Customer of that legal requirement before the Supplier discloses the Personal Data to any Data Subject or third party.

- 25.7.4 The Supplier shall not respond to any request from a Data Subject except on the documented instructions of the Customer or Authorised Person or as required by law, in which case the Supplier shall to the extent permitted by law inform the Customer of that legal requirement before the Supplier responds to the request.

25.8 DATA PROTECTION OFFICER

The Supplier shall appoint a Data Protection Officer, if required to do so pursuant to Data Protection Legislation, and provide the Customer with the contact details of such Data Protection Officer.

25.9 SECURITY

- 25.9.1 The Supplier shall, in accordance with its requirements under Data Protection Legislation, implement Appropriate Technical and Organisational Measures and Security Features to safeguard the Customer Data (PD) from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage, and that, having regard to the state of technological development and the cost of implementing any measures (and the nature, scope, context and purposes of Processing, as well as the risk to Data Subjects), such measures shall ensure a level of security appropriate to the harm that might result from unauthorised or unlawful Processing or accidental loss, alteration, disclosure, destruction or damage and to the nature of the Personal Data to be protected.
- 25.9.2 The Supplier shall ensure that the Customer Data provided by the Customer can only be accessed by persons and systems that are authorised by the Supplier and necessary to meet the Business Purpose, and that all equipment used by the Supplier for the Processing of Customer Data shall be maintained by the Supplier in a physically secure environment.
- 25.9.3 The Supplier shall make a back-up copy of the Customer Data every week and record the copy on media from which the Customer Data can be reloaded in the event of any corruption or loss of the Customer Data.

25.10 BREACH REPORTING

- 25.10.1 The Supplier shall promptly inform the Customer if any Customer Data is copied, modified, lost or destroyed or becomes damaged, corrupted, or unusable, or if there is any accidental, unauthorised or unlawful disclosure of or access to the Customer Data. In such case, the Supplier will restore such Customer Data at its own expense, and will comply with all of its obligations under Data Protection Legislation in this regard.
- 25.10.2 The Supplier must inform the Customer of any Personal Data Breaches, or any complaint, notice or communication in relation to a Personal Data Breach, without undue delay, provide sufficient information and assist the Customer in ensuring compliance with its obligations in relation to notification of Personal Data Breaches (including the obligation to notify Personal Data Breaches to the ODPC within seventy two (72) hours), and communication of Personal Data Breaches to Data Subjects where the breach is likely to result in a risk to the rights of such Data Subjects. The Supplier shall co-operate with the Customer and take such reasonable commercial steps as are directed by Customer to assist in the investigation, mitigation and remediation of each such Personal Data Breach.
- 25.10.3 In the event of a personal data breach or any data breach involving the services, the supplier shall not make any announcement to the media in respect of such breach without first consulting with the Customer.

25.11 INTELLECTUAL PROPERTY RIGHTS

- 25.11.1 The Supplier acknowledges that all Intellectual Property Rights in the Customer Data are and will remain the property of the Customer and the Data Subjects, as the case may be; and that the Supplier shall have no rights in or to the Customer Data other than the right to use it for the purposes set out in this Agreement.
- 25.11.2 To the extent that the Supplier may have any Intellectual Property Rights in respect of the Customer Data Processed pursuant to this Agreement, the Supplier assigns to the Customer, and shall assign to it, all such Intellectual Property Rights. The Supplier shall execute such confirmatory assignments as the Customer may require in this regard.

25.12 RESTRICTED TRANSFERS

- 25.12.1 A Restricted Transfer may not be made by the Supplier without the prior written consent of the Customer, and if such consent has been obtained, such Restricted Transfer may only be made where there are Appropriate Technical and Organisational Measures in place with regard to the rights of Data Subjects (including but not limited to the Standard Contractual Clauses, Privacy Shield, binding corporate rules, or any other model clauses or transfer mechanism approved by the ODPC).
- 25.12.2 Subject to Clause 25.14.3, in the event of any Restricted Transfer by the Supplier to a contracted Sub-processor, to any affiliate of the Customer or otherwise ("Data Importer") for which consent has been obtained, the Parties shall procure that (i) the Customer (where the Restricted Transfer is being made at the request of the Customer) or the Supplier acting as agent for and on behalf of the Customer (where the Restricted Transfer is being made at the request of the Supplier), and (ii) the Data Importer, shall enter into the Standard Contractual Clauses in respect of such Restricted Transfer.
- 25.12.3 Clauses 25.14.1 or 25.14.2 shall not apply to a Restricted Transfer if other compliance steps (which may include, but shall not be limited to, obtaining explicit consents from Data Subjects) have been taken to allow the relevant Restricted Transfer to take place without breach of applicable Data Protection Legislation.

25.13 SUB-PROCESSORS

- 25.13.1 The Supplier shall not engage a sub-processor (including any third party, affiliate or contractor of the Supplier, but excluding Supplier employees) to Process Personal Data without the prior written consent of the Customer. In the case of general written authorisation given, the Supplier shall inform the Customer of any intended changes concerning the addition or replacement of other sub-processors, thereby giving the Customer the opportunity to revoke its consent in respect of such changes.
- 25.13.2 Where the Supplier is authorised pursuant to Clause 25.15.1 to engage a sub-processor in connection with the Processing of Personal Data pursuant to this Agreement (the "Sub-processor"), the Supplier must enter into a data processing contract with the Sub-processor (and provide the Customer with an executed copy of such contract on request) which:
- 25.13.2.1 places the same data protection obligations on the Sub-processor as the Supplier has in this Agreement (in particular, providing sufficient guarantees to implement Appropriate Technical and Organisational Measures in such a manner that the Processing will meet the requirements of Data Protection Legislation); and
 - 25.13.2.2 terminates automatically on termination of this Agreement for any reason or on expiry of the Term.

- 25.13.3 With respect to each approved Sub-processor, the Supplier shall, before the Sub-processor first Processes Customer Data (PD), carry out adequate due diligence to ensure that the Sub-processor is capable of providing the level of protection for Customer Data required by this Agreement
- 25.13.4 The Supplier will remain fully liable to the Customer in respect of any failure by the Sub-processor to fulfil its data protection obligations in this regard.

25.14 WARRANTIES

25.14.1 The Supplier warrants, represents and undertakes to the Customer that:

- 25.14.1.1 the Supplier will Process the Customer Data in compliance with all applicable laws, enactments, regulations, orders, standards and other similar instruments (including Data Protection Legislation);
- 25.14.1.2 the Supplier will maintain Appropriate Technical and Organisational Measures against the unauthorised or unlawful Processing of Customer Data (PD) and against the accidental loss or destruction of, or damage to, Customer Data (PD); and
- 25.14.1.3 the Supplier will discharge its obligations under this Agreement with all due skill, care and diligence.

25.14.2 The Customer does not warrant that the Customer Data:

- 25.14.2.1 is or are accurate, complete, reliable, secure, useful, fit for purpose or timely;
- 25.14.2.2 has or have been tested for use by the Supplier or any third party; or
- 25.14.3.1.1 will be suitable for or be capable of being used by the Supplier or any third party.

25.15 INDEMNITIES

- 25.15.1 The Supplier shall indemnify the Customer against all claims, liabilities, costs, expenses, damages and losses (including but not limited to any direct, indirect or consequential losses, loss of profit, loss of reputation and all interest, penalties and legal costs (calculated on a full indemnity basis) and all other reasonable professional costs and expenses) suffered or incurred by the Customer arising out of or in connection with any breach by the Supplier of any terms of this Agreement or the Processing of the Customer Data (PD) by the Supplier, its employees or agents in breach of this Agreement, contrary to the instructions of the Customer or in contravention of Data Protection Legislation (including but not limited to claims by Data Subjects relating to loss of control over Personal Data or limitation of rights, discrimination, financial loss, damage to reputation, loss of confidentiality of Customer Data and any other significant economic or social disadvantage).
- 25.15.2 The Supplier shall take out insurance sufficient to cover any payment that may be required under the indemnity contained in Clause 25.15.1 and produce the policy and receipt for premium paid, to the Customer on request.
- 25.15.3 This Clause 25.15 is intended to apply to the allocation of liability for losses relating to Data Protection Legislation as between the Parties, including with respect to compensation to Data Subjects, notwithstanding any provisions under Data Protection Legislation to the contrary, except:
- 25.15.3.3 to the extent not permitted by applicable law (including Data Protection Legislation);
- and

25.15.3.2 that it does not affect the liability of either Party to any Data Subject.

25.16 LIMITATION OF LIABILITY

25.16.1 To the extent permitted by law, the Customer shall not under any circumstances be liable to the Supplier for any costs of the Supplier (other than the payment of Charges properly due) relating to this Agreement.

25.16.2 Unless required to do so by the ODPC or any other competent supervisory authority, the Supplier shall not make any payment or any offer of payment to any Data Subject in response to any complaint or any claim for compensation arising from or relating to the Processing of the Customer Data, without the prior written agreement of the Customer.

25.1 CONSEQUENCES OF TERMINATION

25.17.1 Any provision of this Agreement that expressly or by implication is intended to come into or continue in force on or after termination of the Agreement shall remain in full force and effect.

25.17.2 On any termination of this Agreement for any reason or expiry of the Term:

25.17.2.1 all licences granted by the Customer to the Supplier pursuant to this Agreement shall cease and have no further effect;

25.17.2.2 at the choice of the Customer, the Supplier shall Delete or return all Customer Data to the Customer and Delete existing copies of such Customer Data, unless legally required to store the Customer Data for a period of time. If the Customer makes no such election within a ten (10) day period of termination of the Agreement or expiry of the Term, the Supplier shall Delete any of the Customer Data in its possession; and

25.17.2.3 if the Customer elects for destruction rather than return of the Customer Data under Clause [19.2.2], the Supplier shall as soon as reasonably practicable ensure that all Customer Data PD is Deleted from the Supplier System.

25.19.3 The Supplier shall provide written confirmation of compliance with Clause 25.17.2.2 in the form of a letter signed by an authorised representative no later than fourteen (14) days after termination of this Agreement or expiry of the Term.

26. 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,

26.1 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**”);

26.2 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.

26.3 that without prejudice to the generality of Clause 25.1, all haulage for the provision of the Services will comply with:

- 26.3.1 the Road Traffic (Construction and Use of Vehicles) Regulations 2003, (S.I. No. 5/2003),
- 26.3.2 The European Communities (Road Transport) (Working Conditions and Road Safety) Regulations 2008 (S.I. No. 62/2008), and
- 26.3.3 the European Communities (Road Transport) (Amendment) Regulations 2006 (S.I. No. 561/2006).

27. TITLE AND RISK

- 27.1 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.
- 27.2 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.
- 27.3 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.
- 27.4 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.
- 27.5 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.

28. ASSIGNMENT AND SUB-CONTRACTING

- 28.1 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.
- 28.2 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.

29. 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.

30. 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.

31. 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.

32. 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.

33. CHAIN OF COMMUNICATION

- 33.1 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.
- 33.2 The Supplier shall give the Company Representative monthly progress reports (or such other progress reports as agreed by the parties) from the date of the Contract until the Supplier has completed all Services, to the satisfaction of the Company Representative (acting reasonably).
- 33.3 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.
- 33.4 Within 7 days after each meeting the Company Representative may issue minutes of the meeting to both the Company and the Supplier. The Supplier shall notify the Company Representative of any objection to the minutes within 7 working days of receiving them, otherwise, unless clearly wrong, they shall be considered correct.

33.5 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.

34. CHANGE MANAGEMENT PROCESS

34.1 Save were otherwise provided or agreed by the Company, any material change to the relevant Services for a Contract that may be requested by the Company (a “**Change**”) shall be dealt with in accordance with the following procedure:

34.1.1 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**”);

34.1.2 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**”);

34.1.3 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.

34.1.4 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.

34.1.5 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.

35. SPARES

35.1. Where appropriate to the Services, the Supplier shall make available to the Company, or any nominated third party maintenance source, on request and with reasonable despatch and at reasonable prices, all spares and replacement parts as the Company, or nominated third party maintenance source, shall or may require for the Goods.

35.2. The Supplier shall maintain a supply of such spares or replacement parts for a period of seven (7) years from the date of a Contract, unless such spares or replacements are generally and reasonably available on the open market.

35.3 Such spares or replacement parts shall be required to be fully compatible with, and maintain as a minimum the same levels of performance as, the Services originally supplied, but need not be identical to those items. The warranties provided in the Contract shall apply to the spares or replacement parts as if they were part of the original Services.
If during the aforesaid period in this clause, the Supplier, or their sub-contractor, servants or

35.4 agents intend to discontinue the manufacture of spares or replacement parts as aforesaid, the Supplier shall forthwith give a minimum of 3 months’ notice to the Company of such intention,

and advise the Company of any third party source from which the spares or replacement parts will be available, or to which third party source the Supplier intends to provide any intellectual property in same and any associated drawings, patterns, specifications and any other pertinent information.

- 35.5. If during the stipulated period of seven (7) years the Supplier or its sub-contractor, servants or agents either:
- 35.5.1. ~~fail~~ make available to the Company, or any nominated third party maintenance service provider, with reasonable despatch, at reasonable prices all such spares or replacement parts as the Company or nominated third party maintenance source shall require for the Goods; or
 - 35.5.2. ~~any~~ of the matters stipulated in Clause 14.2.7 occur, then the Supplier shall so far as it is legally entitled to do so, and if so required by the Company, as soon as practicable, deliver to the Company or their nominated third party maintenance source, free of charge such drawings, patterns, specifications and other information as referred to in Clause 32.4, and which the Company, or its nominated third party source, shall be entitled to retain for such time only as necessary for the exercise by the Company of its rights under this Clause, and which if the Supplier so requires, shall be returned by the Company to the Supplier at the Company's cost and expense.

36. PROJECT SUPERVISOR DESIGN PROCESS AND PROJECT SUPERVISOR CONSTRUCTION STAGE

- 36.1 In the event that the Supplier is appointed project supervisor for the design process ("PSDP") for any works pursuant to the Services or any part thereof (the "project"), in compliance with the Safety, Health and Welfare at Work (Construction) Regulations 2001 to 2013 (the "Regulations"), it shall conduct (but not limited to) the following on behalf of the Company:
- 36.1.1 identify hazards arising from the design or from the technical, organisational, planning or time related aspects of the project;
 - 36.1.2 coordinate and communicate the process where identified hazards can be eliminated, if possible, or where the risk can be reduced;
 - 36.1.3 ensure all remaining hazards / risks and design assumptions are communicated to any project supervisor for the construction stage ("PSCS") so they can be dealt with;
 - 36.1.4 developed a safety and health plan;
 - 36.1.5 ensure that the work of designers is coordinated to ensure safety including that of temporary work designers and permanent work designers;
 - 36.1.6 prepare a written safety and health plan in respect of the project for the Company, at a time agreed and communicate same to any PSCS, as relevant;
 - 36.1.7 prepare systems to ensure a safety file is prepared for the completed project / structure, and
 - 36.1.8 notify the authority and company of non-compliance with any written directions issued.
- 36.2 In the event that the Supplier is appointed PSCS for the project, in compliance with the Regulations, it shall conduct (but not limited to) the following on behalf of the Company:
- 36.2.1 develop a safety and health plan based from the plan prepared by the PSDP;

- 36.2.2 ensure systems are in place to ensure compliance with the Regulations and all other relevant Laws;
- 36.2.3 ensure coordination and cooperation between all relevant parties working on the project;
- 36.2.4 ensure appropriate approved notification to the Health and Safety Authority (the "Authority"), prior to commencement of any construction;
- 36.2.5 coordinate the reporting of accidents to the Authority;
- 36.2.6 coordinate the election of a Site safety representative and the provision of relevant information;
- 36.2.7 coordinate the inspection of safe working procedures and monitor compliance of contractors and others;
- 36.2.8 ensure provisions are put in place to restrict unauthorised access onto the Site;
- 36.2.9 coordinate the provision and maintenance of welfare facilities;
- 36.2.10 coordinate arrangements to ensure all relevant personnel are in compliance with the legislation with regard to safety training (Safe Pass and Construction Skills Certification Scheme CSCS);
- 36.2.11 appoint a safety advisor where appropriate;
- 36.2.12 collate all necessary safety file information for the PSDP, and
- 36.2.13 notify the Authority and the Company of non-compliance with written directions issued.

37. VALUE ENGINEERING

If requested and agreed, as part of the Services, the Supplier shall perform a written value engineering systematic proposal of the Services or the relevant part thereof for the Company to either improving the function or reducing the cost.

38. PROVISION OF INFORMATION

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

39. EXTENT OF LIABILITY OF THE COMPANY

Save as provided by law, the Company:

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

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