

DATED

2021

TRANSPORT INFRASTRUCTURE IRELAND

and

[

]

MULTI-PARTY FRAMEWORK AGREEMENT

**for the
Supply Only
of Bitumen Emulsions 2022 – 2026**

(Lot 1)

THIS FRAMEWORK AGREEMENT is made the

BETWEEN

1. Transport Infrastructure Ireland (TII) acting as a Central Purchasing Body (CPB) of the one part which expression shall be deemed to include its successors, assigns and authorised representatives; and
2. [] having its registered office at
[] (hereinafter referred to as "**the Supplier**") of the other part.

WHEREAS:

- A. TII is a central purchasing body within the meaning of Directive 2014/24/EC of the European Parliament and Council. TII enters into this Framework Agreement on its own behalf and on behalf of other Framework Purchasers as listed in Schedule 2 hereto. TII has conducted a tender competition advertised on the Irish Government website portal for public tenders, www.etenders.gov.ie and in the Official Journal of the European Union inviting tenders for the supply of Bitumen Emulsion to Framework Purchasers.
- B. The Supplier is engaged in the business of supplying Bitumen Emulsion. The Supplier submitted the Tender Submission (as defined below) in response to TII's tender competition and, following an assessment and evaluation of the Tender Submission, TII wishes to appoint the Supplier to its multi-party framework to provide Emulsion Products, if instructed to do so from time to time by Framework Purchasers, subject to and in accordance with the terms and conditions of this Framework Agreement.
- C. The Supplier has agreed to be appointed to the framework on the terms and conditions set out in this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:-

1) Definitions and Interpretation

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

"Bitumen Emulsion" means any of Cationic Bitumen Emulsion or Polymer Modified Bitumen Emulsion products meeting the Specification referred to in **Schedule 1** and any subsequent amendments agreed by the Framework Purchaser in writing, and supplied in accordance with this Framework Agreement;;

"Bitumen Emulsions Pricing Schedule" means the "Bitumen Emulsions Pricing Schedule" submitted by the Supplier as part of its Tender Submission;

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

"Commencement Date" means the date when the Framework Agreement goes live on www.supplygov.ie ;

"Contract Period" means the period of duration of this Framework Agreement as set out in Clause 3;

"Contractor" shall be read as having the same meaning as Supplier;

“Defects” means non-compliance of any Supply with the Framework Agreement including:

- (a) a failed quality test;
- (b) Products that fail to comply with the Request for Mini Tenders, the Specification or any applicable law or regulation;

“Delivery Address” means the address stated as such in the Mini-Competition Contract;

“Delivery Date” means the date or dates stated by the Framework Purchaser in the Mini-Competition Contract as the date or dates upon which the Product is to be delivered;

“Effective Date” means the date when the Framework Agreement is signed and returned to TII;

“Framework Agreement” means

- i. these terms and conditions, including the Schedules; and
- ii. the Instructions Document as issued through tender call
- iii. the Mini-Competition Contract
- iv. Request for Mini-Tenders (if applicable)
- v. the Proposal (if applicable)
- vi. the Tender Submission;

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

“Framework Suppliers” or “Suppliers” means those suppliers (who have been appointed to the framework;

“Framework Purchaser(s)” means those bodies listed in **Schedule 2** hereto that may wish from time to time to purchase the Product from Framework Suppliers pursuant to this Framework Agreement;

“Instructions Document” means the *Instructions Document for Request for Applications for Appointment to a Multi-party Framework Agreement for Bitumen Emulsion Supplies & Services*, as published by TII;

“Mini-Competition” means a tender competition between the Framework Suppliers conducted in accordance with Clause 6;

“Mini-Competition Contract” means the agreement to be entered into by the Framework Purchaser and the Supplier under and pursuant to which the Supplier will provide the Product in accordance with the terms and conditions contained therein. An indicative example of a Mini-Competition Contract is set out in **Schedule 6**;

“Mini-Competition Request for Tender or Request for Tender (RFT)” means an invitation to submit a Proposal issued by the Framework Purchaser pursuant to Clause 6;

“Polymer Modified Bitumen Emulsion” means 70% polymer modified bitumen emulsion for surface dressing described in Schedule 1;

“Price” shall have the meaning given to it by Clause 8;

“Products” means the Bitumen Emulsion products defined herein

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

“Request for Applications” means the request for applications as issued by TII on **10th September 2021** together with any clarifications issued in respect of same;

“Service Provider” shall be read as having the same meaning as Supplier;

“Specification” means the specifications or other information relating to the Products over the Contract Period, attached as **Schedule 1** hereto;

“Supplier’s Delivery Rates” means the Supplier’s delivery rates set out in the “Delivery Rates” table of the Bitumen Emulsions Pricing Schedule;

“Supplier’s Product Prices” means the product prices set out in the “Product Prices Tables” included in the Supplier’s Tender Submission as adjusted in accordance with Clause 8 and as reflected in the Revised Bitumen Emulsions Pricing Schedule;

“Staff” means all persons (including, without limitation, employees, agents and independent contractors) used or engaged by the Supplier in the provision of Products;

“Tender Submission” or **“Application”** means the Supplier’s application for admittance to the Framework submitted to TII via the TenderBox facility on www.etenders.gov.ie by the Closing Deadline.

“TII” means Transport Infrastructure Ireland;

“VAT” means Value Added Tax.

1.2 In this Framework Agreement, unless where otherwise specified:

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

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

1.2.3 words in any gender shall include all genders;

1.2.4 headings and titles are inserted for convenience only and shall not affect the construction of this Framework Agreement;

1.2.5 references to a day mean a calendar day;

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

1.2.7 any Irish legal or accounting term for any action, remedy, method of judicial proceeding, insolvency proceeding, event of incapacity, legal or accounting document, legal or accounting status, court, governmental or administrative authority or agency, accounting body, official or any legal or accounting concept practice or principle or thing shall in respect of any jurisdiction other than Ireland be deemed to include what most approximates in that jurisdiction to the Irish legal or accounting term concerned;

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

- 1.3 Certain Rules of Construction disappplied:
- 1.3.1 This Framework Agreement shall be construed without regard to the rule of construction known as "ejusdem generis".
 - 1.3.2 If any ambiguity or question of intent or interpretation arises, this Framework Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favouring or disfavouring any party by virtue of the authorship of any of the provisions of this Framework Agreement.

2) Entire Agreement

- 2.1 This Framework Agreement constitutes the entire agreement between the parties and contains all the terms which the parties have agreed with respect to its subject matter and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Supplier and any Framework Purchaser. Without prejudice to the generality of the foregoing, the Framework Agreement shall apply to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any acknowledgement of a purchase order or otherwise.
- 2.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
- 2.3 The Supplier acknowledges that it has not been induced to enter into this Framework Agreement by a statement or promise which this Framework Agreement does not contain. Neither TII nor any Framework Purchaser is liable in equity, contract or tort or in any other way for a representation that is not set out in this Framework Agreement.
- 2.4 Each obligation, warranty or representation of the Supplier under this Framework Agreement is undertaken or made (as the case may be) in favour of TII for its own benefit and for the benefit of each Framework Purchaser.

3) Contract Period

- 3.1 The Framework Agreement shall take effect on the Effective Date. The Framework Agreement shall continue in full force and effect for a period of up to **sixty (60) months** and including the Commencement Date (the "**Contract Period**"), unless it is otherwise terminated in accordance with the provisions of this Framework Agreement. For the avoidance of any doubt, the term of a Mini-Competition Contract may last longer than the Contract Period. Notwithstanding the expiry of the Contract Period, a Mini-Competition Contract that is not completed prior to the end of the Contract Period shall be governed by this Framework Agreement. There may also be one further 24 month extension solely at the discretion of Transport Infrastructure Ireland (TII)

4) Scope of Appointment

- 4.1 This Framework Agreement governs the relationship between TII and the Supplier in respect of the provision of Emulsion Products by the Supplier to TII and to the Framework Purchasers.
- 4.2 In consideration of the performance by the Supplier of its obligations under this Framework Agreement and for other good and valuable consideration (receipt of which is acknowledged), TII appoints the Supplier on a non-exclusive basis to provide Products to Framework Purchasers, if instructed to do so from time to time pursuant to Clause 6, and the Supplier accepts such appointment in each case upon the terms and subject to the conditions of this Framework Agreement.

- 4.3 The parties acknowledge and agree that the Framework Purchasers have the right to order Products pursuant to this Framework Agreement.
- 4.4 The appointment of the Supplier does not constitute a commitment or guarantee by any of the Framework Purchasers to procure any Products or any other products from the Supplier. Products shall only be procured from the Supplier in accordance with Clause 6.
- 4.5 Neither TII nor any Framework Purchaser guarantees that any Products will be procured under this Agreement.
- 4.6 No undertakings or any form of statement, promise, representation or obligation shall be deemed to have been made by TII and/or any Framework Purchaser in respect of the total quantities or values of the Products to be ordered by them pursuant to this Framework Agreement and the Supplier acknowledges and agrees that it has not entered into this Framework Agreement on the basis of any such undertaking, statement, promise or representation.

5) Bitumen Emulsion Products – Division into Lots

- 5.1 This Framework Agreement pertains to the **Supply Only of Bitumen Emulsions 2022 – 2026 (Lot 1)**.

6) Mini-Competition Contracts

- 6.1 Where a Framework Purchaser wishes to acquire Products pursuant to the Framework Agreement, it will do so by means of a Mini-Competition. The Framework Purchaser shall issue a Mini Competition Request for Tender to all Framework Suppliers capable of performing the contract via the Supplygov system, inviting each to submit a Proposal.
- 6.2 The Supplier shall comply with any procedures, processes, time limits, instructions or other requirements issued by the Framework Purchaser in relation to the Mini-Competition and shall bear any and all costs associated therewith.
- 6.3 Framework Suppliers that have more than one depot for the purpose of providing Products shall receive only one Request for Tenders and shall be entitled to issue only one Proposal (based on the depot of its choice) in response to the Request for Tender.
- 6.4 Framework Suppliers who submit tenders in response to a Mini-Competition are restricted by prices previously tendered under this Framework competition in so far as the prices tendered at Framework application stage will set 'ceiling rates' for the product **Base Prices** that will be established following tendering at Mini-Competition stage, such that a Base Price tendered at Mini-Competition stage cannot be higher than the corresponding price tendered at Framework application stage. This shall apply for the initial 12-month period after the Framework Application Closing deadline only.
- 6.5 Thereafter, these 'ceiling rates' will not apply to the monthly updating of the established Base Prices provided for in this Framework.
- 6.6 Proposals received in response to a Mini-Competition Request for Tender will be evaluated on the basis of the most economically advantageous tender, identified on the basis of price and quality criteria set out in **Schedule 4** only.
- 6.7 The Framework Purchaser shall not be bound to accept the lowest priced or any Proposal submitted in response to a Mini-Competition Request for Tender.

- 6.8 The acknowledgement of receipt of any Proposal shall not constitute any actual or implied agreement between the Supplier and Framework Purchaser.
- 6.9 If following a Mini-Competition, a Framework Purchaser selects the Supplier to provide the Products, the Framework Purchaser may raise a purchase order and issue it directly by email to the Supplier. Each purchase order shall constitute a separate contract for the Product.
- 6.10 By signing and returning or otherwise acknowledging a Mini-Competition Contract, the Supplier acknowledges and agrees that it shall have entered into a legally binding contract with the Framework Purchaser to supply the Products specified in the relevant Mini-Competition Contract to the Framework Purchaser. In any circumstance where the Supplier does not formally accept a Mini-Competition Contract, dispatch or delivery of the Products by the Supplier pursuant to an instruction issued by the Framework Purchaser shall be deemed conclusive evidence of the acceptance of a Mini-Competition Contract and the terms and conditions of the Mini-Competition contract thereby constituted.
- 6.11 Each Framework Purchaser shall be responsible for awarding Mini-Competition Contracts in accordance with the Mini-Competition procedure set out in this Framework Agreement and TII shall not have any responsibility or liability whatsoever or howsoever arising from the award of any Mini-Competition Contract or outcome of a Mini-Competition.
- 6.12 A sample Mini-Competition Contract is set out at **Schedule 6**. At Mini-Competition stage a Contracting Authority will indicate whether the sample Mini-Competition Contract or other form of contract will apply.
- 6.13 The Supplier shall perform all Mini-Competition Contracts in accordance with the requirements of this Framework Agreement, the terms and conditions of the respective Mini-Competition Contract and in accordance with Irish law.
- 6.14 Default by a Framework Purchaser or Supplier in relation to any one Mini-Competition Contract shall not entitle the other party to treat such as a breach of the entire Framework Agreement and/or terminate this Framework Agreement.

7) The Supplier's Obligations

- 7.1 The Supplier shall supply the Products meeting the Specification to Framework Purchaser and shall ensure that its Staff shall provide the Products to the Framework Purchaser:
 - 7.1.1 in accordance with the terms of the Framework Agreement including, for the avoidance of doubt the Tender Submission, the Proposal and the Mini-competition Contract;
 - 7.1.2 diligently, conscientiously and in a professional manner and with all due care and skill;
 - 7.1.3 in compliance with all reasonable instructions of the Framework Purchaser in relation to the provision of the Products;
 - 7.1.4 in adherence with best industry standards as regards quality control and assurance
 - 7.1.5 in compliance with all requirements and/or obligations of any law, statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures.
 - 7.1.6 in absolute co-operation with the Framework Purchaser;
 - 7.1.7 maintaining the minimum quality levels of Products as set out in the Specification appended at **Schedule 1**.

- 7.2 The Supplier's obligations also include, but are not limited to:
- 7.2.1 open communication with the Framework Purchasers and with any third parties appropriately authorised by the Framework Purchasers so as to facilitate the efficient provision of Products;
 - 7.2.2 maintaining the minimum quality levels of Products as set out in the Specification appended at Schedule 1;
 - 7.2.3 permitting nominated officers of the Framework Purchasers at any time during the Contract Period to inspect the manufacturer or production facilities of the Products for the purpose of carrying out quality tests to ensure compliance with the minimum quality levels as set out in the Specification;
 - 7.2.4 providing TII with details of the deliveries made to each Framework Purchaser, including information regarding the quantities of the deliveries, on request from time to time;
 - 7.2.5 notifying TII in writing of any notice or order by any court, governmental agency, local authority or regulatory agency which may have an impact on the Supplier's ability to provide the Products as soon as such notice or order is received by the Supplier; and
 - 7.2.6 notifying TII immediately in respect of any claims arising in connection with this Framework Agreement within seven (7) days of such a claim arising.

8) Pricing

- 8.1 Pricing shall be in accordance with the provisions set out in the Instructions Document.
- 8.2 The Supplier shall supply the Products at the price(s) tendered in the Proposal submitted pursuant to a Mini-Competition or pursuant to an instruction issued by the Framework Purchaser.
- 8.3 Unless otherwise stated, the Price shall be:
- 8.3.1 exclusive of any applicable Value Added Tax (which shall be payable by the Framework Purchasers subject to receipt of a valid VAT invoice in accordance with the Mini-Competition Contract); and
 - 8.3.2 payable in euro (€).
 - 8.3.3 inclusive of any costs and/or expenses incurred by the Supplier in the provision of the Products and the Supplier shall not seek to recover such costs and/or expenses from the Framework Purchaser.
- 8.4 As provided under Clause 6.4, during the initial 12 month period only from the Framework Application Closing Deadline, the Products **Base Prices** tendered in response to a Mini-Competition must not exceed the Ceiling Rates tendered by the Supplier in its Tender Submission.

9) Terms of Payment

- 9.1 The Supplier shall send an invoice to the Framework Purchaser on delivery of the Products or at such other time(s) as set out in the Mini-Competition Contract. Each invoice must include -:
- 9.1.1 The Suppliers name and address;
 - 9.1.2 The Suppliers VAT Registration Number;
 - 9.1.3 Invoice number and date;
 - 9.1.4 The Framework Purchaser’s purchase order number;
 - 9.1.5 The reference number from the Supplygov system where the Mini Competition Request for Tender is published;
 - 9.1.6 The origin of the Products (naming the depot from where the Products will be supplied)
 - 9.1.7 The quantity of Products supplied;
 - 9.1.8 The Price;
 - 9.1.9 A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance; and
 - 9.1.10 The CE marking statement must reference the point of delivery of the Products and distribution process as appropriate
- 9.2 Subject to the Framework Purchaser being satisfied as to the due performance of the Mini-Competition Contract in line with clause 8, the Supplier shall be paid the Price established through the Mini-Competition as set out in the purchase order and in the Mini-Competition Contract.
- 9.3 Each Framework Purchaser may retain or set off against the Price any amount owed to that Framework Purchaser by the Supplier on any account whatsoever.
- 9.4 Discharge of any invoice shall be subject to the Framework Purchaser being in possession of the Supplier’s current tax clearance certificate. The Supplier shall not be entitled to payment for and the Framework Purchaser shall not be obliged to pay any interest or penalties incurred as a result of late payment caused by the Supplier’s failure to provide a current tax clearance certificate in a timely manner.
- 9.5 In the event that a Framework Purchaser determines at any time that the quality of any Products provided by the Supplier are of a standard below that required by this Framework Agreement, or that any Products in any other respect are not being rendered in accordance with this Framework Agreement, that Framework Purchaser will notify the Supplier accordingly and will be entitled to withhold a proportionate amount (determined at the discretion of the Framework Purchaser) of any future payment due to the Supplier pursuant to this Framework Agreement until such time as the matter in question has been remedied to the reasonable satisfaction of that Framework Purchaser. The rights of each Framework Purchaser pursuant to this Clause 9.5 shall be without prejudice to any other rights it may have under this Framework Agreement or at law, including the right of termination as provided in Clause 19.

10) Time

- 10.1 The Supplier shall deliver the Products on or before the Delivery Date, unless otherwise agreed to in writing by the relevant Framework Purchaser. The Products shall be delivered to the Delivery Address

by the Supplier. Time of delivery of the Products shall be of the essence of this Framework Agreement, unless otherwise agreed in writing.

- 10.2 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the relevant Framework Purchaser. Notwithstanding such notice and unless a substitute delivery date for the Products has been expressly agreed by the relevant Framework Purchaser in writing, the Supplier's failure to effect the delivery of the Products on the Delivery Date shall entitle the relevant Framework Purchaser, without prejudice to any other remedy it may have, to invoke the remedies set out in Clause 11 below.
- 10.3 When fulfilling a Mini-Competition Contract, the Supplier shall provide a delivery docket specific to each delivery with a minimum of the following information indicated on same:
 - 10.3.1 The Supplier's name and address;
 - 10.3.2 The Supplier's VAT registration number;
 - 10.3.3 The Framework Purchaser's order number and Instructions Document reference number from the www.SupplyGov.ie system;
 - 10.3.4 A description of the Products and the quantity of Products delivered;
 - 10.3.5 A CE marking statement specific to the relevant delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant declaration of performance as provided by the Supplier when applying for a place on the framework. The CE marking statement must reference the point of delivery of the Products to be supplied and distribution process as appropriate.

11) Acceptance

- 11.1 Notwithstanding delivery, a Framework Purchaser shall not be deemed to have accepted any Products until:
 - 11.1.1 those Products have been inspected and checked to the satisfaction of the Framework Purchaser; and
 - 11.1.2 a delivery note has been signed by a duly authorised representative of the Framework Purchaser.
- 11.2 Without prejudice to any other remedy that TII or a Framework Purchaser may have if the Products are not supplied in accordance with this Framework Agreement, including the Specification, the Request for Mini Tenders or the Mini-Competition Contract, where the Supplier has failed to deliver on time in accordance with Clause 10, or where a Framework Purchaser has discovered Defects or a shortage in the quantity of the Products, and has given the Supplier a reasonable opportunity to investigate and remedy the Defects or shortage, a Framework Purchaser may:
 - 11.2.1 require the Supplier, at the Supplier's expense, to fulfil its obligations in all respects within such period as is specified by that Framework Purchaser; or
 - 11.2.2 require the Supplier to provide that Framework Purchaser with a credit note for any part of the Price which has been paid in respect of such Products; or
 - 11.2.3 purchase substitute Products elsewhere and recover from the Supplier any actual losses, cost and liabilities whatsoever incurred by that Framework Purchaser (including without limitation the costs of any replacement Products); or
 - 11.2.4 terminate the relevant Mini-Competition Contract in accordance with the provisions

of Clause 19 and require repayment of any part of the Price which has been paid in respect of the relevant Products and that Framework Purchaser shall, at the Supplier's risk and expense, return Products already supplied under the relevant Mini-Competition Contract and shall be entitled to recover from the Supplier actual losses, cost and liabilities howsoever incurred by it (including without limitation the costs of any replacement Products).

12) Risk and Title

- 12.1 Title to the Products (if applicable) shall pass on delivery to the Framework Purchaser unless payment is made prior to the Delivery Date, in which event, title shall pass to the Framework Purchaser on payment. Where title in the Products has passed to the Framework Purchaser prior to the Delivery Date pursuant to this Clause 12.1 the Supplier shall keep any Products separate from other Products and clearly mark the Products as the property of that Framework Purchaser.
- 12.2 Nothing in this Framework Agreement shall be deemed to give the Supplier any right, title, licence, trade name, trademark, patent, packaging design, intellectual property right or other interest of a Framework Purchaser, unless otherwise agreed between the Supplier and the relevant Framework Purchaser.
- 12.3 Notwithstanding the provisions of Clause 12.1 above, risk of damage or loss of the Products shall, unless otherwise agreed between the Supplier and a Framework Purchaser, remain with the Supplier until their delivery to, and acceptance by, a Framework Purchaser in accordance with the provisions of this Framework Agreement and, in particular, Clause 11.1.

13) Staff

- 13.1 The Supplier shall employ sufficient Staff to provide the Products who shall be properly trained, skilled and qualified.
- 13.2 Failure by the Supplier to meet its obligations under this Clause 13.1 shall be considered a material breach of the Framework Agreement for the purposes of Clause 19.1.1.

14) Warranties and Indemnities

- 14.1 The Supplier shall be responsible for and shall indemnify and keep indemnified TII and each Framework Purchaser, its agents, employees, officers, subsidiaries, associated companies, assigns and, where a Framework Purchaser is acting as an agent, that Framework Purchaser's principal, on demand and in full against any and all losses, costs, judgments, claims or liabilities in respect of:
 - 14.1.1 any death or personal injury to any person;
 - 14.1.2 any loss of or damage to any property (including property belonging to a Framework Purchaser or for which it is responsible);
 - 14.1.3 any breach of statutory duty; and
 - 14.1.4 any losses, actions, claims or demands by third parties against TII and/or a Framework Purchaser, and any costs, charges and expenses (including legal expenses) suffered or incurred by TII and/or a Framework Purchaser in respect of same,

in each case arising directly or indirectly out of, or in connection with any negligent act or omission, or breach of this Framework Agreement committed by the Supplier or its employees, agents or sub-contractors.

- 14.2 TII and each Framework Purchaser undertakes that the Supplier shall be given notice of any third party action or claim described in Clause 14.1 above that is made against TII and/or the relevant Framework Purchaser within seven (7) days and the Supplier shall, subject to TII and/or the relevant Framework Purchaser being indemnified and secured by the Supplier to its reasonable satisfaction against any costs, liabilities, losses or expenses it may suffer in so doing, have the right to defend any such claims, following consultation with TII and/or the Framework Purchaser who shall be kept fully informed at all times of all such claims or proceedings arising from such actions or claims, and make settlements thereof at its own discretion in order to settle or oppose any such claims.
- 14.3 The Supplier hereby warrants and undertakes to TII and each Framework Purchaser that:
- 14.3.1 it has the appropriate skills and technical capacity, legal right and full power and authority to perform its obligations under the Framework Agreement;
 - 14.3.2 all Products are and will be fit for the purpose for which they are intended; and
 - 14.3.3 it shall not do anything to prejudice the name or reputation of TII or any Framework Purchaser, or TII or any Framework Purchaser's business interests.
- 14.4 The Supplier and each Framework Purchaser acknowledge and understand their respective duties of care in respect of the Safety, Health and Welfare at Work Act, 2005 and all regulations made thereunder, including but not limited to the Safety, Health and Welfare at Work (Construction) Regulations 2013.
- 14.5 Any approval, testing or acceptance by a Framework Purchaser in accordance with this Framework Agreement shall not, in any way, limit the Supplier's liability and obligations under this Framework Agreement.

15) Insurance

- 15.1 The Supplier shall maintain in force during the term of this Agreement full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Supplier in connection with the provision of the Products in accordance with the requirements in the Specification and any Mini-Competition Contract including but not limited to:
- 15.1.1 Employer's liability insurance with a limit of indemnity of not less than the sum of €13,000,000. Such policy shall include an indemnity to each Framework Purchaser as principal in accordance with Clause 14.
 - 15.1.2 Products liability insurance with a limit of indemnity of not less than the sum of €6,500,000. Such policy shall include an indemnity to each Framework Purchaser as principal in accordance with Clause 14.
 - 15.1.3 Public liability insurance with a limit of indemnity of not less than the sum of €6,500,000. Such policy shall include an indemnity to each Framework Purchaser as principal in accordance with Clause 14.
 - 15.1.4 Motor Policy Insurance with a limit of indemnity of not less than the sum of €6,500,000. Such policy shall include an indemnity to each Framework Purchaser as principal in accordance with Clause 14.

- 15.1.5 Please note a specific liability to TII is also required to be noted under Public, and Products Liability Covers
- 15.2 The Supplier shall ensure that its insurance policies are taken out with reputable insurers acceptable to TII within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by TII and the Framework Purchasers. All insurance policies must include EU jurisdiction.
- 15.3 If the proceeds of such insurance are insufficient to cover the cost of reinstatement, replacement or repair, the Supplier will make good any deficiency out of its own monies.
- 15.4 Where the said insurance policies lapse prior to the end of the Contract Period, it shall be the responsibility of the Supplier to ensure that the said insurance policies are renewed and that the updated insurance details are provided to the Framework Purchasers.
- 15.5 If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify TII without delay.
- 15.6 The Supplier shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify TII and the relevant Purchaser without delay.
- 15.7 It shall be the Supplier's responsibility to ensure that any agent or sub-contractors of the Supplier effect and maintain all insurance required by law and all other insurance as are necessary for the provision of the provision of the Products. Any deficiencies in the cover or policy limits of the insurance of such agents or sub-contractors shall be the sole responsibility of the Supplier.
- 15.8 Suppliers must provide each Framework Purchaser with confirmation that their insurance policies will cover the acts and omissions (including negligence) of any subcontractor employed by them in connection with any Mini-Competition Contract awarded or task order issued. Subcontractors cannot be employed by the Supplier to carry out activities that are specifically excluded from the Suppliers insurance policies.
- 15.9 The Supplier shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.
- 15.10 Suppliers that have specific exclusions noted in their insurance policies which restrict or prohibit their ability to carry out certain works under any contract, shall be required, at time of Mini-Competitions to either -:
- Have the exclusion removed from their insurance policies and employ a competent and appropriately insured specialist subcontractor to carry out the excluded activity and put in place contingency cover on the Supplier's insurance policies
- or*
- Have the specialist subcontractor included with the Supplier as a full joint insured on the subcontractors insurance policy and have the Framework Purchaser joint insured on the subcontractor's insurance policy. The Framework Purchaser will not be responsible for any cost incurred by a Supplier in complying with the insurance requirements outlined above.

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

16) Tax Clearance

- 16.1 The Supplier shall, and shall ensure that its sub-contractors shall, continue to be tax compliant with the Irish Revenue Commissioners for the Contract Period and until final payment has been made.
- 16.2 Contractors who are tax compliant will receive a Tax Clearance Access Number from the Irish Revenue Commissioners. This number along with the Contractor's PPSN/Tax Reference number (TRN Number) shall be provided when requested to the Contracting Authority as verification of their tax clearance details.

17) Confidentiality

- 17.1 During the Contract Period and at any time after the termination or expiry of this Framework Agreement (for any reason) each of the Parties to this Framework Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained (whether in writing, orally or by another means and whether directly or indirectly) arising from their participation in this Framework Agreement ("Confidential Information") and shall not disclose same to any third party except -:
- 17.1.1 to its professional advisors subject to the provisions of this clause 17; or
 - 17.1.2 as may be required by law; or
 - 17.1.3 as may be necessary to give effect to the terms of this Framework Agreement subject to the provisions of this clause 17; or
 - 17.1.4 in the case of the Framework Purchaser by request of any person or body or authority whose request the Framework Purchaser or persons associated with the Framework Purchaser (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.
- 17.2 The Supplier undertakes that it will properly instruct its staff on the absolute need to maintain privacy and confidentiality of all matters affecting the business of the Framework Purchaser or any persons doing business with the Framework Purchasers or in any way arising from documents or records of any kind which may come under the hand of the Supplier or its staff while engaged by a Framework Purchaser.
- 17.3 The Supplier undertakes to comply with all reasonable directions of the Framework Purchaser with regard to the use and application of all and any Confidential Information. The Supplier acknowledges that the security of the Local Authorities and the State and its information is of paramount importance to the Framework Purchaser. Accordingly the Supplier confirms that it will from time to time, during the currency of this Framework Agreement as may be requested by the Framework Purchaser submit full personal details (including those of subcontractors) of persons who are assigned to supply the Products under this Framework Agreement. The Supplier further acknowledges that checks may be carried out in relation to all such personnel by authorities and the Supplier shall comply with all reasonable directions of the Framework Purchaser arising there from.

18) Contract Performance Review

- 18.1 The Framework Purchasers may review the Supplier’s performance from time to time during the Contract Period or the term of the Mini-Competition Contract according to the Performance Measurement Table hereunder.
- 18.2 On completion of a Mini-Competition Contract, if so requested by the Framework Purchaser, the Supplier shall collate and provide to the Framework Purchaser the information required for the Framework Purchaser to review the Supplier’s performance according to the Performance Measurement Table below. The Framework Purchaser will complete a Performance Evaluation Form in the manner described in section 1.12 of the General Specification Document attached as **Schedule 1** to this Framework Agreement and shall also record performance against the Performance Measurement Table.
- 18.3 The Supplier is said to have reached Level 1, Level 2 or Level 3, if, during the review for one of the indicators listed in the below table, the number of occurrences of that indicator equals or exceeds the number listed in the column headed “Level 1”, “Level 2”, or “Level 3”.
- 18.4 If the Supplier has reached Level 1, the Framework Purchaser will give the Supplier a written notification and the Supplier must demonstrate to the Framework Purchaser’s satisfaction that it has implemented steps to redress the problem.
- 18.5 If the Supplier has reached Level 2, the Framework Purchaser will exclude that Supplier from any Mini-Competition in which it is due to participate until the Supplier has demonstrated to the Framework Purchaser’s satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, Mini Competitions may be run without prejudice as if the Supplier was excluded and the Framework Agreement had been terminated with the Supplier.
- 18.6 Only TII has authority to terminate a Supplier from this Framework Agreement. The Framework Purchaser may notify TII if a Supplier has reached Level 3 and TII may terminate the Framework Agreement as between TII and that Supplier pursuant to Clause 19 below.

Performance Measurement Table

Employers Objective	Indicator	Measurement Period	Level 1 (Rule 18.4)	Level 2 (Rule 18.5)	Level 3 (Rule 18.6)
Health and Safety					
Management of Safety	Failure to maintain safety measures as set out in the Safety and Health Plan and/or Supplier's Safety Statement	Contract/Term	N/A	2	3
	Requirement for immediate cessation of services delivery on foot of committing a breach of the Safety, Health & Welfare at Work Act 2005 or any regulations or code of practice made under it concerning the works	Contract/Term	N/A	1	2
	Requirement for immediate cessation of services delivery on foot of failure to comply with reasonable Direction(s) issued by the PSCS or Framework Purchaser's Representative or HSA	Contract/Term	N/A	1	2
Performance					
Execution of the Mini-Competition Contract	Failure of the Supplier to execute the Mini-Competition Contract in a proper and workmanlike manner and using good practice	Contract/Term	2	3	5
Delivery of the Mini-Competition Contract	Failure to commence works by the nominated start date identified in the Mini-Competition Request for Tender	Contract/Term	2	1	2
	With respect to Response Maintenance/Emergency Works, failure to commence works within the nominated response time identified in the Mini-Competition Request for Tender	Contract/Term	2	1	2
Personnel	Requirement for immediate removal of Supplier's personnel on foot of their negligence or insufficient competence to carry out their tasks in compliance with the Supplier's obligations under the Mini-Competition Contract	Contract/Term	N/A	1	2
Legal Requirements	Requirement for immediate cessation of services delivery on foot of committing or causing the Framework Purchaser to commit a serious breach of Legal or Statutory requirements concerning the project	Contract/Term	N/A	1	2
*Energy Management Systems	By 02 December 2022, the Supplier shall submit documentation to TII to demonstrate they can meet the December 2023 deadline. The Supplier must provide documentary evidence to TII that it has achieved the ISO5001:2011 certification for production of Products by 2 December 2023. Failure to achieve certification by 02 December 2024 will result in Level 2.	From 2 December 2024 for the balance of the Contract Period	1	1	N/A
Quality of Work					
Quality of the Material(s) supplied	Failure to provide required Certification / Inspection results / Test results.	Contract	2	1	2
	Defects in competed work, caused by the provision of non-compliant materials by the Supplier, requiring re-visiting to repair	180 days	1	2	3

*While the Measurement Period Levels set out for certification of an Energy Management Systems will be applied in accordance with the above table, TII may take account of any special circumstances that arise in the certification process.

- 18.7 The Supplier shall implement such recommendations and comply with any Framework Purchaser's findings to the extent necessary to ensure that the provision of Bitumen Emulsions continue to be delivered and the Supplier continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.
- 18.8 In addition to the performance review as may be conducted by the Framework Purchasers pursuant to Clause 18.1 above, the performance of the Supplier under this Framework Agreement shall be subject to review on an annual basis by TII. Annual evaluation meetings may be held during the term of this Framework Agreement. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for the Framework Purchaser, TII and the Supplier to review performance and other key issues in connection with the Framework Agreement. TII, the Framework Purchasers and the Supplier shall be committed to continuously improving the Supplier/Framework Purchaser relationship.
- 18.9 The Supplier shall implement such recommendations and comply with TII's findings pursuant to Clause 11 to the extent necessary to ensure that the Products continue to be delivered and the Supplier continues to meet its related obligations in accordance with the requirements set out in this Framework Agreement.
- 18.10 The Supplier shall keep and maintain until a minimum of six (6) years after the expiry of the Contract Period, full and proper records and all documents relating to the performance of its obligations under this Framework Agreement and shall allow TII and/or each Framework Purchaser and any auditors of or other advisers to TII and/or a Framework Purchaser to access at any time and from time to time any of the Supplier's premises, personnel and such records and documents for the purposes of:
- 18.10.1 fulfilling any legally enforceable request by any court, tribunal or regulatory body;
or
 - 18.10.2 undertaking verifications of the accuracy of the Price or identify suspected fraud;
or
 - 18.10.3 undertake verifications that the Products is being (and has been) provided in accordance with this Framework Agreement.
- 18.11 Conduct of Audits:
- 18.11.1 Subject to Clause 18.11.2 below, any audit shall be carried out with reasonable prior notice and in a reasonable way so as to cause as little disruption as is reasonably possible to the Supplier's business.
 - 18.11.2 Where TII and/or a Framework Purchaser has reasonable grounds to believe that the Supplier is not complying with its obligations under this Framework Agreement, an audit may be carried out without prior notice.
 - 18.11.3 TII and/or any Framework Purchaser, its agents or designees may exercise a right of audit under this Clause 18.11 and shall comply with the Supplier's reasonable security and access rules and procedures. Persons that TII and/or a Framework Purchaser may designate include that Framework Purchaser's or TII's independent auditors, representative of governmental or regulatory authorities having jurisdiction under applicable law for the activities relating to this Framework Agreement.

- 18.11.4 During any audit, TII and any Framework Purchaser shall ensure that its agents or designees shall treat as confidential any information, data or documents relating to the Supplier to which they may have access.
- 18.11.5 The Supplier shall provide all assistance reasonably requested by TII and/or a Framework Purchaser (and its auditors and other advisers) in relation to any audit, including access to the Supplier's personnel, records and premises.
- 18.11.6 Each Framework Purchaser (or TII where relevant) shall pay its own cost and expenses for any audit undertaken pursuant to this Clause 18 save where such audit identifies that the Supplier has overcharged a Framework Purchaser by 2% or more of the invoice amount for the Products under audit, or overstated the Supplier's Product Price by more than 2%, in which case the Supplier shall reimburse TII and/or the Framework Purchaser, for its out of pocket expenses in conducting such audit. This Clause 18.11.6 is intended as a fair allocation of audit expenses and not as damages or a penalty.

19) Termination of the Framework Agreement

- 19.1 Without prejudice to any other rights or remedies to which it may be entitled, TII shall be entitled at any time to terminate this Framework Agreement without liability to the Supplier by giving written notice to the Supplier to take effect immediately or on the date specified in the said notice if:
- 19.1.1 the Supplier commits a material breach of any term or condition of this Framework Agreement or the relevant Mini-Competition Contract or fails to perform any obligation or responsibility hereunder, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by either TII or a Framework Purchaser requiring the Supplier to do so;
 - 19.1.2 the Supplier delivers Products that do not meet the requirements of this Framework Agreement, the Specification and/or a Mini-Competition Contract including the Delivery Date;
 - 19.1.3 the Supplier contravenes any of Clause 6;
 - 19.1.4 the Supplier contravenes Clause 20;
 - 19.1.5 the Supplier has reached Level 3 under the Performance Measurement Table as described in Clause 18;
 - 19.1.6 the Supplier becomes bankrupt, or convenes a meeting for the purposes of, proposes to make or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy act for the time being in force for a sequestration of its estate, or a trustee is granted by it on behalf of its creditors, or if the Supplier, being a company, enters into a voluntary or compulsory liquidation (other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the relevant Framework Purchaser or TII), or if a receiver or examiner is appointed over any of its assets, or if the Supplier is unable to pay its debts within the meaning of Section 570 of the Companies Act, 2014, or the Supplier takes or suffers any analogous action under any other applicable law;
 - 19.1.7 TII or Relevant Purchaser reasonably believes that any of the events mentioned in the clause above or any analogous event is about to occur in relation to the Supplier in any jurisdiction and notifies the Supplier accordingly;
 - 19.1.8 the Supplier ceases or threatens to cease to carry on business;
 - 19.1.9 the Supplier is struck off the register of companies;

- 19.1.10 any representation or warranty made by the Supplier in connection with this Framework Agreement or a Mini-Competition Contract shall in the opinion of either TII or a Framework Purchaser prove to be untrue or incorrect in a material respect as of the date when made;
 - 19.1.11 the Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of this Framework Agreement or a Mini-Competition Contract; or
 - 19.1.12 TII or a Framework Purchaser has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Supplier or any agent or representative of the Supplier, to any employee of any Framework Purchaser or TII with a view towards securing any agreement for the provision of Products or any other contract. Paying the expenses of normal business meals shall not be prohibited by this provision; or
 - 19.1.13 TII or a Framework Purchaser suspects that the Supplier has entered into or implemented an agreement or has made or implemented a decision or has engaged in a concerted practice that is prohibited by Section 4(1) of the Competition Acts 2002 to 2014; in which case the Supplier may be reported by TII or a Framework Purchaser to the Competition Authority of Ireland, and
 - 19.1.14 there is a direct or indirect change of control of the Supplier to which TII reasonably objects; or
 - 19.1.15 without cause, the relevant Framework Purchaser or TII also terminates its agreements with the other Framework Suppliers.
- 19.2 Should conditions arise which, in the opinion of TII or a Framework Purchaser in its absolute discretion, necessitate the termination of this Framework Agreement and/or a Mini-Competition Contract, TII may terminate this Framework Agreement and/or a Mini-Competition Contract upon written notice to the Supplier. Such termination shall take effect on the date specified in the said notice and shall be without prejudice to any claims which either party may have against the other party under this Framework Agreement and/or a Mini-Competition Contract.
- 19.3 In the event of the Framework Agreement being terminated by the TII on any of the grounds listed above during a Mini-Competition Contract, the Supplier shall be liable for any loss incurred by the TII or the relevant Framework Purchaser as a result of such termination including the cost of finding an alternative Supplier to carry out the Supplier's uncompleted provision of the Products.
- 19.4 Termination of this Framework Agreement or any Mini-Competition Contract pursuant to the above clauses shall not relieve or discharge either party from any obligations which have accrued prior to such termination. Unless expressly stated to the contrary, the service of a notice to terminate the Framework Agreement shall not operate as a notice to terminate any Mini-Competition Contract made under the Framework Agreement. Termination or expiry of the Framework Agreement shall not cause any Mini-Competition Contracts to terminate automatically. For the avoidance of doubt, all Mini-Competition Contracts shall remain in force unless and until they are terminated or expire in accordance with their own terms.
- 19.5 Neither TII nor any Framework Purchaser shall be liable to the Supplier for any loss of profit, loss of contracts or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Supplier arising out of or in connection with this Framework Agreement or the termination of this Framework Agreement or any Mini-Competition Contract.

19.6 The provisions of Clauses 1) (*definitions and interpretation*) 14)(*warranties and indemnities*), 15)(*insurance*), 15.11(*tax clearance*) 17)(*confidentiality*), 18.10 and 18.11(*audit*) 19) (*termination*) 21) (*notices*) 22) (*waiver*) 26) (*publicity*) 27) (*data protection*) 29) (*freedom of information*) 30) (*governing law*) and 31) (*dispute resolution*) shall survive the termination or expiry of this Framework Agreement.

20) Assignment, Transfer and Sub-Contracting

20.1 The Supplier shall not -:

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

20.1.2 purport to transfer, sub-contract or delegate any of its obligations under this Framework Agreement to any third party without the prior written consent of the relevant Framework Purchaser or TII. Save as expressly permitted by clause 20.1 any purported sub-contracting, assignment or transfer in breach of this clause 20.2 shall be void.

20.2 In the event of consent to sub-contract being given, the Supplier shall ensure that the sub-contractor is a reasonable and prudent supplier, and that the sub-contractor shall carry out its obligations in accordance with the terms of this Framework Agreement. Notwithstanding the foregoing, the Supplier acknowledges that it remains fully liable and responsible for the provision of the Products and the acts and omissions of the sub-contractor as if they were its own.

20.3 The Supplier shall also maintain during the term of this Framework Agreement and for 6 years thereafter records and documentation relating to the sub-contractor and the Products provided by it and shall make same available to the relevant Framework Purchaser or TII upon request.

20.4 This Framework Agreement shall be binding upon successors and assigns of each Framework Purchaser and the Supplier and the name of a party appearing in this Framework Agreement shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

20.5 The Supplier shall notify the relevant Framework Purchaser or TII in writing immediately upon the occurrence of a direct or indirect change of control of the Supplier.

21) Notices

21.1 The address and telephone numbers of TII and the Supplier for the purpose of the giving of notices under this Framework Agreement are as follows:

<i>TII</i>		<i>Supplier</i>	
Name:	TII Procurement	Name:	
Address:	Parkgate Business Centre, Parkgate Street, Dublin 8 EIRcode	Address:	
Tel:	01 646 3600	Fax:	
Email:	procurement@tii.ie	Email:	

		Attention:	
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Each Framework Purchaser shall agree a contact name with the Supplier for the purpose of any Mini-Competition Contract. Notice given by a Supplier to a Framework Purchaser shall not constitute a notice given to TII.

- 21.2 Any notice required or authorised by this Framework Agreement to be given by a party (which for these purposes of this Clause 21 includes any Framework Purchaser) to the other shall be issued via e-tenders or via e-mail to the e-mail address of the person identified in Clause 21.1.
- 21.3 All notices, documents and communications provided under this Framework Agreement or a Mini-Competition Contract shall be in the English language save that nothing in this Clause 21.4 shall restrict or prejudice the ability of a Framework Purchaser to comply with its obligations under the Official Languages Act 2003.
- 21.4 Any party may, by notice to the others in compliance with this Clause 21 change the contact details set out at Clause 21.1.

22) Waiver

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

23) Severability

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

24) Relationship

- 24.1 The Supplier shall not be the authorised agent of TII or any Framework Purchaser or have the right or authority either express or implied to create or incur any liability against or on behalf of TII or any Framework Purchaser. In particular, the Supplier shall not hold itself out, nor permit any person to hold it out, as being authorised to bind or pledge the credit of TII or any Framework Purchaser in any way and shall not do any act that might reasonably create the impression that it is so authorised.
- 24.2 It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in this Framework Agreement will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between TII and/or any Framework Purchaser and the Supplier.

25) Force Majeure

- 25.1 No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure, as defined in clause 25.2. Unless otherwise instructed by

Framework Purchasers, the Supplier shall recommence performance as soon as possible after the Force Majeure has ceased.

- 25.2 Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: - acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity; local or national emergency, sabotage or riots; floods, unusually severe weather conditions which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Supplier's workforce.
- 25.3 If an Affected Party becomes aware of circumstances of Force Majeure which give rise to or which are likely to give rise to any such failure or delay on its part it shall immediately notify the other by the most expeditious method then available and shall inform the other of the period which it is estimated that such failure or delay shall continue.
- 25.4 No Affected Party shall in any circumstances be liable to the other(s) for any loss of any kind whatsoever directly or indirectly caused or incurred by the other(s) by reason of any failure or delay by the Affected Party in the performance of its obligations to the extent such failure or delay is due to Force Majeure. Notwithstanding the foregoing, each Affected Party shall use all reasonable endeavours to mitigate the effects of the Force Majeure on the performance of its obligations under this Framework Agreement. The Affected Party shall resume performance of its obligations under this Framework Agreement once the Force Majeure has ended.
- 25.5 If any delay or failure in performance, as set out above, persists for 14 days or more, Framework Purchasers shall have the right to terminate the relevant Mini-Competition Contract by giving 7 days' notice in writing to the Supplier.
- 25.6 It is agreed that any failure by the Supplier to perform, or any delay by the Supplier in performing its obligations under the Framework Agreement, which results from any failure or delay in the performance of its obligations by any person, firm or company with which the Supplier has a contract, supply arrangement or sub-contract or otherwise, shall be regarded as a failure or delay due to Force Majeure only in the event that such person, firm or company shall itself be prevented from or delayed in complying with its obligations under such contract, supply arrangement or sub-contract or otherwise, as a result of circumstances of Force Majeure.

26) Publicity

- 26.1 The Supplier shall ensure that no publicity relating to the Products shall take place without the prior written consent of TII. For the avoidance of doubt, this restriction includes internal publicity and using any Framework Purchaser as a referee.

27) Data Protection

- 27.1 See TII273 Data Protection Notice. Please note that successful suppliers will have to sign a Data Protection Agreement with TII prior to commencement.

28) Conflicts, Registrable Interests and Corrupt Gifts

- 28.1 The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the provision of the Products and its obligations undertaken

under this Framework Agreement. The Supplier hereby undertakes to advise the Framework Purchaser forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Framework Agreement and to comply with the Framework Purchaser's directions in respect thereof. Any registrable interest involving the Supplier (and any subcontractor or agent as the case may be) and the Framework Purchaser, or their relatives must be fully disclosed to the Framework Purchaser immediately upon such information becoming known to the Supplier and to comply with the Framework Purchaser's directions in respect thereof, to the satisfaction of the Framework Purchaser.

- 28.2 The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995. The Supplier shall not offer or agree to give any public servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 28.2 or the commission of any offence by the Supplier, any sub-contractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Framework Purchaser to terminate this Framework Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Supplier of the amount or value of any such gift, consideration or commission.
- 28.3 The supplier confirms (including any parent, subsidiary or associated company of the Supplier or any director, partner or person in an equivalent position to the Supplier) confirms that
- We are not engaged in any works or operation which relates or may relate in any direct way to the outcome of this Competition
 - there is no registrable interest involving the Applicant or any sub-contractors and any of the members of Local Authorities or their relatives
 - we have read and understand the Conflicts of Interest and registrable interest provision as set out in the Instructions Document and we agree to comply with this provision in full.

29) Freedom of Information

- 29.1 Each Framework Purchaser and TII is subject to the provisions of the Freedom of Information Acts, 1997 to 2014. The Authority is entitled to disclose information about this competition, including the identity of those expressing interest, to any person. If a Tenderer considers that information in its Tender is commercially sensitive or confidential, this should be clearly stated, and clear and substantive reasons should be given. The Authority will have regard to such a statement in considering a request for access to the information under the Freedom of Information Acts 1997 to 2014, but is not bound by the Tenderer's view.

30) Governing Law

- 30.1 This Framework Agreement and any non-contractual obligations arising out of or in connection with this Framework Agreement shall be governed and construed in accordance with the laws of Ireland.

31) Dispute Resolution

31.1 All disputes that arise between the Supplier, TII and/or any Framework Purchaser (each a “disputing party”) in connection with this Framework Agreement or the subject matter of this Framework Agreement shall be dealt with as follows:

31.1.1 In the first instance, the disputing parties shall submit the dispute to the personnel nominated specifically to participate in the escalation process in Clause 31.1.2 in the order set out therein.

31.1.2 Escalation Procedure: In the event of a dispute in relation to the interpretation or fulfilment of any of the provisions of this Framework Agreement, the disputing parties shall, in accordance with Clause 31.1.1, submit the dispute to the following personnel:

1.	Framework Purchaser Representative:	Director of Roads & Transportation
2.	Supplier Representative:	Director
3.	TII Representative: (where the dispute concerns TII)	As directed by TII’s Chief Executive

31.1.3 If a dispute cannot be resolved pursuant to the escalation procedure set out at Clause 31.1.2 within a period of ten (10) days, either of the disputing parties may request that the matter is submitted to conciliation. If any such request is made, the matter will be submitted to conciliation by a conciliator to be appointed, in the absence of agreement between the disputing parties, by the President for the time being of the Law Society of Ireland (or in the event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment). The determination of such conciliator shall be final and binding on both disputing parties unless, within fourteen (14) days following the date of the determination, either party notifies the other in writing that it rejects the determination of the conciliator. Each disputing party shall bear its own costs in the conciliation and shall each pay half of the costs of the conciliator.

31.1.4 In the event that the conciliation procedure under Clause 31.1.3 fails to result in a satisfactory resolution of the dispute within thirty (30) days of the date of the notice to refer to conciliation (or such other longer period as is agreed between the disputing parties); or if either disputing party notifies the other in writing in accordance with Clause 31.1.3 that it rejects the determination of the conciliator; or if both disputing parties agree to submit the dispute directly to arbitration after the conclusion of the escalation process under Clause 31.1.2, either disputing party may submit the dispute to be decided at arbitration by an arbitrator agreed by the parties or, in default of agreement, appointed by the President for the time being of the Law Society of Ireland or in the event of his being unwilling or unable to do so by the next senior officer of the Society who is willing and able to make the appointment provided always that these provisions shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court, or refuses to act, or is incapable of acting or dies.

31.1.5 Any such arbitration shall be governed by the Arbitration Act 2010 as amended or re-enacted from time to time. If the dispute to be referred to arbitration raises issues which are substantially the same as/or connected with issues raised in a related dispute between either Party and any third party and if such related dispute has already been referred for determination to an arbitrator or any court the Parties

hereby agree that the difference or dispute under or in connection with this Framework Agreement can be referred to such arbitrator or such court and that such arbitrator shall have power to make such directions and all necessary awards in the same way as if the procedure in the High Court as to the joining of one or more co-defendants or third parties was available to both Parties and to such arbitrator.

32) Health & Safety

32.1 Notwithstanding any of the provisions of this Framework Agreement, national Health & Safety legislation will apply to this Framework Agreement, as set out in the Instructions Document. As set out in Schedule 4 herein, Framework purchasers will complete a competency assessment of the company's safety statement or equivalent document as a pre-condition to the Mini-Competition Contract Award Evaluation.

33) Miscellaneous Provisions

33.1 Any amendments to the terms of this Framework Agreement shall be signed by the Parties to this Framework Agreement and endorsed on this Framework Agreement.

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

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

33.4 This Framework Agreement and any contractual obligations or disputes arising out of or in connection with this Framework Agreement shall be governed and construed in accordance with the laws of Ireland. The Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Framework Agreement.

33.5 This Framework Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

34) Energy Management Systems

34.1 The Supplier shall, on or before 2 December 2023, produce evidence that, in relation to the production of Products, **the Supplier has achieved ISO 50001:2011**. Suppliers will be required provide documentary evidence of this certification to TII by 2 December 2023. See also clause 18 Contract Performance Review.

Some benefits and characteristics of an ISO50001.2001 certified organisation are as follows:

34.1.1 Continually improve energy performance, including energy efficiency, energy use and consumption

- 34.1.2 Define their energy policy and document an energy planning process
- 34.1.3 Establish, implement and maintain documented Energy Objectives and Targets.
- 34.1.4 Minimise energy usage.
- 34.1.5 More effectively meet legislative and regulatory requirements and therefore be viewed more favourably by regulators.
- 34.1.6 Systemically plan, control and monitor operational activities and processes that may impact on energy usage.
- 34.1.7 Incorporate energy efficiency in the planning of all new investments.

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

SIGNED for and on behalf of the Transport Infrastructure Ireland by:

A duly authorised representative

in the presence of:

Signature of Witness

Name of Witness

Address of Witness

SIGNED by [**name of individual**], duly Authorised to sign this agreement on behalf of [**company name**], in the presence of:

Signature of Witness

Name of Witness

Address of Witness

SCHEDULE 1 - GENERAL SPECIFICATION DOCUMENT

1.1 General

- 1.1.1 The Bituminous Emulsion products to be supplied shall comply with the Technical Specifications set out in this section.
- 1.1.2 The appointed Supplier will be fully responsible for the quality of the materials and their compliance with the technical requirements as set out in the tender documents. Compliance will be verified by use of material conformance testing (remote and in-situ) and reference to the quality management systems within the production plant.
- 1.1.3 All materials supplied will be in compliance with the technical standards as detailed in this Schedule and any further technical requirements as set out in the Mini Competitions.
- 1.1.4 In relation to each Irish and/or European Norm Standard Specification that is referred to in the tender documents it shall be taken as meaning the latest edition/year of that standard specification together with all amendments relating thereto which were published six months before the closing date for this tender.
- 1.1.5 Suppliers will be fully liable for all products supplied by them through the course of any Mini-Competition Contract. Suppliers will confirm -:
- that all construction products associated with harmonised Standards will be CE marked and have a Declaration of Performance
 - that the Supplier by submitting a Declaration of Performance (even if prepared by others) is assuming full legal responsibility for the conformity of the construction product with its declared performance
 - that together with the technical specification, the Declaration of Performance will give all the information to the Framework Purchaser needed to assess whether the Products meets the essential characteristics in accordance with the applicable harmonised technical specifications
 - that the CE mark shall be followed by the two last digits of the year in which it was affixed (and remains current), the name and the registered address of the manufacturer, or the identifying mark allowing identification of the name and address of the manufacturer easily and without any ambiguity
 - that certification of an organisation's factory production control system by a notified body will be available if so required under the regulation and requested
- 1.1.6 Where reference is made in this tender document to a particular make, source, process, trademark, type or patent, this is not to be regarded as a de facto requirement. In all such cases it should be understood that such indications are to be treated for reference purposes only, to which the words "or equivalent" will always be appended.
- 1.1.7 In order to ensure compliance with environmental technical standards, Applicants who intend to tender for an alternative environmentally friendly product at Mini-Competition stage will be required, at that stage, to submit the following for each alternative environmentally friendly product they propose.
- (i) Demonstrated suitability by one or more of the following:
- European Standard;
 - European Technical Assessment;
 - Specifications for materials based on a demonstrable history of satisfactory use. Evidence shall be provided on their suitability. This evidence may be based on research combined with evidence from practice.

- (ii) Evidence of compliance with environmental and technical standards for the use of such a product on the network
- (iii) Have prior written approval from the relevant Overseeing Authority

1.2 Construction Product Regulations

1.2.1 Suppliers are reminded of their obligations under Regulation 305/2011 of the European Parliament and of the Council, in particular Article 11, as follows -:

- 1) Suppliers shall draw up a declaration of performance in accordance with Articles 4 and 6, and affix the CE marking in accordance with Articles 8 and 9.

Suppliers shall, as the basis for the declaration of performance, draw up technical documentation describing all the relevant elements related to the required system of assessment and verification of constancy of performance.

- 2) Suppliers shall keep the technical documentation and the declaration of performance for a period of 10 years after the construction product has been placed on the market.
- 3) Suppliers shall ensure that procedures are in place to ensure that series production maintains the declared performance. Changes in the product-type and in the applicable harmonised technical specifications shall be adequately taken into account.

Suppliers shall, where deemed appropriate with regard to ensuring the accuracy, reliability and stability of the declared performance of a construction product, carry out sample testing of construction products placed or made available on the market, investigate, and, if necessary, keep a register of complaints, of non-conforming products and of product recalls, and keep distributors informed of any such monitoring.

- 4) Suppliers shall ensure that their construction products bear a type, batch or serial number or any other element allowing their identification, or, where the size or nature of the product does not allow it, that the required information is provided on the packaging or in a document accompanying the construction product.
- 5) Suppliers shall indicate on the construction product or, where that is not possible, on its packaging or in a document accompanying it, their name, registered trade name or registered trade mark and their contact address. The address shall indicate a single point at which the manufacturer can be contacted.
- 6) When making a construction product available on the market, Suppliers shall ensure that the product is accompanied by instructions and safety information in a language determined by the Member State concerned which can be easily understood by users.
- 7) Suppliers who consider or have reason to believe that a construction product which they have placed on the market is not in conformity with the declaration of performance or not in compliance with other applicable requirements in Regulation 305/2011, shall immediately take the necessary corrective measures to bring that construction product into conformity, or, if appropriate, to withdraw or recall it. Furthermore, where the product presents a risk, manufacturers shall immediately inform the competent national authorities of the Member States in which they made the construction product available to that effect, giving details, in particular, of the non-compliance and of any corrective measures taken.
- 8) Suppliers shall, further to a reasoned request from a competent national authority, provide it with all the information and documentation necessary to demonstrate the conformity of the

construction product with the declaration of performance and compliance with other applicable requirements in this Regulation, in a language which can be easily understood by that authority. They shall cooperate with that authority, at its request, on any action taken to eliminate the risks posed by construction products which they have placed on the market.

1.3 Technical Specification

- 1.3.1 The Bituminous Emulsion products to be supplied shall comply with the requirements of TII Publication Road Pavements - Bituminous Materials CC-SPW-00900 Table 15: Binder Properties – Cationic Bituminous Emulsions

1.4 Insurances

- 1.4.1 No Supplier will be awarded a Mini-Competition Contract unless satisfactory evidence of insurance is submitted online by the Insurance Broker/Company, prior to the award of a Mini-Competition Contract. Where the Insurance Policy in question is due to expire prior to the end of the period outlined in the Mini-Competition Contract, it shall be the responsibility of the Supplier to ensure that, in advance of the expiration date, said policy is renewed, that the relevant Contracting Authorities are so informed, and that the insurance details are updated on www.Supplygov.ie.
- 1.4.2 It is the responsibility of the Supplier to advise the TII and the Framework Purchaser when their insurance has lapsed or has been cancelled. All Suppliers must notify the TII and the Framework Purchaser of alterations, cancellations and to confirm the renewal of policies. Any failure to do so may result in the immediate termination of the Supplier from the Framework Agreement.
- 1.4.3 See section 15 (Insurance) of this document for Insurance Requirements required of Suppliers to be appointed onto Framework Agreement.
- 1.4.4 In accordance with Clause 14 of the Framework Agreement, the Supplier shall be liable for and shall indemnify the Contracting Authority (Framework Purchaser) for and in respect of all and any losses, claims, demands, damages or expenses that a Framework Purchaser may suffer due to and arising directly as a result of the negligence, act or omission, breach of contract, breach of duty, willful default or fraud of the Supplier, its employees, sub-contractors or agents, or any of them.
- 1.4.5 Applicants do not need to have the insurances outlined above in place at the time of submitting an Application for inclusion on the Framework but will be required to put those insurances in place should they be successful in a Mini-Competition Contract. The Contracting Authority (Framework Purchaser) will not be responsible for any cost incurred by Suppliers for putting in place the required insurances.

1.4.6 Insurance of Subcontractors

Suppliers who are successful in being invited to participate in the Framework Agreement must confirm that their insurance will cover the acts and omissions (including negligence) of any subcontractor employed by them in connection with any Mini-Competition Contract awarded under the Framework Agreement or purchase order issued.

Subcontractors cannot be employed by the Supplier to carry out activities that are specifically excluded from the Suppliers insurance policies.

1.4.7 Exclusions

If Suppliers are successful in being invited to participate in the Framework and have specific exclusions noted in their insurance policies which restrict or prohibit their ability to carry out certain works under any contract (asbestos, working at heights etc) the Supplier at time of Mini-Competition will be required to either -:

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

or

- Have the specialist subcontractor included with the Framework Supplier as a full joint insured on the subcontractors insurance policy and have the Contracting Authority (Framework Purchaser) joint insured on the subcontractor's insurance policy. Suppliers should note that the Contracting Authority (Framework Purchaser) will not be responsible

for any cost incurred by Supplier in complying with the insurance requirements outlined above.

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

1.5 Payment, Tax Clearance, etc.

1.5.1 Payment will be made at the rates agreed in the Mini-Competition.

1.5.2 The Supplier's **invoice** shall show the following information:

- The Suppliers name and address
- The Suppliers VAT Registration Number
- Invoice number and date
- The Framework Purchaser's purchase order number
- The RFT (Request For Tender) reference number from the [Supplygov](#) system
- The quarry/depot of origin from which the materials have been supplied
- Information on Product Type and Quantity
- The Price
- A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance
- The CE marking statement must reference the point of delivery of the product and distribution process as appropriate

1.5.3 Prior to invoicing, some Contracting Authority (Framework Purchasers) may require Suppliers to submit periodic (e.g. weekly or monthly) statements of materials/services provided during the period, for the purpose of certification.

1.5.4 A number of the Contracting Authorities only pay via EFT (Electronic Fund Transfer) and the remittance is sent to Supplier via email.

1.5.5 Each of the Contracting Authority (Framework Purchasers) is subject to the provisions of the Freedom of Information(FOI) Act 1997 and the Freedom of Information (Amendment) Act 2003. If you consider that any of the information supplied by you is either commercially sensitive or confidential in nature, this should be highlighted and the reasons for its sensitivity specified in a separate letter. In such cases, the relevant material will, in response to FOI requests, be examined in the light of the exemptions provided for in the Act.

1.6 Weights (if applicable after a Mini-Competition)

1.6.1 All loads of Bituminous Emulsions delivered will have to have a docket showing the net weight of the amount delivered.

1.6.2 All deliveries must be weighed at an LMS certified and in-calibration weighbridge. A copy of the certification may be requested.

1.7 Machinery/Operator Requirements & Conditions (where applicable)

1.7.1 The delivery vehicles in use should be capable of delivery of materials for which they were intended. It should also be noted that any delivery vehicles accepted for work by the respective Contracting Authority (Framework Purchaser) might be dismissed from a work site, if found, on examination not to comply with the current Road Traffic Act (if applicable), or Health and Safety Regulations, or by non-compliance of any terms and conditions, in any particular instance. This

will be at the discretion of the Framework Purchaser.

- 1.7.2 Suppliers and subcontractors shall ensure that all vehicles will be labeled as appropriate for the goods carried and comply with H&S, CPL, ADR and Carriage of Dangerous Goods Regulations as applicable.
- 1.7.3 The Contracting Authority (Framework Purchaser) will not provide storage of materials/vehicles and the Framework Purchaser will not accept any responsibility for any loss or damage to materials or vehicles placed on any work site by the Supplier or his agents. The Suppliers shall make their own arrangements for the protection of their vehicles and materials.
- 1.7.4 **PLEASE NOTE** the terms and conditions in this Specification (Schedule 1) and in the Framework Agreement and in any purchase order issued by the Framework Purchasers shall apply, to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any invoice, delivery docket or other document produced by or furnished to the Framework Purchaser by the Supplier, its agents or employers.
- 1.7.5 Suppliers engaged by Framework Purchasers shall provide the names and addresses of all drivers, in the "Driver's Details" section of www.Supplygov.ie and enter updates as the need arises during the Contract Period.
- 1.7.6 All drivers operating vehicles shall also possess a current full driver's license pertaining to the vehicle that they are operating. Copies must be available on request on any given day.
- 1.7.7 The driver in charge of a vehicle shall be skilled in its the operation and thoroughly conversant with the vehicle, which he/she is operating The driver must remain in constant attendance on the vehicle while it is employed and under no circumstances shall a vehicle be operated by any person other than those for whom the relevant documentation as required by these terms and conditions has been submitted.
- 1.7.8 All vehicles for which a Road Fund License (Tax Disc) is required must display a current Tax Disc correctly.
- 1.7.9 All vehicles for which an "Insurance Disc" is required must display a current "Insurance Disc" correctly
- 1.7.10 A valid and current Certificate of Road Worthiness (CRW) must be available in respect of vehicles and trailers required to possess one. All goods trailers with a Gross Vehicle Weight (GVW) of more than 3,500kg require a Certificate of Road Worthiness. In addition, such vehicles shall comply with the provisions of the Road Safety Authority (Commercial vehicle roadworthiness) (vehicle maintenance and repair) Regulations 2013.
- 1.7.11 All vehicles used by the Supplier will be required to have suitable flashing/warning beacons in working order at all times.

1.8 Health & Safety (Legal/Paperwork) – where applicable

- 1.8.1 All Suppliers and their subcontractors shall comply with the Safety, Health and Welfare at Work Act 2005 and all Regulations, Codes of Practice and Guidance arising thereunder. All articles and substances supplied for use at work, including any plant, machine, tool or hazardous substance, shall comply with the requirements of the current Safety, Health & Welfare at Work Act, Regulations, Codes of Practice and Guidance.
- 1.8.2 All employees entering Local Authority sites shall have a Safe Pass Card, with FÁS accreditation.
- 1.8.3 The operator in charge of a delivery vehicle shall be provided with the necessary Personal Protective Equipment (P.P.E.) by the Supplier in order to safely carry out his duties; e.g. safety boots, reflective vests, helmets etc.

- 1.8.4 All employees operating delivery vehicles shall have a current full driver's license pertaining to the item(s) of plant they are operating. Copies to be available upon request on site on any given day.
- 1.8.5 Driver CPC (Certificate of Professional Competence) is a legal requirement that **all professional drivers** of C1, C1E, C and CE vehicles (trucks) and D1, D1E, D and DE vehicles (buses) must comply with. Professional Drivers must possess a Driver CPC qualifications Card for the appropriate license category and be CPC compliant. The legal basis for the Driver CPC programme is EU Directive 2003/59/EC which was transposed into Irish law in 2008 as SI No 359.
- 1.8.6 If applicable, delivery vehicles must be fitted with a reverse alarm which cannot be disabled.

1.9 Health & Safety - Safety Statement

- 1.9.1 As part of their application for admittance to the Framework Agreement, successful Suppliers must provide a current Safety Statement or equivalent document, that sets out the details of the company's overall safety management system, and that describes the measures, procedures, systems, roles and responsibilities used by the Applicant to secure and manage the safety, health, and welfare at work of its staff, other workers, clients, and the general public in the place of work.
- 1.9.2 The Safety Statement shall be prepared in accordance with Section 20 of the Safety, Health & Welfare at Work Act 2005, and implementing Regulations.
- 1.9.3 The Safety Statement must be signed, dated and Company Registrations Office Company Name referenced where applicable.
- 1.9.4 The minimum requirement is that the evidence provided will demonstrate compliance with the Safety, Health and Welfare at Work Act 2005, including but not limited to the Safety, Health and Welfare at Work (General Application) Regulations 2007, and the Safety Health and Welfare at Work (Construction) Regulations 2013.
- 1.9.5 Where the Supplier has 3 or Less Employees, the documents included in the Health & Safety Authority **Code of Practice for Contractors with Three or Less Employees** can be used to satisfy the requirement for submission of a Safety Statement. The Supplier shall complete and sign the documents included as Appendix E to the Code of Practice and submit these along with the associated Safe System of Work Plans.
- 1.9.6 The requirements under Health and Safety legislation will only be evaluated by the relevant Contracting Authority at Mini-Competition Stage when the Supplier is being evaluated in response to a Mini-Competition Request for Tender. Please refer to the Mini-Competition Evaluation Criteria included in **Schedule 4**.
- 1.9.7 The requirements of this section 1.9 shall apply to any Subcontractor carrying out delivery or spraying works on behalf of the Supplier.

1.10 Products and Services Terms and Conditions

- 1.10.1 Suppliers and their employees are expected to adhere to acceptable standards of behaviour, i.e. standards expected of Contracting Authorities staff.
- 1.10.2 Except in relation to Health & Safety matters within their control, the Supplier or his/her agent will take their instructions from the Director of Services, or authorised employees of the Contracting Authority (Framework Purchaser) who have been authorized in writing to issue instructions.
- 1.10.3 The Supplier is responsible for ensuring that the supplied materials meet the required Specification as detailed in the Instructions Document, and in any Mini-Competition.
- 1.10.4 The Supplier may be required to produce evidence of a quality control plan and quality control documentation to prove testing against and compliance with the required specification. The supplied materials shall be in accordance with the relevant Specification. Should the material not

conform to the standards, the Supplier will be excluded from the Framework. All samples specified here and in the Mini-Competition shall be provided free of charge, when required, to the Contracting Authority (Purchaser). Testing & sampling shall be carried out to the relevant standards. Suppliers should note that the requirements of the Specification identified in Schedule 1 must be met.

- 1.10.5 If applicable, maximum weight restrictions will apply and the Contracting Authority (Framework Purchaser) will not pay for material in excess of such maximum weight.
- 1.10.6 At Mini-Competition stage, Suppliers may be required to submit a schedule of quarry sources when responding to Requests for Tender, where applicable to the Products required under such a Request for Tender.
- 1.10.7 All Contracting Authorities (Framework Purchasers) will be advised of Suppliers appointed to the Framework who are eligible to compete in Mini-Competitions within their Contracting Authority area. Quarry or pit sources as identified by Suppliers at Mini-Competition stage will be checked for compliance with the requirements of the Planning & Development Acts and other relevant Statutes and Regulations in force by the Planning Department of the Contracting Authority.
- 1.10.8 In addition, each Supplier shall ensure that operations at the site specified in his/her Proposal comply with the requirements of the Planning and Development Acts and other relevant Statutes and Regulations in force. Suppliers found to be non-compliant for any source may be temporarily suspended from the Framework for all Contracting Authorities.
- 1.10.9 Suppliers of materials are required to submit copies of current Factory Production Control (FPC) Certificate, product Type Test Reports, Declaration of Performance (DoP) and C.E. marking certifications for each product as part of their Framework Submission.
- 1.10.10 If applicable, Suppliers may be required at their own expense to take their trucks to independent weighbridges on a spot check basis to verify gross weights and to confirm delivery docket weights and compliance with loading limits.
- 1.10.11 If applicable, delivery of materials shall be made as and where required by the Framework Purchaser. No material shall be delivered on site by a Supplier unless there is an authorized representative of the Contracting Authority (Framework Purchaser), on site to receive, check and sign for the material.
- 1.10.12 If applicable, Suppliers of surface dressing chippings, base course, binder course and surface course materials are required to submit copies of the most recent Type Test reports, DoP and C.E. Marking Certifications with any Proposal.
- 1.10.13 If applicable, Material Safety Data Sheet (MSDS) must be supplied with all hazardous substances.
- 1.10.14 The Contracting Authority(s), whose finding(s) will be final, will measure distances by road from the Suppliers quarry to the various work sites.
- 1.10.15 Where the Contracting Authority (Framework Purchaser) is satisfied that a particular Supplier cannot supply the required materials at such rate of delivery or in such quantity as will enable the work on hand to be carried out expeditiously and with such convenience as may be required, the Framework Purchaser may decide to purchase from such other supplier as he considers appropriate.

1.11 Supplier Performance

- 1.11.1 It is intended that the Supplier's performance will be monitored by the Framework Purchaser during the execution of all Mini-Competition Contracts.
- 1.11.2 A Performance Evaluation Report will be completed by the Framework Purchaser at the end of or any time during the Mini-Competition, that will record the performance of the Supplier on the Mini-Competition Contract. Such reports will be copied to the Supplier and the content of such reports

may be considered when formulating new award criteria for future centralised procurement competitions for the Supply of Bitumen Emulsions products (Supply Only) for Local Authorities. A copy of the Performance Evaluation Report is included in **Schedule 7**.

- 1.11.3 Where any Supplier fails to satisfactorily perform a Mini-Competition Contract awarded, the Mini-Competition Contract may be terminated and the Framework Purchaser shall have the right to re-tender the contract.
- 1.11.4 Please refer to Clause 18 – Contractor Performance Review of the Framework Agreement for full details of the Mini-Competition Contract performance review mechanism.

SCHEDULE 2 - CONTRACTING AUTHORITIES

2.1 The Framework Purchasers are as follows -:

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

SCHEDULE 3 - MINI-COMPETITION SCHEDULE OF CHARGES

3.1 Instructions for Completing the Pricing Schedule

THIS SCHEDULE IS NOT REQUIRED TO BE SUBMITTED AT FRAMEWORK APPLICATION STAGE.

The attached Delivery Rate Table must be completed by the tenderer for each location specified by the Contracting Authority in the Mini-Competition tendered. A Minimum Delivery Charge per load shall be tendered for each location and will only apply when the charge is greater than the actual cost arising from the applicable delivery charge per tonne multiplied by the tonnage ordered.

The Minimum Delivery Charge applying to each location shall not exceed the sum arrived at by multiplying the Delivery Rate Charge per Tonne by **16 Tonnes**.

These prices will only apply to the particular Contracting Authority running the Mini-Competition and to that Mini-Competition only.

Supply of Bitumen Emulsions 2022 – 2026			Page 1 of 1	
Mini-Competition Schedule of Charges – Lot 1				
Contracting Authority Name:				
Sub-Area (if applicable):				
Tenderer Name:				
Supplier Supplygov ID:		RFT No.		

1) Delivery Rate Schedule (all prices excluding VAT)

Location Delivered From :					
Location(s) delivered to :		Quantity (Tonnes)	Price <i>per Tonne</i>		Minimum Delivery Charge <i>per Load</i>
1			€		€
2			€		€
3			€		€
4			€		€
5			€		€
6			€		€
7			€		€
8			€		€
9			€		€
10			€		€
11			€		€
12			€		€
13			€		€
14			€		€
15			€		€
16			€		€
17			€		€
18			€		€
19			€		€
20			€		€
21			€		€
22			€		€

These cells to be completed by the Tenderer only
These cells to be completed by the Contracting Authority only

Note 1 - Minimum Delivery Charge applying to each location shall not exceed the sum arrived at by multiplying the Delivery Rate Charge per Tonne by **16 Tonnes**.

SCHEDULE 4 - MINI-COMPETITION CONTRACT EVALUATION & AWARD CRITERIA (Lot 1)

4.1 Contract Evaluation Criteria

4.1.1 Suppliers submitting a response to a Request for Tender must comply with the requirements listed in the table hereunder, that will be assessed on a Pass/Fail basis. Suppliers shall note that not all of the criteria listed may apply to every Mini-Competition Request for Tender.

4.1.2 Only those Suppliers passing all of the following criteria will proceed for assessment in accordance with the Mini-Competition Contract Award Criteria set out in part 4.2 below.

Contract Evaluation Criteria (Lot 1)		Weighting
1	<p>Health & Safety Competency of Workers</p> <p>For each member of the project team, details of the following must be entered on www.supplygov.ie under 'My Checklist' -:</p> <ul style="list-style-type: none"> ▪ Solas/Fás Safepass Card, or equivalent <p>And where relevant to the works required in the Request for Tender -:</p> <ul style="list-style-type: none"> ▪ A valid CSCS card for any additional skill covered under the Construction Skills Certification Scheme required for the proposed products defined in the Request For Tender ▪ A valid and compliant Driver CPC Card for the appropriate vehicle category ▪ Any additional Health and Safety qualifications required in relation to the supply of requested Bituminous Emulsion products defined in the Request For Tender 	Pass/Fail
2	<p>Compliance with Specification and Particular Requirements</p> <p>Provide confirmation in writing that the products will comply with the requirements of the General Specification.</p>	Pass/Fail
3	<p>Safety Statement</p> <p>The company's Safety Statement or equivalent document and those for all proposed subcontractors submitted at Framework Application stage will be assessed for compliance with the provisions set out in the Safety, Health & Welfare at Work Act 2005 and enforcing Regulations.</p>	Pass/Fail

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

4.2 Mini-Competition Contract Award Criteria

4.2.1 The Mini-Competition Contract will be awarded to the most economically advantageous tender(s), identified following application of the contract award criteria and weightings detailed in the Table below.

Mini-Competition Award Criteria (MEAT) – Lot 1 (Supply only)		Weighting
1	Quality (100 marks) (20%)	
1a	Technical Support <i>(Description of proposed full time staff and facilities available to provide technical advice and support to Contracting Authorities)</i>	10% (50 marks)
1b	After Sales Support <i>(Details of Customer Service Charter/Protocol proposed to be used on the contract, including -: Testing and Quality Assurance Protocol Complaints Procedure)</i>	10% (50 marks)
2	Total Cost (400 marks) (80%) Total Cost will be assessed based on the <u>sum</u> of the pricing (ex. VAT) submitted for the following -:	
2a	The Supply of [XX] Tonnes of [Emulsion products], expressed as <u>Total Cost</u> for the required quantities of all products specified	80% (400 marks)
2b	The Delivery to Location(s) specified by the Contracting Authority, expressed as the <u>Total Cost</u> for delivery of the specified quantities to these locations	
Total		100%

4.2.2 The Delivery locations will be specified by the Contracting Authority at Request For Tender stage.

4.2.3 For the first 12 months of the Framework Agreement, the total cost for the Emulsion Products in the Contractor's tender submitted in response to a Mini Competition Request for Tender must not exceed the Ceiling Rates tendered by the Contractor in its Application for the same products (**Ceiling Rates**).

4.2.4 The lowest total cost tendered for supply and delivery of the products will be awarded 100% of the **400** marks available for **Total Cost**. The total cost will be computed in the following manner -:

- (i) The cost for all products will be computed based on the tendered unit cost multiplied by the quantity of each product required and added to give a total product cost.
- (ii) The cost for delivery to all specified locations will be computed based on the tendered unit cost, and added to give a total product cost.
- (iii) The Total cost for Products and Delivery will be added to give the Overall Tender Total Price.
- (iv) The Tender with the Lowest Overall Price will be awarded 400 Marks.
- (v) The Minimum Delivery Charge will not form part of the Total Cost Evaluation.

4.2.5 The remaining Suppliers for that Mini-Competition will receive a pro rata mark for **Total Cost** based on the relative difference between their total tendered cost and that of the lowest total cost tenderer, expressed as a percentage of the lowest total cost as follows -:

$$\text{Marks Awarded for Total Cost} = \frac{\text{Total Cost of Lowest Valid Tender}}{\text{Total Cost of Valid Tender being Evaluated}} \times \text{Maximum Marks Available (400)}$$

4.2.6 The qualitative criteria will be assessed on the basis of the level of detail provided and the quality of the submission. More specific details may be set out in the Request For Tender.

- 4.2.7 Information submitted in support of the Quality element of the Award criteria are limited to no more than 5 A4 pages. Pages in excess of this amount will not be considered in the evaluation.
- 4.2.8 The marks awarded for total cost and quality will be added together to give the total marks to be awarded to each tenderer.
- 4.2.9 The marks awarded will determine the highest scoring Supplier who will be ranked No. 1 for the Mini-Competition. The remaining Suppliers will be ranked in descending order, i.e. the next highest mark ranked No. 2, etc.
- 4.2.10 Framework Purchasers also reserve the right to use additional criteria, which will be notified to the Mini-Competition Participants at Call-off stage. This may include the use of sustainable criteria as part of the MEAT identification process where deemed appropriate for Call-off contracts.

4.2.11 Contract Award

- (i) Following evaluation on the basis of the MEAT Contract Award Criteria above, the tenderers will be ranked in descending order, with the Most Economically Advantageous Tenderer ranked No. 1.
- (ii) The percentage difference between the total marks awarded to each Supplier will be computed in the following manner -:

$$\frac{(\text{Score of Tender Ranked No.1} - \text{Score of Other Tender})}{\text{Score of Tender Ranked No.1}}$$

- (iii) With reference to the Allocation Matrix hereunder, this will determine the market share applicable to each Supplier for Lot 1. The market share will be applied separately to each product included in the Request For Tender.
- (iv) To provide for consistency in the evaluation and awarding of marks, a 'Mini-Competition Evaluation' template is included with the tender documents for information purposes. This Form will be made available in softcopy to the Contracting Authorities following establishment of the Framework.
- (v) With respect to the order of ranking, this Framework provides that the Contracting Authority will allocate some of the Authority's product requirements to the **second, third, and if applicable, fourth ranked tenderers**. This distribution of requirements will be allocated in accordance with the following Allocation Matrices -:

Allocation based on Tenderer Ranking (MEAT) (3 Tenderers)

Tenderer No. 1	Ranking Gap	Tenderer No. 2	Tenderer No. 3
100% - (%No.2 + %No.3)	≤0.5% < No.1	% equal to No.1	% equal to No.1
	>0.5% & ≤1.0% < No.1	30%	30%
	>1.0% & ≤1.5% < No.1	20%	20%
	>1.5% & ≤2.5% < No.1	10%	10%
	>2.5% < No.1	0%	0%

Allocation based on Tenderer Ranking (MEAT) (4 Tenderers)

Tenderer No. 1	Ranking Gap	Tenderer No. 2	Tenderer No. 3	Tenderer No. 4
100% - (%No.2 + %No.3 + %No.4)	≤0.5% < No.1	% equal to No.1	% equal to No.1	% equal to No.1
	>0.5% & ≤1.0% < No.1	20%	20%	20%
	>1.0% & ≤1.5% < No.1	15%	15%	15%
	>1.5% & ≤2.5% < No.1	10%	10%	10%
	>2.5% < No.1	0%	0%	0%

- (vi) Suppliers should note that, where more than four tenderers partake in a Mini-Competition, the obligation on a Contracting Authority to distribute its product requirements will be limited to the four highest ranked tenderers only.
- (vii) Suppliers should also note that the resultant allocation of demand is not a mandatory requirement. All Suppliers will be afforded the right of refusal. In the case of refusal, the percentage to be allocated will be divided equally amongst the remaining participating Suppliers on the basis of their own tendered prices.
- (viii) Allocations will be based on total quantity of all products to be purchased by the relevant Contracting Authority under that Mini-Competition for the duration of the Framework period.
- (ix) Allocations will apply separately to each individual product to be supplied to the relevant Contracting Authority, except in cases where the total quantity of a product (including all locations) is limited to one load or less and is impractical to divide between suppliers. In such cases, allocations of one load or less will be offered to the No. 1 ranked Tenderer.
- (x) The ranking gap calculated following evaluation as outlined above will apply for the full calendar year irrespective of the adjustment to the prices provided for under the Framework Agreement thereafter.
- (xi) The Contracting Authorities will make every effort to ensure that their total annual demand will be allocated in accordance with the distributions suggested by the above matrices. All Contracting Authorities will track ordered quantities and expenditure on an on-going basis, and adjust outstanding allocations in a timely manner so that all qualifying Suppliers receive the applicable quantities. A tolerance level of +/- 2.5% of the required allocations will be allowed annually, with the resultant quantity difference to be corrected in the following year.

4.2.12 **Lot 1** supply contracts will be executed in accordance with the sample Mini-Competition Contract attached as **Schedule 6** to the Framework Agreement.

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

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

4.2.15 Mini-Competitions will be conducted in accordance with the provisions of the Mini-Competition Request for Tender and the Framework Agreement.

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

4.3.1 In addition to the information to be provided when submitting a tender in response to a Mini-Competition Request for Tender (as outlined in part 4.1 above), successful Suppliers must provide to the Framework Purchaser for their review and approval, prior to formal award of the contract (if not already submitted), the specific information listed below or any such relevant information as requested by the Framework Purchaser:

- Satisfactory evidence of insurance submitted online at www.SupplyGov.ie by the Insurance Broker/Company
- Any other details specified in the Request For Tender consistent with the terms and conditions of the Framework Agreement

SCHEDULE 5 - **MINI-COMPETITION REQUEST FOR TENDER TEMPLATE – Lot 1**

[Insert Date]

[Insert Name and Address of Supplier]

Dear Sirs,

We refer to the Multi-Party Framework Agreement for the supply of bitumen emulsions dated [●] between you and TII (the "**Framework Agreement**"). Terms and expressions defined in the Framework Agreement shall bear the same meanings where used in this Request for Mini Tenders.

[Insert name of relevant Framework Purchaser] hereby issues a Request for Mini Tenders in accordance with **Clause 6** of the Framework Agreement for the provision of Products in respect of:

[Insert precise description/specification of the Products, including if possible the approximate quantity of each product and call off requirements regarding delivery dates and delivery address]

Please confirm that:

- the Products are available;
- the Products will be delivered by [insert the nominated start and finish times];
- the Products meet the minimum quality requirements set out in the Specification attached at Schedule 1 of the Framework Agreement;
- The Price is inclusive of all costs and expenses.
- A description of the proposed full time staff and facilities available to provide technical advice and support to Contracting Authorities
- Details of Customer Service Charter/Protocol proposed to be used on the contract, including -:
 - Testing and Quality Assurance Protocol
 - Complaints Procedure
- [Insert any additional requirements for the supply price etc.]

Note: only one Proposal may be submitted in response to this Request for Mini-Competition per Framework Supplier. Proposals will be assessed as described in Clause 6 of the Framework Agreement.

In order to be considered for this Mini Competition you must respond to this request by completing this form, providing the required information, and e-mailing us a signed copy by [insert date].

Queries

Should you have any queries in respect of this Mini Competition Request, please contact [●] by email at [●][or by telephone at [●]] no later than [●]. The Framework Purchaser will endeavour to respond to all reasonable queries received promptly, but does not undertake to respond to all queries.

We look forward to receipt of your Proposal.

By submitting your response to this Mini Competition Request, you acknowledge and agree that if you are awarded a contract for the supply of Bitumen Emulsions under the Mini Competition, that contract will incorporate the terms and conditions set out in the Framework Agreement entered into as between TII and the Supplier on [insert date] and will be subject to the rights and obligations set out therein.

Yours faithfully,

SCHEDULE 6 - **SAMPLE MINI-COMPETITION CONTRACT**

MINI-COMPETITION CONDITIONS

MINI-COMPETITION CONDITIONS FOR SUPPLY OF BITUMEN EMULSION PRODUCTS

ORDER FORM TEMPLATE

To: [Insert Supplier's Details]

Issue Date:	Purchase Order Number:
Description of the Bitumen Emulsion Products Unit/ number/ unit price VAT	
Indicate if any of the Terms and Conditions are not applicable	
Relevant documents Specification Proposal	
Optional information	
Delivery location	
Delivery date	
Price breakdown including any discounts	
Approver	

In accordance with the provisions of the conditions, you are instructed to proceed with the delivery of the Products as identified above. The Products must be delivered on or before the Delivery Date.

In delivering the Products, as required under this Purchase Order, you are to comply with all requirements and the mini-competition terms and conditions for the supply of Bitumen Emulsion Products (supply only) contained at Appendix 1 attached.

APPENDIX 1

TERMS AND CONDITIONS FOR THE SUPPLY OF BITUMEN EMULSION PRODUCTS (SUPPLY ONLY)

SCOPE

These terms and conditions (the “**Conditions**”) (together with any 3.2 Purchase Order) shall govern the provision of any Products by the Supplier pursuant to the Framework Agreement from time to time.

1. DEFINITIONS

The **Conditions** means these conditions as defined in clause 2.1; 3.3

The **Framework Agreement** means the multi-party framework (Lot 1) to provide the Products for Local Authorities issued by the TII and dated [Insert date];

The **TII** means Transport Infrastructure Ireland (TII)
Parkgate Business Centre, Parkgate Street, Dublin 8, Ireland
D08 YFF1;

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

The **Proposal** means the proposal submitted by the Supplier to the Employer in response to a Mini-Competition Request for Tender;

The **Products** means the Bitumen Emulsions products the Supplier is to provide as described in the Specification and the Purchase Order(s);

The **Specification** means the document identified as Schedule 1 of the Framework Agreement;

A **Purchase Order** means a written order given to the Supplier in the form included in this document;

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

2. INTERPRETATION

2.1 These Conditions are the entire agreement between the parties about the Products and consists of, in order of precedence:

- 2.1.1 the Purchase Order; and
- 2.1.2 these Conditions.

2.2 The Supplier must deliver the Products at its own expense, complying with these Conditions, the Specification, each Purchase Order, the Employer’s instructions, and the law.

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

2.4 It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in these Conditions will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint the Employer and the Supplier.

3. DURATION OF TERM

3.1 The Term starts on the date the Employer accepts the Supplier’s Proposal or issues a Purchase Order and ends on the delivery of the Products specified in a Purchase Order to the reasonable satisfaction of the Employer unless otherwise

terminated in accordance with these Conditions.

Each Purchase Order shall constitute a separate contract for the Products and default by the Employer in relation to any one Purchase Order shall not entitle the Supplier to treat such as a breach of the Framework Agreement and/or these Conditions.

By signing and returning or otherwise acknowledging a Purchase Order, the Supplier acknowledges and agrees that it shall have entered into a legally binding contract with the Employer to provide the Products specified in the relevant Purchase Order to the Employer incorporating these Conditions. In any circumstances where the Supplier does not formally accept a Purchase Order, dispatch or delivery of Products by the Supplier to the Employer shall be deemed conclusive evidence of the acceptance of a Purchaser Order and the terms and conditions of the contract thereby constituted.

3.4 Without prejudice to any other rights or remedies to which it may be entitled, the Employer may terminate a Purchase Order issued by it without liability to the Supplier by giving written notice to the Supplier to take effect immediately or on the date specified in the said notice if:

3.4.1 the Supplier commits a material breach, in the opinion of the Employer, of any of these Conditions, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Employer requiring the Supplier to do so;

3.4.2 the Supplier is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or the Supplier suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any of its indebtedness;

3.4.3 any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Supplier; or any liquidator, receiver or examiner is appointed to or in respect of the Supplier or any of its assets;

3.4.4 the Supplier ceases or threatens to cease to carry on business;

3.4.5 any representation made by the Supplier in connection with the Mini-Competition Request for Tender shall in the opinion of the Employer prove to be untrue or incorrect in a material respect as of the date when made;

- 3.4.6 the Supplier has committed any fraudulent act or any criminal activity or is guilty of gross negligence in the performance of its obligations; or
- 3.4.7 the Employer has reason to believe that gratuities, in the form of entertainment, gifts or otherwise, were offered or given by the Supplier or any agent or representative of the Supplier, to any employee of the Employer with a view towards securing any agreement for the provision of the Products. Paying the expenses of normal business meals shall not be prohibited by this provision.
- 3.5 The Employer may terminate a Purchase Order at any time by giving 30 days' notice in writing to that effect to the Supplier.
- 3.6 Termination of any Purchase Order pursuant to Clauses 3.4 or 3.5 above shall not relieve or discharge either the Supplier or the Employer from any obligations which have accrued prior to such termination.
- 3.7 The Employer shall not be liable to the Supplier for any loss of profit, or other economic losses and/or expenses or for any indirect, economic, or consequential loss suffered or incurred by the Supplier arising out of or in connection with these Conditions or the termination of any Purchase Order

4. PAYMENT

- 4.1 Subject to these Conditions and in accordance with the provisions of this clause, the Purchase Order and the Specification, the Employer will pay the Supplier the value of delivered Products.
- 4.2 The price for any Products ordered by the Employer shall be the price set out in the applicable Purchase Order. If no price is specified therein, the price of the Products shall be the price last quoted by the Supplier. The payment terms for any Products ordered by the Employer shall be set out in the applicable Purchase Order.
- 4.3 The rates and prices in the Proposal exclude VAT.
- 4.4 The Employer may deduct from amounts due to the Supplier any amount that the Employer considers is due, or likely to become due, to the Employer from the Supplier under these Conditions.

5. INSPECTION

- 5.1 At any time, prior to any dispatch of Products to it, the Employer (or any other person whom it may nominate) shall be entitled to inspect, examine and test the Products at the Supplier's premises and, if any Products or any part of them are being sourced at other premises, the Supplier shall obtain for the Employer permission to carry out a like inspection on such premises.
- 5.2 The Supplier shall make available to the Employer (or its nominee) (at the Supplier's cost unless otherwise agreed in writing), all necessary resources making it possible for the Employer to check the conformity of the Products to the relevant Purchase Order.
- 5.3 The Supplier must be able to supply all documentary evidence concerning the origin and quality of the raw materials used in its products.
- 5.4 Any inspection, examination or test required or carried out by the Employer shall not in any way affect the Supplier's warranties or reduce or relieve the Supplier of its obligations under these Conditions or constitute a waiver by the Employer and shall be without prejudice to any of the Employer's other rights under

these Conditions. Without prejudice to the generality of the foregoing, the Employer shall be entitled to inspect the Products upon their arrival at the final destination and to issue a refusal at any of these times, or to express any reservations. The Supplier's responsibility shall not be reduced or relieved by any observations that the Employer may make regarding instructions detailed in the Employer's designs or drawings and concerning the nature and quality of the materials used.

6. DELIVERY

- 6.1 The Supplier must deliver the Products ordered on the delivery date or dates specified in the applicable Purchase Order (or such other delivery date as may be specified by the Employer) to such place as the Purchase Order may specify and otherwise upon the terms and conditions set out in the Purchase Order and in accordance with the Specification. For the purpose of delivery of the Products, time is of the essence.
- 6.2 If the Supplier fails to deliver the Products to the Employer on or before the due date for delivery as specified in the relevant Purchase Order, the Supplier shall pay to the Employer as and by way of agreed liquidated damages an amount in euro equal to [X%] of the contract price stipulated in this Purchase Order per week subject to a maximum amount in euro equal to [x]% of the contract price. The parties acknowledge and agree that damages payable pursuant to this sub-clause 6.2 are a genuine pre-estimate of the loss likely to be suffered by the Employer as a result of failure of the Supplier to deliver the Products on or before the delivery date.
- 6.3 If the Supplier fails to deliver the Products to the Employer on or before the due date for delivery as specified in the relevant Purchase Order, the Employer may (without prejudice to any other right it may have under the terms of these Conditions or otherwise) cancel the order.
- 6.4 The Employer may postpone delivery by reasonable notice given to the Supplier at any time before delivery. Without prejudice to the generality of the foregoing, in the event of an industrial dispute or other action preventing the Employer from operating in its normal course of business, the Employer reserves the right to suspend acceptance of deliveries of Products until the dispute or other action has ceased.

7. ACCEPTANCE

- 7.1 The Employer shall not be deemed to have accepted any Products until after the Employer has actually inspected the Products and carried out all tests which it may, in its absolute discretion, deem appropriate to ascertain that the Products are in accordance with its requirements, notwithstanding any prior acknowledgement of receipt or prior payment. The Employer may reject Products which are not in accordance with its requirements. In those circumstances, the Employer shall be entitled to return any such Products to the Supplier at the Supplier's cost and risk to the fullest extent permitted by law.

8. TRANSPORTATION AND CLAIMS

- 8.1 The Supplier is solely responsible for compliance with all laws relating to the sourcing, packaging and carriage of the Products until delivery and for ensuring that such sourcing, packaging, carriage and delivery are made in accordance with the best current industry practice and all applicable legal requirements and meet with all relevant government and local authority requirements. For the avoidance of doubt, the

Supplier shall be obliged to procure that all third party carriers and other contractors engaged by it shall comply with the foregoing.

- 8.2 The Supplier agrees to indemnify and hold harmless the Employer and the employees and sub-contractors of the Employer from and against any and all losses arising out of any injury (including death) to any person or damage to any property resulting from or in any way connected with

- 8.2.1 the sourcing of the Products; and/or
8.2.2 any breach by the Supplier of the provisions of sub-clause 8.1;

except for such losses that have been caused solely and exclusively by the negligence of the Employer or the employees or sub-contractors of the Employer.

9. RISK AND TITLE

- 9.1 Title to the Products (if applicable) shall pass on delivery to the Employer unless payment is made prior to the delivery date, in which event, title shall pass to the Employer on payment. Where title in the Products has passed to the Employer prior to the delivery date pursuant to this clause 9, the Supplier shall keep such Products separate from other products and clearly mark the Products as the property of the Employer.
- 9.2 The risk in the Products shall remain with the Employer until delivery in accordance with Clause 6.

10. WARRANTIES

- 10.1 The Supplier represents and warrants to the Employer that on an ongoing basis:
- 10.1.1 it has examined the Specification and/or other documents provided by the Employer and has satisfied itself that same are suitable to enable the Supplier to proceed with the sourcing of the Products;
- 10.1.2 all Products delivered to the Employer shall conform to the Specification and/or other documents provided by the Employer and to any description given by the Supplier in respect of the Products concerned;
- 10.1.3 any Products delivered to the Employer shall be of merchantable quality, free from defects in materials and workmanship and shall, unless a different period is specified in the applicable Purchase Order, remain fit for use in their intended purpose for the period of [430] days commencing on the date on which the Products concerned are delivered;
- 10.1.4 if a sample of the Products was provided to the Employer before delivery, the bulk of the Products will correspond with the sample; and
- 10.1.5 the Products when delivered with comply with all applicable laws.
- 10.2 In the event of any breach of these warranties or representations, and in addition to and without prejudice to any other rights which the Employer may have, the Employer may:
- 10.2.1 require the Supplier to remedy the defect(s) in the Products and any damage to other property arising directly or indirectly out of any defect(s) in the

Products in which event the Supplier shall proceed to carry out such remedial works with all possible speed and/or supply replacement products; or

- 10.2.2 arrange for a person other than the Supplier to remedy the defect(s) in the Products and any damage to other property arising directly or indirectly out of the defect(s) in the Products, in which event the Supplier shall indemnify the Employer on demand against all costs incurred in connection with such remedial works and/or supply replacement products.

- 10.3 The provisions of these terms and conditions shall apply to any products supplied by the Supplier to the Employer in place of any defective Products.

11. LOSS AND DAMAGE

- 11.1 The Supplier shall indemnify and keep indemnified the Employer (on demand) from and against all losses suffered or incurred by the Employer arising out of or in connection with any of the following:
- 11.1.1 any injury or death to any person or in respect of any loss of or damage to any property caused by or arising out of any act, omission or negligence of the Supplier, its servants, agents, employees or contractors in connection with these Conditions;
- 11.1.2 any damage caused by the Products or any defects therein owing to the act, omission or negligence of the Supplier, or any of its employees, servants, agents or contractors.

12. INSURANCES

- 12.1 During the entire Term the Supplier shall maintain in force full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Supplier in connection with the provision of the Products in accordance with this clause and the Specification, including but not limited to:
- 12.1.1 Employer's liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to the Employer as principal.
- 12.1.2 Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.
- 12.1.3 Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.
- 12.1.4 Motor Insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to the Employer as principal.
- 12.2 The Supplier shall ensure that its insurance policies are taken out with reputable insurers acceptable to the Employer within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Employer.
- 12.3 The Supplier shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall

notify the Employer without delay.

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

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

13. ETHICS IN PUBLIC OFFICE

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

14. LAW AND DISPUTES

14.1 These Conditions and any contractual obligations or disputes arising out of or in connection with these Conditions shall be governed and construed in accordance with the laws of Ireland. The parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with these Conditions.

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

SIGNED for and on behalf of the (Purchaser) by:

SIGNED by [**name of individual**], duly
Authorised to sign this agreement on
behalf of [**company name**]
in the presence of:

Signature

Signature of Witness

Name of Witness

Address of Witness

Performance Evaluation of Bitumen Emulsions <u>Supply</u> or <u>Supply & Spray</u>						
Scoring Range (Maximum of 20 to be scored for each criteria below)		Excellent 17 - 20	Very Good 13 - 16	Good 9 - 12	Moderate 5 - 8	Poor 0 - 4
Please give one rating for each criteria. Add comments as required to justify your rating.						
Evaluation Criteria (Total score available – 100)						Score
1	Performance Delivery [20] <i>How dependable was the Supplier in delivering orders ? Were they flexible in regard to Time & Quantity ?</i> <i>What percentage of deliveries were on time ?</i> <i>Did the Sprayers function adequately and complete the work effectively (if applicable) ?</i> <i>Were difficulties encountered - No. of Breakdowns, Any Operator issues (were Drivers experienced) ?</i>					
	Comments					
2	Availability of Required Products and/or Services [20] <i>Were the requested Product quantities or Services available when ordered ?</i> <i>Did the Supplier have the type of Equipment available most suitable to the location of the spraying e.g. Combi Unit ?</i> <i>Was there a significant Lead Time involved at any stage ?</i> <i>Did this have any knock-on effect on planned works (e.g. did it lead to work stoppage) ?</i>					
	Comments					
3	Supplier Responsiveness [20] <i>Could the Buyer communicate easily with the Supplier ?</i> <i>Were all issues arising addressed in a professional and timely manner ?</i> <i>Did the same issue occur more than once ?</i> <i>Did the Buyer have to issue any requests for corrective action(s) ?</i>					
	Comments					
4	Technical Support [20] <i>Was the Supplier's Technical support available when required and easily accessible ?</i> <i>Did the Supplier provide the requested assistance when asked ?</i> <i>Any difficulties encountered in relation to verifying product quality ?</i>					
	Comments					
5	After Sales Support [20] <i>Was the Supplier's After Sales Support available when required and easily accessible ?</i> <i>Did the Supplier provide the requested assistance when asked ?</i> <i>Were all issues arising addressed in a professional and timely manner ?</i>					
	Comments					
Total Score						