

**STRICTLY PRIVATE AND CONFIDENTIAL**

**UISCE-ÉIREANN – IRISH WATER**

**AGREEMENT TO ACCEPT WASTE WATER FROM WEST CORK DISTILLERS LIMITED (REGISTERED  
NO. 452466) OF MARSH ROAD, SKIBBEREEN, CO. CORK**

**TO AN**

**IRISH WATER WASTE WATER TREATMENT FACILITY OR FACILITIES**

**FOR TREATMENT AND DISPOSAL**

**TWA-10266-01**

**BETWEEN**

**UISCE-ÉIREANN – IRISH WATER**

**AND**

**WEST CORK DISTILLERS LIMITED (REGISTERED NO. 452466) OF MARSH ROAD, SKIBBEREEN, CO.  
CORK**

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**THIS AGREEMENT** made 12/1/2022

between

- (1) **UISCE ÉIREANN - IRISH WATER**, a designated activity company (limited by shares), incorporated in Ireland (registered no. 530363), pursuant to the Water Services Act 2013, whose registered office is at Colvill House, 24-26 Talbot Street, Dublin 1 ("**Irish Water**") and
- (2) **WEST CORK DISTILLERS LIMITED (registered no. 452466) of MARSH ROAD, SKIBBEREEN, CO. CORK** (the "**Client**");

## RECITALS

- A. Irish Water and the Client have agreed to enter into a arrangement for the discharge of Waste Water, with prescribed characteristics, to the Treatment Works listed in Schedule 1.
- B. Subject to the Waste Water having the characteristics set out in this Agreement, Irish Water is prepared to enter into this Agreement on the following terms and the Client is prepared to accept such terms.

## 1. DEFINITIONS AND INTERPRETATION

1.1 In this Agreement unless the context otherwise requires:

**Ancillary Charges** mean any charges, costs, expenses due to Irish Water under the terms of the Agreement, which are not included in Schedule 5

**Business Day** means a day (excluding Saturdays and Sundays) on which banks are open for normal business in Dublin, Ireland;

**Charge** means all charges for the reception, treatment, and disposal of the Waste Water and for the treatment and disposal of the by-products of Waste Water treatment which may include a capital contribution and for all measurement and laboratory testing necessary for establishing compliance with this Agreement and statutory requirements and for the computation and apportionment of the costs of these operations and as set out at Schedule 5 hereto;

**Client's Premises** means the Client's premises at MARSH ROAD, SKIBBEREEN, CO. CORK

**Commencement Date** means the date on which this Agreement has been fully executed by the parties hereto;

**Conciliator** means a Conciliator appointed pursuant to Article 9 to resolve any dispute or difference between the parties;

**Daily Volume** means the total volume discharged over a continuous period of twenty-four hours;

**Day** means a period of twenty-four hours;

**Discharge Limit** means that value for each of the various parameters set out in Schedule 4;

**Effluent** means effluent from any works, apparatus, portable toilets, domestic septic tanks, plant or drainage pipe used for the disposal of effluent by the Client of any liquid (whether treated or untreated), either with or without particles of matter in suspension therein, which is transported by Tanker and discharged by the Client at the Treatment Works

**Euribor** means for any day, the percentage rate per annum determined by the Banking Federation of the European Union for a period of one month displayed on the appropriate page of the Reuters screen. If the appropriate page is replaced or service ceases to be available Irish Water, acting reasonably, may specify another page or service displaying the appropriate rate;

**Inhibition** means the presence in Waste Water of materials which, either by themselves or in combination with

other materials present in the Waste Water, may reduce the treatability of the Waste Water at the Treatment Works;

**Laws** mean any laws applicable in Ireland and includes Legislation and the requirements of any regulator to which Irish Water is subject;

**Leachate** means liquid waste water from a landfill or similar waste management facility

**Legislation** means primary or secondary legislation including statute, statutory instrument, byelaw, delegated and subordinate legislation and shall further include European law applicable in Ireland, as interpreted by the courts of Ireland and the European Court of Justice;

**Monitoring** means the inspection, measurement, sampling, testing and analysis carried out for the purposes of this Agreement;

**Storm water** means that portion of Waste Water, resulting from precipitation runoff during or after a period of rainfall;

**Sub-contractor(s)** means a person or business that the Client contracts to provide a service necessary for the performance of this Agreement (including any person/haulier/engaged by the Client to transport the Wastewater);

**Tanker** means a vehicle or other vessel used to carry Waste Water set out in Schedule 2 to be emptied or discharged at the Treatment Works;

**Term** has the meaning set out in Article 7;

**Trade** means any commercial or industrial activity by the Client and includes agriculture, aquaculture, horticulture and any scientific research or experiment;

**Treatment Works** means all of the structures and equipment that are located at the waste water treatment works sites listed in Schedule 1, or any alternative treatment works that Irish Water may specify in their sole discretion from time to time, that are required to receive, store and treat the Waste Water, and the residue of the treatment processes, and to dispose of same;

**VAT** means value-added tax under the Value-Added Tax Consolidation Act 2010 (as amended) and any other tax of a similar nature

**Waste Collection Permit** means a permit required under the Waste Management (Collection Permit) Regulations, 2007 and Waste Management (Collection Permit) (Amendment) Regulations 2008 by those intending to carry out waste collection activities

**Waste Water** means any combination of Effluent, Leachate and any Storm water which may be present in the discharge presented by the Client in a Tanker at the Treatment Works;

**Writing** means manuscript, typed, cable, facsimile transmission or e-mail means of communication.

- 1.2 Any reference within this Agreement to any provision of a legislative enactment shall be construed as a reference to its provisions as amended, re-enacted or extended at the relevant time.
- 1.3 Where the context so admits any reference in this Agreement to the singular shall include the plural and vice versa.
- 1.4 Article, clause, Schedule and paragraph headings shall not affect the interpretation of this Agreement.
- 1.5 A person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality) and that person's personal representatives, successors and permitted assigns.
- 1.6 The Schedules form part of this Agreement and shall have effect as if set out in full in the body of this Agreement. Any reference to this Agreement includes the Schedules.

- 1.7 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.8 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.9 A reference to any party shall include that party's personal representatives, successors and permitted assigns.
- 1.10 A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision.
- 1.11 Any reference to a party's consent or approval being required is to a consent or approval in writing, which must be obtained before the relevant action is taken or event occurs.
- 1.12 Any obligation on a party not to do something includes an obligation not to allow that thing to be done.
- 1.13 A reference to writing or written includes fax and e-mail.
- 1.14 References to articles, clauses and schedules are to the articles, clauses and schedules of this Agreement and references to paragraphs are to paragraphs of the relevant schedule.
- 1.15 Any words following the terms including, include, in particular, for example or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.

2. **ARTICLE 2 - PERMISSION AND OPERATION OF WORKS**

- 2.1 Subject to compliance in full by the Client with the terms and conditions of this Agreement, Irish Water hereby grants to the Client permission to discharge its Waste Water to the Treatment Works listed in Schedule 1 during the Term provided that such Waste Water is at the relevant time strictly in accordance with the characteristics set out in Schedule 2.
- 2.2 The permission granted by Irish Water to the Client at Article 2.1 above shall not in any way curtail, limit or lessen any obligations or liability of the Client pursuant to any licences or permissions issued or to be issued to the Client under any Legislation or by any statutory authority.
- 2.3 Subject to Clause 2.4 and this Agreement, Irish Water shall accept the Waste Water of the Client and shall receive, treat and dispose of same.
- 2.4 Notwithstanding Clause 2.1, Irish Water may at any time during the Term, specify any alternative Treatment Works to which the Client shall discharge its Waste Water, and the Terms and Conditions of this Agreement shall apply to such discharge or discharges.
- 2.5 The Client or his Sub-Contractor(s) shall procure that at least forty eight hours notice prior to the arrival of any Tanker containing Waste Water at the Treatment Works is given to the Treatment Works to ensure that
  - 2.5.1 the Treatment Works are accessible; and
  - 2.5.2 there is no reason or reasons as to why the Waste Water cannot be accepted at the Treatment Works.
- 2.6 The Client or his haulage Sub-Contractor(s) shall hold a valid Waste Collection Permit and must comply with all relevant statutory obligations.
- 2.7 The Client or his haulage Sub-Contractor(s) shall comply with all relevant health and safety requirements and site rules at the Treatment Works listed in Schedule 1 or any alternative Treatment Works that may be specified for operational reasons.
- 2.8 The Client or his haulage Sub-Contractor(s) shall nominate dedicated drivers for the transport of

Waste Water referred to in this Agreement. The Client or his haulage Sub-Contractor(s) must certify that such dedicated drivers have been inducted and familiarised with the Treatment Works site and its procedures. Save for such certified Tanker drivers no other Tanker drivers will be permitted to enter the site for deliveries as part of this Agreement. The driver will be required to sign in and out when entering or leaving the site. Irish Water reserves the right not to allow tankers with drivers other than inducted Drivers access to the Treatment Works.

- 2.9 The Client or his haulage Sub-Contractor(s) shall operate a numbered waste transfer note system to include Haulier/ Company name, Waste Collection Permit number, Source of Waste, Waste Type, Signature of Originator, Destination of Waste, Volume, Signature of Recipient. The Client or his haulage Sub-Contractor(s) must retain a record of all loads delivered to the Treatment Works listed in Schedule 1 and shall submit same to Irish Water on request.

### 3. **ARTICLE 3 – CHARGES AND CONTRIBUTIONS**

- 3.1 In consideration of the Client being granted permission to discharge its Waste Water to the Treatment Works the Client shall pay to Irish Water (or its agent) all Charges and any Ancillary Charges incurred by Irish Water in order to provide the service. Payment of all Charges and Ancillary Charges due by the Client to Irish Water pursuant to this Agreement shall be made within thirty (30) Days from the date of issue of the invoice by Irish Water or its agent.
- 3.2 Unless otherwise stated, amounts in this Agreement exclude VAT. To the extent that any VAT is chargeable, under Irish or other applicable laws, on any Goods and/or Services supplied by the Irish Water to the Client pursuant to this Agreement, Irish Water shall deliver to the Client a valid VAT invoice in such form and within such timing as may be required under Irish or other applicable laws. Upon receipt of a valid VAT invoice, an amount equal to the amount of VAT correctly chargeable to or payable by the Client on the charges shall be paid in addition to the charges payable in accordance with this Agreement. Irish Water shall account for all amounts in respect of VAT paid to it by the Client to the appropriate tax authorities in compliance with Irish or other applicable laws.
- 3.3 Payments shall be due in full and the Client shall not be entitled to make any deduction or exercise any set off or other similar right or claim, (howsoever arising), in relation to any payments due by the Client to Irish Water pursuant to this Agreement. In the event of late payment, Irish Water shall be entitled to charge interest on such late payment at a rate equal to the higher of either the interest rate payable on court judgments (at the time the payment first becomes overdue) or one (1) week EURIBOR plus 4%. In the case of payments which have been the subject of a bona fide dispute determined in accordance with Article 9, Irish Water shall be entitled to charge interest on such late payment at a rate one (1) week EURIBOR plus 1%.
- 3.4 In the event that the Client disputes any amount invoiced to it by Irish Water, then it shall make payment of the amount invoiced within the period required by this Article, and shall with such payment serve written notice upon Irish Water that it disputes the amount invoiced and shall set out in detail the reasons why it disputes the amount invoiced. Upon receipt of such notice, Irish Water shall furnish a detailed reply within thirty (30) Business Days and if applicable shall state why in its view the invoice is correct, or if otherwise, Irish Water shall furnish to the Producer full particulars of the amended account.
- 3.5 In the event that Irish Water is found to have overcharged the Client, then the Client shall be credited any amount overpaid in the next invoice to be issued to it by Irish Water plus interest at prevailing EURIBOR rate for the period. In the event that the original invoice is found to have been understated, then Irish Water shall be entitled to make adjustment and to seek payment of the balance in the next invoice to be issued by Irish Water.
- 3.6 If, following the procedure set out in this Article, the parties cannot agree on the amount due, then the matter shall be resolved in accordance with the provisions of Article 9 (Settlement of Disputes) hereof.

4. **ARTICLE 4 - MONITORING AND ASSOCIATED COSTS**

- 4.1 All analyses to be carried out pursuant to this Agreement shall be carried out in accordance with the provisions of this Agreement and Schedule 3 hereto.
- 4.2 The Client and Irish Water agree that, the determination of the volumes, characterisation and quantification of the Client's Waste Water, shall be based upon the Monitoring of the Waste Water by Irish Water, in accordance with Schedule 3, or other methods as may be agreed by the parties in writing from time to time, and shall be used in computing the various charges as set out in this Agreement to be made by Irish Water for the reception, treatment and disposal of the Client's Waste Water.
- 4.3 The Client shall be liable for all costs incurred in connection with the installation and maintenance of any recording and/or sampling equipment required for the purposes of this Agreement, for all costs associated with the monitoring of its Waste Water, all costs associated with the sampling, conveyance and analysis of samples and the reporting of such test results as may be required to establish compliance by the Client with this Agreement and for the purposes of measuring the appropriate Waste Water characteristic parameters necessary for the computation of charges in accordance with this Agreement.
- 4.4 Irish Water may at any time require the Client to supply and install (or permit Irish Water to supply and install) recording, sampling or metering equipment for the purposes of Monitoring the Client's Waste Water. The cost of supply, installation and maintenance of such equipment shall be borne by the Client.
- 4.5 Irish Water may provide the Client with copies of the results of tests of its Waste Water and will use reasonable endeavours to ensure that all tests will be separately identified for analysis and invoice purposes.
- 4.6 **Waste Water Characterisation - Inhibition Testing**

Should Irish Water have reasonable grounds to believe that the Client's Waste Water is responsible for causing Inhibition in the total mixed flows received at the Treatment Works then:

- 4.6.1 Irish Water shall be entitled immediately to take samples of the Client's Waste Water, in the presence of an officer or agent of the Client, and submit such samples for testing for inhibitory effects by an independent laboratory accredited for the purpose;
- 4.6.2 the test procedures performed by the laboratory shall reflect the dilution afforded the Client's Waste Water by admixture with all flows of other origin received at the Treatment Works;
- 4.6.3 if the results of the tests shall clearly demonstrate inhibition at the Treatment Works:
- (1) the Client shall bear the full costs of the sampling and testing;
  - (2) the Client shall carry out such works as are necessary in order to remove the cause of Inhibition
  - (3) the Client shall bear the full costs of any modification or additions to the Treatment Works (to include any increased operating cost or costs) which Irish Water decides are necessary to compensate for the inhibitory effects.
- 4.6.4 In the event that the Client does not carry out any works in accordance with sub-article (2) above, or pay the costs of any modification to the Treatment Works as may be indicated by Irish Water in accordance with sub-article (3) above, within such period as is specified by Irish Water, then Irish Water may either:
- (1) Terminate this Agreement in accordance with Article 12 (Termination) hereof, or

- (2) Carry out such works or modification to the Treatment Works as is necessary in order to prevent further Inhibition arising by reason of the discharge by the Client of its Waste Water to the Treatment Works and in such event Irish Water shall be entitled to recover the costs of so doing as a simple contract debt from the Client on demand.

4.7 The Client represents and warrants that it possesses all authorisations, permissions, consents and licences required by it, and has made all notifications necessary in connection with the conveyance of the Waste Water to the Treatment Works and the assumption by it of the duties specified in this Agreement and agreed by it to be performed under this Agreement.

## 5. **ARTICLE 5 - INSURANCES AND INDEMNITIES**

### 5.1 **Indemnity from the Client**

The Client shall indemnify Irish Water against any liability, loss, claim or proceedings, howsoever arising, in respect of:

- 5.1.1 any injury or damage whatsoever to any property, real or personal, in so far as any such injury or damage arises out of or in the course of or by reason of the operation of this Agreement;
- 5.1.2 any injury to or disease contracted by or the death of any person whomsoever arising out of or in the course of or caused by the operation of this Agreement;
- 5.1.3 any other loss or damage, whether direct, indirect or consequential, sustained by Irish Water arising out of or in the course of or by reason of the operation of this Agreement

### 5.2 **Client/Sub-Contractor(s) Insurances**

5.2.1 The Client (including any Sub-Contractor(s) engaged by the client) shall take out and maintain during the Term all appropriate insurances, including employer's liability, and public liability insurances, covering any loss, claim or proceedings in respect of the matters referred to in Article 5.1 and in an amount not less than:

- (1) €13 million any one accident/occurrence — unlimited in the period of insurance, under the Employers Liability policy.
- (2) €6.5 million any one accident/occurrence — unlimited in the period of insurance, under the Public Liability policy and in the aggregate in respect of Products Liability to include sudden and accidental pollution with an inner limit of no less than €2.6 million.
- (3) €6.5 million third party property damage limit under any motor insurance policy\*\*. Cover to include Legal Liability arising from the use of the insured vehicle or from an error or omission during the process of loading and unloading the insured vehicle by either the driver or attendant.  
*\*\* Motor insurance cover is only required by the entity transporting the Waste Water to the Waste Water Treatment Works.*

5.2.2 The insurance policies mentioned in Article 5.2.1 above shall each contain a specific indemnity in favour of Irish Water (and its agents and Sub-Contractor(s)).

5.3 If the Client shall at any time fail to effect and produce to Irish Water any of the insurances required by this Article, then Irish Water shall be entitled to terminate this Agreement within fourteen (14) days of having notified the Client of its intention to do so by reason of the non-compliance by the Client with this Article.

## 6. **ARTICLE 6 - PERIODIC REVIEW**



- 6.1 The terms of this Agreement shall be reviewed by Irish Water 2 months after the date here of or within such other period as Irish Water may decide with the objective of agreeing any necessary changes to Schedule 4 Discharge Limits. The review may include but shall not be confined to the following:-
- 6.1.1 the compliance by the Client with the discharge conditions and maximum discharge limits;
  - 6.1.2 identification of any elements of the Client's Waste Water which impact on the efficiency and safety of the operation of the Treatment Works and compliance with Legislation requirements;
  - 6.1.3 identification of any changes in the Legislation legislative requirements or Irish Water objectives that impact on the cost of the operation of the Treatment Works;
  - 6.1.4 the applicability of the discharge limits in Schedule 4;
  - 6.1.5 agreement on a schedule for implementation of any proposed changes.

6.2 **Review At Request Of Client**

The Client may request a review of the terms of the Agreement by submitting notice in writing to Irish Water. Such notice shall set out, in as much detail as possible, the nature and basis of the review requested. Irish Water will be required to initiate such a review within two (2) months of the receipt of the application.

6.3 **Notice of Change in Waste Water / Processes**

The Client shall give to Irish Water prior written notice of any change in its Waste Water discharge parameters or in the source type, nature, characteristics, process of manufacture, materials, or other circumstances howsoever arising capable of altering the nature and/or composition of the Waste Water. No new substances or properties shall be discharged unless and until Irish Water has agreed thereto, either with or without imposing a limit and thereafter the said substance(s) and/or property(ies) shall be deemed incorporated into Schedule 2 as appropriate, subject to whatever limits Irish Water agrees with the Client.

7. **ARTICLE 7 - DURATION**

Unless otherwise agreed in accordance with the terms hereof, this Agreement shall commence with effect from the Commencement Date and shall expire upon 12 months from Commencement Date unless terminated by either party pursuant to this Agreement or extended by Irish Water at its sole discretion under this Clause (the "Term").

Irish Water may, on no more than two occasions, extend the Term by 12 months by giving notice to the Client which shall take immediate effect provided the Client wishes to extend the Term. The entire Term shall not exceed 36 months.

8. **ARTICLE 8 - NOTICES**

- 8.1 Any notices or other communication whether required or permitted to be given hereunder shall be given in writing and shall be deemed to be duly given:
- 8.1.1 if delivered in person, upon receipt by the addressee or its duly authorised agent;
  - 8.1.2 if sent by pre-paid post, addressed to the relevant party at the address hereinbefore mentioned for it (or at such other address as it may from time to time designate to the other party hereto for the purposes of this Article), within seven days after the same shall have been posted; and
  - 8.1.3 if transmitted by electronic mail to such electronic address as may from time to time be specified by either party to the other for the purpose of this clause, upon transmission of

an acknowledgement of receipt of the notice from the recipient of same.

9. **ARTICLE 9 – SETTLEMENT OF DISPUTES**

- 9.1 In the event of any dispute or difference arising between the parties in connection with or arising from this Agreement, then either party may request conciliation. If adopted, the conciliation procedure shall be interpreted and applied in the manner most conducive to the efficient conduct of the proceedings with primary objective of achieving a settlement of the dispute by agreement between the parties in a timely and cost effective manner.
- 9.2 Should either party require to refer a dispute for resolution by conciliation, that party may do so by giving notice to the other party hereto in writing (hereinafter called a Notice of Conciliation) requesting that the dispute shall be referred to a Conciliator. The Notice of Conciliation shall be accompanied by a brief statement of the matter to be referred to conciliation and the relief or remedy sought. The Notice of Conciliation shall also nominate a party to act as Conciliator.
- 9.3 If the party receiving the Notice of Conciliation under the Article is agreeable to conciliation, it shall serve a notice to this effect within twenty-one (21) days, stating whether or not it agrees to the appointment of the Conciliator named by the other party, and if not, suggesting its own nominee. If the party receiving the Notice of Conciliation fails to serve a notice under this sub-clause within twenty-one (21) days, then, unless the parties otherwise agree, the matter shall be referred to the courts.
- 9.4 If both parties are agreeable to conciliation, but cannot agree on the nomination of a Conciliator, then either party may request the President (or, if he or she is unable to act, a Vice President) for the time being of Engineers Ireland to appoint a Conciliator within fourteen (14) days of receipt of the request by him or her, which request shall be accompanied by a copy of the Notice of Conciliation.
- 9.5 Upon confirmation of his or her appointment, the party requesting conciliation shall deliver to the Conciliator and the other party to the dispute copies of the Notice of Conciliation, all relevant notices of dispute and/or any documentation relevant to the dispute. The Conciliator shall also be furnished with a copy of this Agreement.
- 9.6 The Conciliator shall start the Conciliation as soon as possible after his or her appointment and shall use all reasonable endeavours to conclude the Conciliation as soon as possible and in any event not more than three (3) months from the date on which he or she accepts his or her appointment as Conciliator (or such extended time as may be agreed between the parties hereto).
- 9.7 Upon the appointment of the Conciliator, each party shall send the Conciliator and the other party brief details of the dispute stating its version of the facts, together with, if it so wishes, its views as to the rights, obligations and liabilities of the parties arising from the dispute and as to any consequence of the dispute, financial or otherwise.
- 9.8 As soon as possible after his or her appointment, the Conciliator shall issue directions establishing, inter alia, the date and place for any Conciliation meeting with the parties. Each party shall inform the Conciliator in writing of the name of its representative for the Conciliation (who shall be deemed to have full Irish Water to act on behalf of, and to bind, that party) and the names of any other persons who will attend the Conciliation meeting. This information shall be given at least three working days before the Conciliation meeting, with copies to the other party.
- 9.9 The Conciliator may, entirely at his or her own discretion, issue such further directions as he or she considers appropriate; meet and question the parties and their representatives, together or separately; investigate the facts and circumstances of the dispute; visit the Treatment Works and/or the Client's Premises; and request the production of documents or the attendance of people whom he or she considers could assist in any way. The Conciliator may conduct the proceedings in any way that he or she wishes and may obtain legal or technical advice, the cost of which shall be met by the parties in accordance with Article 9.1.17 or as may be agreed by the parties and the Conciliator.
- 9.10 The Conciliator may consider and discuss such solutions to the dispute as he or she thinks appropriate

or as may be suggested by any party. He or she shall observe and maintain the confidentiality of any information which he or she is given by either party, and may disclose it only with the explicit permission of that party. He or she shall try to assist the parties to resolve the dispute in any way acceptable to them.

- 9.11 The parties shall co-operate with the Conciliator and in particular, shall endeavour to comply with requests by the Conciliator to submit written materials, provide evidence and attend meetings.
- 9.12 Any party may, at any time, ask that additional claims or disputes shall be joined in the Conciliation. Such applications shall be accompanied by details of all relevant facts, notices and decisions. Such joinder shall be subject to the agreement of the Conciliator and the parties hereto.
- 9.13 If, in the opinion of the Conciliator, the resolution of the dispute would be assisted by further investigation by either party hereto or by the Conciliator, or by an interim agreement, including action by either party, then the Conciliator shall, with the agreement of the parties, prepare a direction and/or adjourn the proceedings as may be appropriate.
- 9.14 If a settlement is achieved of the whole or any part of the matters in dispute, the Conciliator may, if so requested by the parties, assist the parties to prepare an agreement incorporating the terms of settlement. Once signed by the parties, the said agreement shall be final and binding upon them with respect to the matters set out therein.
- 9.15 If in the opinion of the Conciliator it is unlikely that the parties will achieve an agreed settlement of their disputes, or if any party fails to respond to a direction by the Conciliator, the Conciliator shall advise the parties accordingly and shall prepare his or her recommendation within a further period of two weeks.
- 9.16 The Conciliator's recommendation shall state his or her opinion as to how the parties can best dispose of the dispute between them and need not necessarily be based on any principles of common law or equity. The Conciliator shall not be required to give reasons for his or her recommendation. Nevertheless, should he or she choose to do so, his or her reasons shall be issued as a separate document, within seven days of the giving of his or her recommendation.
- 9.17 If a settlement is reached, or when the Conciliator has prepared his or her recommendation, or at any earlier date solely at the discretion of the Conciliator, he or she shall notify the parties in writing and send them an account of his or her fees and disbursements. Unless otherwise agreed between themselves, each party shall be responsible for payment and shall, within seven days of receipt of notice from the Conciliator, pay an equal share of the account, save that the parties shall be jointly and severally liable to the Conciliator for the whole of his or her account. Upon receipt of payment in full, the Conciliator shall send his or her recommendation to all of the parties. If any party fails to make the payment due from it, the other party shall pay the sum to the Conciliator, and such party shall be entitled to recover the amount from the defaulting party as a debt due. Each party shall meet its own costs and expenses.
- 9.18 If neither party rejects the recommendation by notice in writing to the Conciliator and the other party within two weeks of the date of receipt of the recommendation or within such other period as the Conciliator may specify, then the recommendation shall be final and binding on the parties. However, if one party rejects the recommendation, then its terms and provisions and any reasons given by the Conciliator, together with any disclosures made during Conciliation, shall be and remain privileged and confidential and shall not be divulged to the other party, or used in evidence by the other party in any subsequent litigation or other dispute resolution mechanism.
- 9.19 The Conciliator may be recalled by written agreement of the parties and upon payment of an additional fee, to clarify the recommendation.
- 9.20 The Conciliator shall not be appointed nor be retained or act as advocate or as representative in any subsequent litigation between the parties whether arising out of the dispute, difference, or otherwise arising out of this agreement unless the parties otherwise agree in writing. No party shall be entitled to

call the Conciliator as a witness in any subsequent litigation concerning the subject matter of the Conciliation.

- 9.21 The confidential nature of the Conciliation and any recommendation issued by the Conciliator shall be respected by every person who is involved in the Conciliation procedure, in whatever capacity.
- 9.22 The parties hereto shall jointly and severally and on behalf of their heirs and successors and any other persons claiming through them, indemnify the Conciliator against any claims, demands, proceedings, damages, costs, charges and expenses whatsoever which may arise in connection with or arising out of the Conciliation or the way in which it is or has been conducted and shall not themselves bring any such claims against the Conciliator.

Upon conclusion of the Conciliation, the Conciliator and each party shall return originals of documents in his or her possession or custody to the party which submitted such documents in connection with the Conciliation.

10. **ARTICLE 10 - NO WAIVER**

A waiver by any party of any breach of the terms, provisions or conditions of this Agreement or the acquiescence of such party in any act or omission, which, but for such acquiescence would be a breach as aforesaid shall not constitute a general waiver of such term, provision or condition or of any subsequent act in breach thereof. Any liability of any party under the provisions of this Agreement may in whole or in part be released, compounded or compromised by either party in its absolute discretion without in any way prejudicing or affecting its rights against the other party hereto under same.

11. **ARTICLE 11 - ASSIGNMENT**

- 11.1 The Client may not assign its rights or obligations under this Agreement without the consent in writing of Irish Water.
- 11.2 Where the Client proposes to assign its rights or obligations under this Agreement and Irish Water consents to the proposed assignment or transfer, it shall be a prerequisite to such assignment or transfer that the party to whom it is proposed to assign the Agreement (whether in whole or in part) shall enter into an agreement conforming to the terms of this Agreement and the assignment or transfer shall not be effective pending completion of such an agreement.
- 11.3 Any amendments to the Agreement agreed by the parties shall be deemed incorporated in any subsequent assignment or transfer of the Agreement.

12. **ARTICLE 12 - TERMINATION**

- 12.1 In the event of the termination of this Agreement by Irish Water or expiry of the Term, the permission granted by Irish Water to the Client under Article 2 shall automatically terminate and the Client shall immediately cease all discharges to the Treatment Works.
- 12.2 This Agreement may be terminated immediately by Irish Water, without any liability of Irish Water to the Client, upon the happening of one or more of the following events:-
- 12.2.1 failure by the Client to remedy any wilful and/or substantial breach and/or persistent breach of this Agreement within ten (10) Business Days of being so requested in writing; or such other period as may be agreed between Irish Water and the Client;
  - 12.2.2 failure by the Client to pay any sum due to Irish Water under this Agreement within the timeframe specified by this Agreement;
  - 12.2.3 the Client being unable to pay its debts within the meaning of the Companies Act 2014;
  - 12.2.4 the Client entering into any arrangement or composition for the benefit of its creditors or if the Client suffers the publication in the national or local press of a notice pursuant to the Companies Acts 2014, convening a Creditors meeting, or suffers the issue of a petition to wind up the Client;

- 12.2.5 the appointment of a liquidator (provisional or otherwise) or receiver to the assets of the Client;
- 12.2.6 the appointment of a liquidator (provisional or otherwise) or receiver to the assets of the Client;
- 12.2.7 distress or execution being levied on, or issued against the whole or substantial part of the property of the Client, and not being discharged within thirty (30) days;
- 12.2.8 the Client ceasing or threatening to cease, to trade, or carry on its business, or substantially the whole of its business; and
- 12.2.9 when a right to terminate arises under Article 4.6.4.

12.3 The Client may terminate the Agreement with at least three (3) months written notice.

12.4 The termination of this Agreement by either party shall not affect any liability or obligation of either party which has fallen due prior to such termination. From the date of expiry of any notice of termination, the parties obligations under this Agreement will cease with the exception of Article 5 Insurance.

13. **ARTICLE 13 - GOVERNING LAW AND JURISDICTION**

13.1 This Agreement shall be governed by, and construed in accordance with, the laws of Ireland.

14. **ARTICLE 14 - FORCE MAJEURE**

14.1 If the performance of any of the obligations of Irish Water under this Agreement is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of Irish Water, Irish Water, upon giving reasonable notice to the Client, shall be excused from performance to the extent of the prevention, restriction or interference.

14.2 The Client agrees that this may require Irish Water to refuse to accept the Waste Water of the Client for a time, but Irish Water shall use reasonable endeavours to avoid or remove the causes of non-performance, and shall resume performance of such obligations whenever such causes are removed or diminished.

14.3 If the performance of any of the obligations of the Client under this Agreement is prevented, restricted or interfered with by reason of circumstances beyond the reasonable control of the Client, the Client, upon giving reasonable notice to Irish Water, shall be excused from performance to the extent of the prevention, restriction or interference, but the Client shall use all reasonable endeavours to avoid or remove the causes of non-performance and shall continue performance of such obligations with the utmost diligence whenever such causes are removed or diminished PROVIDED ALWAYS that this Article 14.3 shall not apply to (i) the Client's obligations to pay any amounts due to Irish Water under this Agreement or (ii) the Client's obligations to discharge Waste Water only with the characteristics (including volume) which the Client is permitted to discharge to Sewers pursuant to the terms of this Agreement.

15. **ARTICLE 15 - LIMITATIONS ON LIABILITY**

15.1 Irish Water shall not be liable to the other party under this Agreement (or under tort which shall include negligence) for any costs, expenses, disbursements or losses (including any loss of profits, loss of business, loss of fees, loss of reputation or other similar losses) or for any indirect losses or consequential losses in connection with this Agreement.

15.2 Subject to the terms of this Agreement, and without prejudice to the statutory functions of Irish Water, the parties agree that their respective rights, obligations and liabilities as provided in this Agreement shall be exhaustive of the rights, obligations and liabilities or each of them to the other arising out of, under or in connection with this Agreement, whether such rights obligations or liabilities arise in respect of a breach of contract or tort.

15.3 The rights and remedies of either party under Article 12 is the sole remedy in respect of the consequences of termination of this Agreement and the circumstances resulting from the same.

15.4 Nothing in this Agreement shall limit a party's liability in respect of wilful default or fraud.

16. **ARTICLE 16 - INFORMATION**

16.1 The parties hereto shall retain all information and documentation generated through the operation of this agreement for a period of three (3) years from the date on which the information or documentation was first generated or created. Without prejudice to the generality of the foregoing, information or documentation for the purposes of this clause shall include all information or documentation relating to the volume and characteristics of the Waste Water of the Client, all analysis of the same, all reports on such analysis, all correspondence or notices received from third parties in connection with the discharge of Waste Water to the Treatment Works by the Client, the replies or responses to any such correspondence or notices and all financial information relating to or arising out of the operation of this agreement, including purchases orders, invoices and receipts for payment. Such information and / or documentation shall be retained, where applicable, in electronic form as well as in hard copy form.

16.2 The Client acknowledges that Irish Water is a prescribed body for the purposes of the Freedom of Information Act 2014 and may be required to respond to requests for information arising out of the operation of this agreement, pursuant to that Act. In accordance with the terms of that Act, Irish Water will afford the Client the opportunity to respond to any such requests, but ultimately must comply with the obligations under the act, which in given instances may result in Irish Water furnishing copy documentation received from the Client to third parties in response to requests to the Act.

17. **ARTICLE 17 - NO PARTNERSHIP**

Nothing in this Agreement shall create, or be deemed to create, a partnership or the relationship of principal and agent or employer and employee between Irish Water and the Client.

18. **ARTICLE 18 - SEVERABILITY**

In the event that any provision of this Agreement shall be determined to be partially void or unenforceable by any court or body of competent jurisdiction or by virtue of any legislation to which it is subject or by virtue of any other reason whatsoever, it shall be void or unenforceable to that extent only and no further and the validity and enforceability of any of the other provisions of this Agreement shall not be affected.

19. **ARTICLE 19 - COUNTERPARTS AND EXECUTION**

This Agreement may be executed in any number of counterparts, and by the parties to it on separate counterparts, each of which when so executed will constitute an original but all of which together will evidence the same agreement.

The parties agree that this Agreement may be executed electronically. Transmission of an executed counterpart of this Agreement (but for the avoidance of doubt not just a signature page) by (a) fax or (b) email (in PDF, JPEG or other agreed format) shall take effect as delivery of an executed counterpart of the Agreement.

20. **ARTICLE 20 - ENTIRE AGREEMENT**

This Agreement and the documents referred to in it, constitutes the entire agreement and understanding of the parties and supersedes any previous agreement between the parties relating to discharges of Waste Water to the Treatment Works and may not be modified except by an instrument in writing signed by the duly authorised representatives of the parties. Both Irish Water and the Client agree and acknowledge that, save to the extent that it is otherwise agreed in writing, in entering into this Agreement, and any documents referred to in it, they do not rely upon, and shall have no remedy in respect of, any practice, statement, representation, warranty or understanding (whether negligently or innocently made) of any person (whether party to the Agreement or not)

other than as expressly set out in this Agreement.

**SCHEDULE 1 TREATMENT WORKS**

| <b>Wastewater Treatment Plant (WWTP)</b> | <b>Wastewater Discharge Authorisation Number</b> | <b>Contact at WWTP</b>  |
|--|--|---|
| Carrigtohill WWTP                        | D0044-01   | Name: Muireann Kennedy<br>Phone: 085 887 8594<br>Email: mkennedy@epswater.com |

(1) Should capacity not be available at Carrigtohill WWTP, Irish Water reserves the right to specify an alternative Treatment Works to which the Client shall discharge its Waste Water, in which case the parties agree that Schedule 1 may be updated. (2) All deliveries to Carrigtohill WWTP must be scheduled in accordance with Article 2.5 within the following hours: 9:00 – 16:00 – Monday to Friday. (3) Disposal to take place at Inlet sump at Barryscourt Pumping Station or Carrigtohill WWTP - Leachate tank if capacity is available. (4) Required notice period for booking of tankered waste water loads – 48 hours. (5) Irish Water / Electrical & Pump Services Ltd. reserve the right to refuse entry to the plant at any time if the wastewater is deemed unsuitable. (6) Following successful testing period, the operator may consider accepting greater than 60m<sup>3</sup>/day, this will be subject to operator conditions. (7) The Client and/or his haulage sub-contractors shall adhere at all times to the site Health and Safety requirements. (8) All delivery drivers must complete site induction form prior to arrival, and drip trays to be used on site.



**SCHEDULE 2 DISCHARGE CHARACTERISTICS**

The following waste waters will be accepted subject to adherence to the discharge limits set out in Schedule 4:

| <b>Waste Water Type</b>       | <b>LoW Code</b> | <b>Origin</b>                           |
|-------------------------------|-----------------|---|
| Commercial / Industrial Waste | 02 07 02        | Wastes from spirits distillation        |
| Commercial / Industrial Waste | 02 07 05        | Sludges from on-site effluent treatment |

**SCHEDULE 3 ANALYSES**

Sampling of shall be carried out at the prescribed monitoring frequency below.

*LoW Code: 02 07 02*

| <b>Parameter</b>             | <b>Monitoring Frequency</b>              | <b>Methodology</b>         |
|------------------------------|--|----------------------------|
| Ammonia- Total (as N)        | Initial sample and on request thereafter | Standard Method            |
| BOD - 5 days (Total)         | Initial sample and on request thereafter | Standard Method            |
| Chloride                     | Initial sample and on request thereafter | Standard Method            |
| COD-Cr                       | Initial sample and on request thereafter | Standard Method            |
| Dry solids - sludge          | Initial sample and on request thereafter | Standard Method            |
| Fats, Oils & Greases         | Initial sample and on request thereafter | Standard Method            |
| Flow Rate                    | Every Tanker                             | As agreed with Irish Water |
| pH                           | Initial sample and on request thereafter | Standard Method            |
| Sulphate                     | Initial sample and on request thereafter | Standard Method            |
| Total Heavy Metals           | On request                               | Standard Method            |
| Total Nitrogen               | Initial sample and on request thereafter | Standard Method            |
| Total Petroleum Hydrocarbons | On request                               | Standard Method            |
| Total Phosphorus (as P)      | Initial sample and on request thereafter | Standard Method            |
| Visual Inspection            | Every Tanker                             | Standard Method            |
| Volatile Organic Compounds   | On request                               | Standard Method            |

*LoW Code: 02 07 05*

| <b>Parameter</b>             | <b>Monitoring Frequency</b>              | <b>Methodology</b>         |
|------------------------------|--|----------------------------|
| Ammonia-Total (as N)         | Initial sample and on request thereafter | Standard Method            |
| BOD - 5 days (Total)         | Initial sample and on request thereafter | Standard Method            |
| Chloride                     | Initial sample and on request thereafter | Standard Method            |
| COD-Cr                       | Initial sample and on request thereafter | Standard Method            |
| Dry solids - sludge          | Initial sample and on request thereafter | Standard Method            |
| Fats, Oils & Greases         | Initial sample and on request thereafter | Standard Method            |
| Flow Rate                    | Every Tanker                             | As agreed with Irish Water |
| pH                           | Initial sample and on request thereafter | Standard Method            |
| Sulphate                     | Initial sample and on request thereafter | Standard Method            |
| Total Heavy Metals           | On request                               | Standard Method            |
| Total Nitrogen               | Initial sample and on request thereafter | Standard Method            |
| Total Petroleum Hydrocarbons | On request                               | Standard Method            |
| Total Phosphorus (as P)      | Initial sample and on request thereafter | Standard Method            |
| Visual Inspection            | Every Tanker                             | Standard Method            |
| Volatile Organic Compounds   | On request                               | Standard Method            |

**SCHEDULE 4 DISCHARGE LIMITS**

The Client shall discharge waste water to the treatment works in compliance with the following:

Imports are limited to the following discharge limits, as scheduled in accordance with Article 2.5:

*LoW Code: 02 07 02*

| <b>Parameter</b>     | <b>Unit</b>            | <b>Limit/Max</b> |
|----------------------|------------------------|------------------|
| BOD - 5 days (Total) | milligrams per litre   | 6400             |
| COD-Cr               | milligrams per litre   | 10700            |
| Fats, Oils & Greases | milligrams per litre   | 100              |
| Flow Rate            | Cubic metres per day   | 60               |
|                      | Cubic metres per week  | 300              |
|                      | Cubic metres per month | 1200             |
| pH                   | pH Units               | 6 - 9            |
| Suspended Solids     | milligrams per litre   | 950              |

*LoW Code: 02 07 05*

| <b>Parameter</b> | <b>Unit</b> | <b>Limit/Max</b> |
|------------------|-------------|------------------|
|------------------|-------------|------------------|

Note: Discharge limits for 02 07 05 are inclusive of those for 02 07 02.

All loads shall be presented within 24 hours of collection

The Waste Water shall not contain any material which may cause damage to the Treatment Works or the treatment process such as solid detritus, hazardous waste, mineral oil or hydrocarbons (e.g. fuel waste products)

The Client is obliged to notify Irish Water in advance if the suspected nature of the Waste Water has changed or if the Waste Water is likely to contain any parameters which are not permitted under this Schedule.

## SCHEDULE 5 CHARGES

### **\*Charges**

#### Treatment Charge

Imports will be subject to the following charges:

|                     |            |
|---------------------|------------|
| 02 07 02 / 02 07 05 | €20 per m3 |
|---------------------|------------|


**\*Charges are subject to review.**

#### **Sampling Charge**

The Client shall be liable for all costs associated with the sampling, conveyance and analysis of samples and the reporting of such test results as may be required to establish compliance by the Client with this Agreement

Dated 12/1/2022

**SIGNED** by

DocuSigned by:  
  
C924D2C2069645C...


Name: Yvonne Harris

On behalf of **Irish Water**

In the presence of: Witnessed by DocuSign

Name: \_\_\_\_\_

**SIGNED** by

DocuSigned by:  
  
FC51AD4B0AD3410...

Name: adrian duggan

[On behalf of] **WEST CORK DISTILLERS LIMITED OF MARSH ROAD, SKIBBEREEN, CO. CORK**

In the presence of: Witnessed by DocuSign

Name: \_\_\_\_\_