Comhairle Cathrach Bhaile Átha Cliath
Dublin City Council

DUBLIN CITY COUNCIL

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SERVICES

THIS AGREEMENT, made the day of **202** ,
BETWEEN:

(i) **DUBLIN CITY COUNCIL,** of Civic Offices, Wood Quay, Dublin 8, (hereinafter called "the **Purchaser**") of the one part; and
(ii) **[TBC]** of [TBC] (hereinafter called "the **Supplier**") of the other part

each "a **Party**" together "the **Parties**" (which expression shall include each of its successors in title and permitted assigns).

WHEREAS:

IT IS HEREBY AGREED that the Purchaser shall procure and the Supplier shall provide the Services (as hereinafter defined) on the terms and conditions as hereinafter set forth.

The Supplier warrants that it is duly authorised and competent to satisfactorily provide the Services (as hereinafter defined) on the terms and conditions as hereinafter set forth and to enter into and complete this Agreement.

1. **DEFINITIONS AND INTERPRETATION**

1.1 In these conditions:

"**Agreement**" means these terms and Conditions together with any Materials, appendices, schedules and attachments referred to herein or attached hereto.
"**Conditions**" means these conditions of purchase set out in this Agreement and, unless the context otherwise requires, includes any other special terms and conditions agreed in writing between the Purchaser and the Supplier in the Tender or otherwise.
"**Delivery Address**" means the address/es stated as such on the Order.
"**Delivery Date**" means the date or dates stated on the Order as the date or dates upon which Services and/or Materials are to be delivered or completed by the Supplier.
"**Incoterms**" means the version of the international rules for the interpretation of trade terms of the International Chamber of Commerce as specified in the

Order or if not so stated then the version which is in force at the date when the Agreement is made. Unless the context otherwise requires, any term or expression which is defined in or given a particular meaning by the provisions of Incoterms shall have the same meaning in this Agreement, but if there is any conflict between the provisions of Incoterms and the Agreement, the latter shall prevail.

"**Materials**" means the materials (including any instalment of the materials or part of it) described on the Order.

"**Order**" means the Purchaser's purchase order to which these Conditions are annexed.

"**Price**" means the price of Services and/or Materials as set out in Condition 6.

"**Purchase Order**" means the number stated as such on the Order and to be quote on the invoice.

"**Purchaser**" means Dublin City Council, having its principal place of business at Civic Offices, Wood Quay, Dublin 8 (which expression shall include each of its successors in title and permitted assigns).

"**Purchasing Manager**" means the Purchaser's purchasing manager having his/her address at Civic Offices, Dublin or as otherwise advised in writing by the Purchaser to the Supplier from time to time.

"**Specifications**" means the plans, drawings, specifications, data or other information relating to the Services and/or Materials contained in the Order or the Supplier's offer, or as otherwise agreed by the Parties in writing, or if not so specified or agreed, shall be as specified by the Supplier as standard for the Services and/or Materials..

"**Services**" means the services (including any associated works) and any part of the Services and associated works as may be described on the Order and to be provided to the Purchaser by the Supplier in accordance with the conditions set out in this Agreement.

"**Tender**" means the invitation to tender in relation to the Services and/or Materials and published by the Purchaser to which the Supplier filed tender submissions.

"Supplier" means the person, firm, or company to whom the Order is addressed (which expression shall include each of its successors in title, permitted assigns and Subsidiary Companies).

"Subsidiary Company" has the same meaning as is attributed to such expression by the Companies Act 1963, S. 155 and "Subsidiary Companies" shall be construed accordingly.

1.2 Any reference in this Agreement to a statute or a provision of a statute shall be construed as a reference to that statute or provision as amended, consolidated, replaced, re-enacted or extended at the relevant time.

1.3 The headings in this Agreement are for convenience only and shall not affect their interpretation.

1.4 Save where the express wording or the context otherwise requires, the definitions contained herein shall apply to any special conditions agreed between the Parties.

2. SUPPLIER'S STATUS AND COMPLIANCE

2.1 The Supplier acknowledges that its status under this Agreement is that of an independent Supplier [and further agrees that it is self-employed for all purposes and that it is in business on its own account]. Nothing in the

Agreement shall constitute or shall be deemed to constitute a partnership between the Parties hereto or constitute or be deemed to constitute the Supplier as agent of the Purchaser for any purpose whatsoever.

2.2 The Supplier shall have no authority or power to bind the Purchaser or to contract in the name of or create a liability against the Purchaser in any way or for any purpose.

2.3 The Supplier warrants that it has complied with the requirements of the Revenue Commissioners in respect of its status as an independent Supplier.

2.4 The Supplier will ensure that any persons it engages or employs to undertake the work and provide the Services on its behalf will be duly competent to do so and it further agrees that all such persons will be its servants, agents or employees. The Supplier further agrees to be responsible for making all lawful deductions in respect of income tax or PRSI or similar deductions from the wages of such persons as it may engage or employ from time to time and undertakes to transmit such deductions to the Revenue Commissioners or other relevant authorities.

2.5 The Supplier agrees to comply in all respects and at all times with the relevant statutory and legal requirements in and about the performance of this Agreement and will conform fully with the Purchaser's general work practice arrangements and safety requirements as advised from time to time.

3. BASIS OF PURCHASE

3.1 The Order constitutes an offer by the Purchaser to purchase the Services and/or Materials subject to these Conditions which shall apply to the exclusion of any other terms and conditions, expressed or implied by trade, custom, practice or course of dealing.

3.2 Acceptance by the Supplier of an Order, whether expressly or implied by delivery, shall result in a contract for the sale of the Services and/or Materials which are the subject of such Order.

3.3 No terms or conditions endorsed upon, delivered with or contained in the Supplier's s quotation, acknowledgement or acceptance of Order, Specification, delivery docket, invoice or similar document will form part of the Conditions and the Supplier waives any right which it otherwise might have to rely on such terms and conditions.

3.4 Subject to variation or cancellation permitted by Conditions 4.6, no variation to these Conditions shall be binding unless agreed in writing between the authorised representatives of both Parties.

4. DELIVERY AND ACCEPTANCE

4.1 The Delivery Date, as stated on the Order, is binding upon the Supplier unless otherwise agreed to in writing by the Purchaser.

4.2 The Services and/or Materials shall be delivered to the Delivery Address by the Supplier on or by the relevant Delivery Date during the Purchaser's usual business hours and off-loaded by the Supplier unless the Purchaser requests otherwise.

4.3 No consignment of Materials shall be deemed to have been delivered unless a delivery note has been signed by a duly authorised representative of the Purchaser.

4.4 Time of delivery of Services and/or Materials is of the essence of this Agreement.

4.5 The Supplier shall supply the Purchaser in good time with any instructions or other information required enabling the Purchaser to accept delivery of the Services and/or the Materials.

4.6 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Purchaser of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute delivery date for the Services and/or Materials has been expressly agreed by the Purchaser in writing, the Supplier's failure to effect delivery of the Services and/or Materials on the Delivery Date shall entitle the Purchaser, without prejudice to any other remedy it may have to:

4.6.1 deduct from the Price or (if the Purchaser has paid the Price) to claim from the Supplier by way of liquidated damages for delay 2 per cent of the price for every week's or part week's delay, up to a maximum of 15 per cent of the Price; and/or

4.6.2 cancel the Agreement in whole or in part, whereupon if requested by the Purchaser the Supplier shall refund any part of the Price which has been paid in respect of such Services and/or Materials and the Purchaser shall, on receipt of the refund, at the Supplier's risk and expense, return any Materials already supplied under the Agreement; and/or

4.6.3 (where delivery is by instalments) cancel that instalment and (at the Purchaser's option) purchase substitute Services and/or Materials elsewhere;

and in each case in paragraphs 4.6.1, 4.6.2 and 4.6.3 inclusive recover from the Supplier any costs and liabilities incurred by the Purchaser (including, without limitation, the costs of any replacement Services and/or Materials).

5. SPECIFICATIONS

5.1 The quantity, quality and description of the Services and/or Materials shall, subject as provided in these Conditions, shall be as specified in the Specifications.

5.2 Any Specifications supplied by the Purchaser to the Supplier in connection with this Agreement, or any Specifications specifically produced or used or modified or amended by the Supplier in connection with the Agreement shall be and remain the exclusive property of the Purchaser. Furthermore, any and all copyright, design rights or any other intellectual property rights in the Specifications shall at all times be and remain the exclusive property of the Purchaser.

5.3 The Supplier shall not disclose to any third party any such Specifications except to the extent that it is or becomes public knowledge through no fault of the Supplier or such disclosure is required under law. Furthermore, the Supplier shall not use any such Specifications (or any modifications or amendments thereof) other than as required for the purpose of this Agreement.

6. PRICE AND PAYMENT

6.1 The Price of Services and/or Materials shall be as stated on the Order [and must be in accordance with Incoterms] and subject to no variation or extra charges except with the prior written consent of the Purchaser.

6.2 Unless otherwise stated in the applicable Incoterms and/or specifically agreed by the Purchaser in writing, the Price shall be:

6.2.1 exclusive of any applicable VAT (which shall be payable by the Purchaser subject to receipt of a VAT invoice);

6.2.2 inclusive of all charges for packaging, packing, loading, unloading, shipping, carriage, insurance and delivery of any Materials to the Delivery Address and any duties, taxes or levies other than VAT; and

6.2.3 Payable in Euro.

6.3 Subject as hereinafter provided, the Supplier shall be entitled to invoice the Purchaser on or at any time after delivery of the Services and/or Materials and all invoices must be sent to the address specified on the Order.

6.4 Each invoice shall quote the number of the relevant Purchase Order, the service description, (as stated on the Order) together with applicable part or all of the Price for each service description and the Delivery Date and the Delivery Address. VAT and the cost of shipping (where not included in the Price) shall be itemised separately on each invoice. Where appropriate, invoices must show both the Supplier's VAT Registration number and the Purchaser's VAT registration number.

6.5 Unless otherwise stated in the Order, the Purchaser shall pay for the Services and/or Materials within 30 business days after receipt by the Purchaser of a proper invoice or, if later, after acceptance of the Services and/or Materials by the Purchaser.

6.6 The Purchaser shall be entitled at its sole discretion to set off against the Price or any retention in respect thereof any sums owed to the Purchaser by the Supplier.

6.7 The Purchaser shall be entitled to retain such percentage part of the Price (if any) as is specified in the Order as retention monies against any defects or delays in the Services and/or Services.

6.8 Where no price is stipulated on the Order, the Order must not be filled at higher prices than those last charged or quoted by the Supplier to the Purchaser without the prior consent of the Purchaser in writing.

6.9 If the Supplier does not receive payment in accordance with this Condition 6, the Supplier shall be entitled, upon making a written claim to the Purchaser during or within a reasonable period after the end of the delay in payment to receive financing charges compounded monthly on the amount unpaid during the period of the delay. This period shall be deemed to commence on the date for payment specified in Sub-Condition 6.5. The financing charges referred to herein shall be calculated at the annual rate of interest applicable for late payment (“late payment interest”) which shall be the rate applied by the European Central Bank published in the Official Journal of the European Communities at the due date plus one (1) percentage point and shall be payable in Euro. Accordingly, to the extent that they are otherwise agreed and specified in this Condition 6 each of the provisions of the European Communities (Late Payment in Commercial Transactions) Regulations 2002 which imply certain terms into a contract unless they are otherwise agreed or specified, shall not apply to the Contract.

6.10 The Purchaser shall be entitled to deduct or withhold from the Price before payment thereof, any taxes or other charges which it is obliged to

deduct or otherwise withhold in accordance with the applicable laws and to pay any such deductions or withholdings to the relevant authority. It shall be the sole responsibility and liability of the Supplier to apply to the relevant authority for or to seek any applicable refunds or rebates in respect thereof. Any currency conversion costs and/or other currency risks on any amounts deducted or set off under these Conditions shall be borne by the Supplier.

6.11 All costs (legal or otherwise) borne by the Supplier in connection with the preparation of the Tender or in connection with this Agreement shall be borne by the Supplier and not the Purchaser.

7. WARRANTIES

7.1 The Supplier warrants to the Purchaser and it is a condition of the Contract that the Services and/or the Materials:-

7.1.1 will be of merchantable quality and fit for any purpose held out by the Supplier or made known to the Supplier by the Purchaser in writing at any time up to and including the time the Order is placed and for use by the Purchaser in the ordinary course of its business;

7.1.2 will be free from defects;

7.1.3 will correspond in all respects with the Order, Specifications and/or any sample supplied or advised to the Purchaser; and 7.1.4 will comply with all statutory requirements and regulations relating to the provision of the Services and/or Materials.

7.2 In the event that any Services and/or Materials do not comply with any of the warranties in this Condition 7, and without prejudice to any other remedy that the Purchaser may have, the Purchaser shall be entitled to require the Supplier to re-perform the Services in a conforming manner, including the replacement of any associated Materials.

7.3 The Supplier shall comply with all applicable regulations or other legal requirements concerning waste management, manufacture, labelling, packaging, packing and delivery of Services and/or Materials according to tender as may be amended by the Parties in writing [by the Service Level Agreement] or otherwise.

7.4 The warranties and remedies provided for in this Condition 7 and Conditions 4.6, and Condition 14 shall be in addition to those implied by or available at law or in equity and shall continue in force notwithstanding acceptance by the Purchaser of all or part of the Services and/or Materials in respect of which such warranties and remedies are available.

8. NOTICES

8.1 Any notice or other communication whether required or permitted to be given by one Party hereto to the other shall be in writing and shall be deemed to have been duly given if signed by or on behalf of a duly authorised officer of the party giving the notice and:-

8.1.1 if delivered, at the time of delivery to the addressee or its duly authorised agent;

8.1.2 if sent by pre-paid post, four days after posting if addressed to the party to whom such notice is to be given at the address set forth for such party in this Agreement (or such other address as is from time to time notified to the other Party hereto);

8.1.3 if transmitted by facsimile, on a receipt of an error free transmission report to such facsimile number or numbers from time to time notified to the other Party; and

8.1.4 if transmitted electronically on receipt of a "read receipt" or equivalent.

8.2 All notices to the Purchaser under the Contract shall be in writing and sent to the Purchaser's buying entity specified on the Order.

8.3 All notices to the Supplier under the Contract shall be in writing and sent to the address specified on the Order.

9. VALIDITY

9.1 If any provision of these Conditions is held by any competent authority to be invalid 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.

10. TUPE

10.1 In the event that the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (the "**TUPE Regulations**") apply in relation to or in connection with this Agreement, the Supplier shall indemnify the Purchaser fully (without limitation) in respect of any losses, damages, costs or expenses of any kind incurred arising from its compliance with the TUPE Regulations.

10.2 The Supplier shall be responsible for satisfying itself as to the applicability of the TUPE Regulations and shall bear all costs and expenses associated with same.

11. FORCE MAJEURE

11.1 Neither the Purchaser nor the Supplier shall be liable to the other or be deemed to be in breach of this Agreement by reason of any delay in performing, or any failure to perform, any of its obligations under this Agreement if the delay or failure was beyond that Party's reasonable control including in such cases but not by way of limitation of any law, order, regulation, directive or request of any Government or legal authority; war or threat of war, insurrection, national emergency, riots, acts of public enemies, fire, floods, or other catastrophe, strikes, lock-outs or any industrial disputes of the Purchaser or any similar cause beyond the control of the Party (hereinafter referred to as a "**Force Majeure Event**").

11.2 Upon the happening of any Force Majeure Event, the Party who is in breach as a result of the circumstances outlined in Condition 11.1 above shall give notice thereof in writing to the other as soon as reasonably practicable and shall nevertheless constantly use all reasonable endeavours to prevent any delay in completion of the Agreement.

11.3 On the occurrence of Force Majeure Event, both Parties shall allow a fair and reasonable extension of the time for completion of this Agreement.

11.4 If the Force Majeure Event continues for 30 days then either Party may terminate at 14 days written notice.

12. PAY AND CONDITIONS

12.1 The Supplier shall ensure that the terms and conditions of employment in respect of work persons employed by, or otherwise working for, the Supplier in the performance of this Agreement [including in relation to pension contributions] comply with terms of the Employment Regulation Order applicable [to the relevant sector] registered under the Industrial Relations Acts 1946 to 2004. The Supplier shall ensure that the rates of pay and conditions are no less favourable than those for the relevant category of work person set out in the Employment Regulation Order.

12.2 To monitor compliance with 12.1 above, the Purchaser shall be entitled to make random checks requiring production of records if necessary. If the Purchaser so requests, the Supplier shall within 5 working days after the receipt of the request, give to the Purchaser a statement showing the amount of wages and other payments due at the date of the request to and in respect of each working person, or, in respect of work persons not employed by or otherwise working for the Supplier, ensure that their employer or the person for whom they are working does the same.

12.3 If the Supplier has not complied with 12.1 above, the Purchaser shall [without limiting its other rights or remedies] be entitled to estimate the amount that should have been paid to work persons and contributions that should have been made on their behalf, and the Purchaser may deduct the estimated amount from any payment due to the Supplier, until the Purchaser is satisfied that all proper amounts have been paid.

13. SAFETY AND INSURANCE

13.1 The Supplier shall in so far as same apply to the sale, delivery and performance of Services and/or Materials:-

(a) comply and ensure that each of its employees, subcontractors, agents or representatives complies with all Irish safety and equality legislation including, without limitation, The Safety, Health & Welfare at Work Act, 2005, The Safety, Health & Welfare at Work (Construction) Regulations, 2007 and 2013 (the "**Regulations**"), The Safety, Health & Welfare at Work (General Application) Regulations 2007, The Safety, Health and Welfare at Work (General Application) (Amendment) Regulations 2012, The Employment Equality Act 1998 and the Equal Status Act 2000 as may be amended from time to time and any subordinate legislation made thereunder together with the most recent versions of the following safety requirements (as applicable):-

(b) at the Purchaser's request, provide to the Purchaser with two copies of:-

(i)the Safety Statement as defined in and pursuant to Section 20, Part 3 of the Safety, Health & Welfare at Work Act, 2005 and

(ii) the developed Safety Plan as defined in the Regulations.

(c) provide or procure the provision of all necessary documents for inclusion in the Safety File as defined in the Regulations to be

furnished to the Employer and/or Purchaser on and as a condition to the achievement of taking over; and

(d) indemnify and hold harmless the Purchaser in the event of any claims, losses, costs, damages, expenses, fines and/or penalties arising from the failure by the Supplier, its employees, sub-Suppliers, agents or representatives to comply with the provisions of this sub-condition.

13.2 The Supplier shall at all times insure and keep itself insured with a reputable insurance company against all insurable liability set out in the Order in respect of the Services and/or Materials, and without prejudice to the generality of the foregoing, against all the Supplier's liabilities under Condition 14.

13.3 The Supplier shall provide the Purchaser with proof of its insurance cover no later than the time stated in a written request to supply same from the Purchaser. The Supplier agrees to provide and maintain for the duration of this Agreement all appropriate policies of insurance in respect of public and employers liability that may be stipulated by the Purchaser and the Supplier will furnish such insurance policies to the Purchaser prior to the commencement of this Agreement and will provide the Purchaser with copies thereof on request at any time.

13.4 The Supplier shall provide all facilities, assistance and advice required by the Purchaser or the Purchaser's insurers for the purpose of contesting or dealing with any action, claim or matter arising out of or in connection with the Supplier's performance of this Agreement.

13.5 The Supplier shall be responsible for compliance with the safety and insurance obligations set out in this Condition 13 without reliance on the Purchaser.

14. INDEMNITIES AND LIABILITY

14.1 The Supplier agrees to indemnify the Purchaser against any acts or omissions or breaches of this Agreement (and whether negligent or otherwise) on its part or on the part of any of its servants or agents or employees which may result in any loss, injury, damage or expense whatsoever either to itself or to such servants or agents or employees or to members of the public including the employees, agents and servants of the Purchaser, and agrees to indemnify the Purchaser in respect of any claim by its servants or agents or employees or members of the public including the employees, agents and servants of the Purchaser for compensation in respect of any accident arising in the course of the performance of this Agreement howsoever caused save where the accident is caused by the negligence or breach of contract and or duty of the Purchaser, its servants and or agents.

[Notwithstanding clause 14.1 above, the liability of the Supplier to the Purchaser shall be limited as follows:

(a) In the case of damage to physical or real property, the limit of liability shall be €XXX euro; and
(b) In respect of any other liability, the limit of liability shall be XXX% of the value of the contract, that is €XXX euro.]

15. COMMENCEMENT AND TERMINATION

15.1 The Parties agree that this Agreement shall commence on the date set out in the Order.
15.2 The Parties agree that this Agreement shall terminate forthwith in the following circumstances unless otherwise stated:

15.2.1 on the date set out in the Order;

15.2.2. the Supplier makes any voluntary arrangement with its creditors or becomes insolvent or bankrupt or goes into liquidation; or

15.2.3 an encumbrancer takes possession of, or a receiver is appointed to, the Supplier or any of its property or assets; or

15.2.4 the Supplier ceases, or threatens to cease, to carry on business; or

15.2.5 the Supplier commits a material breach of any term or condition of this Agreement or fails to perform any obligation, responsibility hereunder and if such breach is capable of being remedied fails to remedy the breach within thirty (30) days of notice given by the Contracting Authority requiring the Supplier to do so; or

15.2.6 the Supplier is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 or any analogous provision of law; or

15.2.7 an order is made or an effective resolution is passed for the winding up of the Supplier other than for the purpose of an amalgamation or reconstruction the terms of which have been agreed by the Purchaser, or

15.2.8 a petition is presented or an order is made or a resolution passed or any analogous proceedings or action is taken for the appointment of an examiner, administrator, administrative receiver, trustee or any similar officer over the Supplier or any part of its assets; or

15.2.9 at any time before delivery of the Services and/or Materials on [30 days' notice] from the Purchaser

15.3 In the event that this Agreement is terminated by the Purchaser in accordance with Clause 15.2.9, the Purchaser shall pay the Supplier the portion of the Price for any Services and /or Materials delivered up to the date of termination of the Agreement and for its reasonable and vouched costs incurred in connection with the Agreement up to the date of termination of this Agreement.

16. ASSIGNMENT

This Agreement is personal to the Supplier who shall not assign, charge or transfer any right or obligation under this Agreement to any other person without the Purchasers written consent.

17. SUB-CONTRACTING

17.1 The Supplier shall not delegate, sub-contract or transfer the performance of the whole of this Agreement to any other person without the written consent of the Purchaser, and shall ensure that any permitted subcontractor shall not delegate, sub-contract or transfer the performance of the whole of its obligations, without the consent of the Purchaser.

17.2 The Supplier shall not be relieved or excused of responsibility or liability under this Agreement nor shall performance of its obligations be affected by the appointment of any sub-Supplier or any other delegation of its duties under this Agreement.

17.3 Unless the Parties otherwise agree, the Supplier shall be responsible for the acts, omissions and neglect of the sub-Supplier whether employed directly or indirectly by it, and the agents or employees of any of them as fully as if they were the acts, omissions or neglect of the Supplier, its agents or employees.

18. CONFIDENTIALITY

18.1 Save as provided for in Sub Condition 18.2, the Supplier shall treat the details of this Agreement and any information made available in relation thereto and all information concerning the Agreement as private and confidential and shall not publish or disclose details of same or any particulars thereof (save insofar as may be necessary for the purposes of the Agreement) without the previous written consent of the other Party.

18.2 The undertaking in Sub Condition 18.1 does not apply to confidential information which (i) comes into the public domain through no fault of the Supplier; (ii) was lawfully in the possession of the Supplier prior to the disclosure by the Purchaser; (iii) at any time is required by an applicable law or an applicable regulatory authority to be disclosed; or (iv) at any time after the Agreement commences comes lawfully into the Supplier's possession from a third party.

18.3 The provisions of this Condition shall survive two years following the termination of the Agreement.

18.4 The Supplier shall comply fully with the Data Protection Acts, 1988 and 2003.

18.5 The Supplier shall not advertise or publicly announce that it is supplying the Services to the Purchaser without the prior written consent of the Purchaser, such consent not to be unreasonably withheld.

18.6 The Purchaser shall endeavour to hold confidential any information relating to the Supplier, its business and operations which is not already in the public domain, subject to the Purchaser's obligations under law, including the Freedom of Information Acts 1997 and 2003 ("The FOI Acts") and the European Communities (Access to Information on the Environment)Regulations 2007 and 2011 ("AIE Regulations"), and to the remaining provisions of this Clause 18.6. In the event that the Supplier considers that any information supplied by it should not be disclosed by the Purchaser because of its sensitivity, the Supplier shall, when providing such

information, identify the same and specify the reasons for its sensitivity. In the absence of such identified sensitivity, the Purchaser may release such information, in the exercise of its lawful discretion, pursuant to its obligations under law, including in response to a request made under the FOI Acts or the AIE Regulations. The Purchaser accepts no liability whatsoever in respect of any information provided by the Supplier which is subsequently released or in respect of any loss or damage suffered as a result of the Purchasers complying with its obligations under law, including the FOI Acts and the AIE Regulations.

19. WAIVER

19. A failure by either Party to exercise any right or remedy arising out of this Agreement shall not constitute a waiver of the right or remedy. No waiver shall be effective unless written notice of the waiver is given to the other Party. A waiver of any right or remedy shall not constitute a waiver of any other right or remedy arising out of this Agreement.

20. SEVERANCE

20.1 If at any time any one or more of the provisions in this Agreement is or becomes invalid, illegal or otherwise unenforceable in any respect under any law or regulation, the validity, legality and enforceability of the remaining provisions of this Agreement shall not be in any way affected or impaired.

21. DISPUTE RESOLUTION

21.1 Any dispute or difference arising out of or in connection with this Agreement shall be referred in the first instance to a Conciliator to be agreed between the Parties, or failing such agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of a Conciliator, to be appointed on the request of either Party by the Chairman of the time being of the Chartered Institute of Arbitrators (Irish Branch) or failing his or her availability the Vice Chairman of the Institute.

21.2 In the event that the matter cannot be resolved by conciliation it shall be referred to a single Arbitrator to be agreed between the Parties, or failing such agreement within fourteen days after either Party has given to the other a written request to concur in the appointment of an Arbitrator, to be appointed on the request of either Party by the Chairman of the time being of the Chartered Institute of Arbitrators (Irish Branch) or failing his or her availability the Vice Chairman of the Institute.

21.3 The decision of the Arbitrator appointed under this Condition 21 shall be final and binding on the Parties.

21.4 Such arbitration shall be governed by the Arbitration Acts 2010 or any statutory variation, modification or re-enactment thereof for the time being in force.

21.5 For the avoidance of doubt, the performance of this Agreement shall not stop by reason of such dispute-resolution proceedings unless termination is directed by the Conciliator or Arbitrator

22. LAW AND JURISDICTION

22.1 This Agreement shall be governed by, and construed in accordance with the Law of Ireland and the Courts of Ireland shall have exclusive jurisdiction.

23 ENTIRE AGREEMENT

23.1 Unless it is otherwise specifically stated in or on the Order, this Agreement supersedes any arrangements, understandings, promises or agreements made or existing between the Parties thereto prior to or simultaneously with the Agreement and constitutes the entire agreement between the Parties thereto.

23.2 Except as otherwise provided herein, no addition, amendment to or modification of this Agreement shall be effective unless it is made in writing and signed by and on behalf of both Parties.

DRAFT

PRESENT when the Corporate Seal of
Dublin City Council was affixed hereto:-

PRESENT when the Common Seal of
[TBC]
was affixed hereto:-

DRAFT