DUBLIN CITY COUNCIL

GENERAL TERMS AND CONDITIONS FOR THE PURCHASE OF SUPPLIES

THIS AGREEMENT, made the **[●]** day of **[●]**202 ,
BETWEEN:
(i) **DUBLIN CITY COUNCIL,** of Civic Offices, Wood Quay, Dublin 8, (hereinafter called "the **Contracting Authority**") of the one part; and
(ii) **[●]** of **[●]** (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 Contracting Authority shall procure and the Supplier shall provide the Goods (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 Goods (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 including the Specification and any Order given hereunder together with any, 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 Contracting Authority and the Supplier in the Tender or otherwise.
"**Delivery Address**" means the address/es stated as such on the Order or such other address as may be agreed in Writing.
"**Delivery Date**" means the date or dates stated on the Order as the date or dates upon which the Goods are to be delivered or completed by the Supplier or as otherwise agreed by the Parties.
"**Goods**" means the goods (including any instalment of the goods or any part of them) to be supplied (and, where appropriate, installed and commissioned) in accordance with this Agreement pursuant to Orders made hereunder.
"Invoice" means a written document from the Supplier to the Contracting Authority detailing the Goods sold and delivered to the Contracting Authority hereunder and requesting payment for such Goods.
"**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.
"**Order**" means the Contracting Authority's purchase order to which these Conditions are annexed.
"**Price**" means the price of Goods as set out in the Order.
"**Purchase Order**" means the number stated as such on the Order and to be quote on the invoice.
"**Purchasing Manager**" means the Contracting Authority's purchasing manager having his/her address at Civic Offices, Dublin or as otherwise advised in writing by the Contracting Authority to the Supplier from time to time.
"**Special Conditions**" means any special terms and conditions agreed in Writing between the Contracting Authority and the Supplier from time to time.
"**Specifications**" means the plans, drawings, specifications, data or other information relating to the Goods contained in the Order, or as otherwise advised and/or approved by the Contracting Authority, and either set out in the Schedule hereto or annexed to the Special Conditions or as otherwise agreed by the Parties in Writing from time to time.
"**Writing**" includes cable, e-mail, facsimile transmission and comparable means of communication.

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 Contracting Authority for any purpose whatsoever.

2.2 The Supplier shall have no authority or power to bind the Contracting Authority or to contract in the name of or create a liability against the Contracting Authority 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 shall be in a position to produce, as appropriate, either a valid C2 Tax Certificate, a Tax Clearance Certificate or, in the case of Suppliers having their principal place of business outside Ireland, a statement from the Revenue Commissioners that it has satisfied them as to its suitability on tax grounds to be awarded the contract. Where a Tax Clearance Certificate expires within the course of the Contract, the Contracting Authority shall be entitled to seek and the Supplier shall provide a renewed certificate. All payments under the Contract will be conditional on the Supplier being in possession of a valid Tax Clearance Certificate at all times.

2.5 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.

2.6 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 Contracting Authority's general work practice arrangements and safety requirements as advised from time to time.

2.7 The Supplier shall comply with all requirements and/or obligations of any statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measure in the fulfilment of this Agreement, in particular (but not limited to) in relation to the manufacture, packaging, packing, distribution, importation, pricing or sales of the Goods. In particular, but without limitation to the generality of the foregoing, any patented articles supplied hereunder shall be marked in accordance with the provisions of the Patents Act, 1992.

2.8 The Supplier shall be responsible for obtaining any import licences, permits or other consents necessary for the importation and delivery of Goods and shall produce evidence of same if requested to do so by the Contracting Authority.

2.9 The Supplier agrees on request to supply the Contracting Authority with any necessary declarations, certificates and other documents stating the origin of the Goods.

3. BASIS OF PURCHASE

3.1 The Order constitutes an offer by the Contracting Authority to purchase the Goods 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 Goods 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.

3.5 The Supplier shall not unreasonably refuse any request by the Contracting Authority to inspect and test the Goods during manufacture, processing or storage at the premises of the Supplier or any third party prior to despatch, and the Supplier shall provide the Contracting Authority with all facilities reasonably required for such inspection and testing.

3.6 If, as a result of inspection or testing, the Contracting Authority is not satisfied that the Goods will comply in all respects with the Agreement and the Contracting Authority so informs the Supplier within seven (7) days of inspection or testing, the Supplier shall take such steps as are necessary to ensure compliance.

3.7 The Goods shall be marked, packed and secured in accordance with the Contracting Authority's instructions and any applicable regulations or requirements of the carrier, and properly packed and secured so as to reach their destination in an undamaged condition.

3.8 The Supplier shall supply, without charge, such reasonable quantity of operation and maintenance manuals in English relating to the Goods which the Contracting Authority may require and/or which are necessary for the proper installation, operation and maintenance of the Goods.

3.9 In selecting packaging, the Supplier shall take into consideration environmental concerns and shall use packing material of sufficient strength and quality to protect the Goods against all transport risks and shall be responsible for any damage to the Goods resulting from the inadequacy of such packaging in accordance with the indemnity provisions of this Agreement.

3.10 The Contracting Authority may (unless otherwise agreed in Writing) require the Supplier to dispose, at the Supplier's cost, of all packaging materials. Failure by the Supplier to effect disposal within 14 days of the relevant delivery shall entitle the Contracting Authority to arrange disposal with another supplier and any money paid by the Contracting Authority in effecting disposal of packaging shall be paid by the Supplier to the Contracting Authority or set off against any monies owed to the Supplier pursuant to Clause 6.

3.11 Where this Contract is for the supply of equipment, it will, unless otherwise stated, also cover the delivery, installation and commissioning (to include any necessary start-up, calibration and testing) of the equipment, operator training and supply of manuals.

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 Contracting Authority. Where the Contracting Authority has agreed that the Delivery Date is to be specified by the

Supplier after the placing of an Order, the Supplier shall give the Contracting Authority reasonable notice of such Delivery Date and the Contracting Authority shall be entitled to cancel the relevant Order without penalty or other obligation at any time within seven (7) days following receipt of such notice.

4.2 The Goods shall be delivered to the Delivery Address by the Supplier on or by the relevant Delivery Date during the Contracting Authority's usual business hours and off-loaded by the Supplier unless the Contracting Authority 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 Contracting Authority.

4.4 Time of delivery of Goods is of the essence of this Agreement.

4.5 The Supplier shall supply the Contracting Authority in good time with any instructions or other information required enabling the Contracting Authority 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 Contracting Authority of the earliest possible date for delivery. Notwithstanding such notice, and unless a substitute delivery date for the Goods has been expressly agreed by the Contracting Authority in writing, the Supplier's failure to effect delivery of the Goods on the Delivery Date shall entitle the Contracting Authority, without prejudice to any other remedy it may have to:

4.6.1 deduct from the Price or (if the Contracting Authority 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 Contracting Authority the Supplier shall refund any part of the Price which has been paid in respect of such Goods and the Contracting Authority 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 Contracting Authority's option) purchase substitute Goods 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 Contracting Authority (including, without limitation, the costs of any replacement Goods).

4.7 A packing note quoting the number of the Order, the Supplier's name and the Delivery Address must accompany each delivery or consignment of the Goods and must be displayed prominently.

4.8 The Contracting Authority shall be entitled to reject any Goods delivered which are not in accordance with the Agreement, and shall not be deemed to have accepted any Goods until:

(a) the Contracting Authority has had a reasonable time to inspect them following delivery of the Goods; and

(b) the Goods have passed any acceptance tests which the Contracting Authority deems appropriate, such tests to be carried out by the Contracting Authority within a reasonable period after the date of actual delivery of such Goods; or, if later,

(c) the lapse of a reasonable period after any latent defect in the Goods has become apparent.

In particular, the giving of a receipt or signature of a delivery note by the Contracting Authority, its servants or agents, on delivery to the Supplier, its servants or agents, shall be proof only of delivery notwithstanding the terms

of any such receipt or delivery note. It is the Supplier's responsibility to retrieve at no extra cost to the Contracting Authority any defective or damaged Goods within seven days of notification being issued. Any rejected articles not removed within the prescribed time may be re-consigned to the Supplier, who shall repay to the Contracting Authority any expense thereby incurred or occasioned.

4.9 The Supplier shall supply the Contracting Authority in good time with any instructions or other information required to enable the Contracting Authority to accept delivery of the Goods.

4.10 The Contracting Authority shall not be obliged to return to the Supplier any packaging or packing materials for the Goods, whether or not such Goods are accepted by the Contracting Authority.

4.11 Where access to the Contracting Authority's premises is necessary in connection with delivery or installation of the Goods, the Supplier shall comply with all reasonable security and health and safety requirements of the Contracting Authority while on the Contracting Authority's premises, and shall procure that all of its employees, agents, servants and sub-contractors shall likewise comply with such requirements

5. SPECIFICATIONS

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

5.2 Any Specifications supplied by the Contracting Authority 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 Contracting Authority. 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 Contracting Authority.

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 Goods 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 Contracting Authority.

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

6.2.1 exclusive of any applicable VAT (which shall be payable by the Contracting Authority 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 the Goods to the Delivery Address and any duties, taxes or levies other than VAT; and

6.2.3 Payable in Euro; and

6.2.4 inclusive of all royalties, licence fees or similar expenses in respect of the making, use or exercise by the Supplier of any work, invention or design for the purpose of performing its obligations under this Agreement, and

6.2.5 No less favourable than the price at which the Supplier supplies the same Goods to other purchasers in Ireland.

6.3 The Contracting Authority shall be entitled to any discount for prompt payment, bulk purchase or volume of purchase customarily granted by the Supplier, whether or not shown on its own terms and conditions of sale or set out in the Special Conditions or any Order.

6.4 The Price of the Goods shall be fixed for the first year of the Agreement and not subject to review but may be reviewed in each successive year for the duration of the Agreement. The Price of the Goods for each successive year shall be agreed by the Contracting Authority and the Supplier and recorded in Writing. In the event of a failure to agree a new price for the Goods, the existing Price shall be deemed to be the Price of the Goods as increased by the percentage rate of inflation in the previous twelve months, as calculated by the consumer price index ("CPI") published by the Consumer Association of Ireland, provided that either party shall thereafter be entitled to terminate the Contract on three months' prior written notice.

6.5 In the event that the cost to the Supplier of any raw materials used by the Supplier in the manufacture of the Goods should increase at an annual rate materially in excess of the applicable CPI over any twelve-month period, at the request of the Supplier the parties will review the Price of the relevant Goods. In the event of a failure to agree on a new Price for the relevant Goods, the existing Price of such Goods will remain unchanged provided that the Supplier in such circumstances shall have the right upon three months' prior written notice to terminate the supply of such Goods to the Contracting Authority and the Contracting Authority shall thereupon have no obligation to purchase or pay for such Goods but the Contract shall otherwise remain in full force and effect.

6.6 Subject as hereinafter provided, the Supplier shall be entitled to invoice the Contracting Authority on or at any time after delivery of the Goods and all invoices must be sent to the address specified on the Order. Where a Supplier has not accompanied its invoice with an appropriate delivery note and there is difficulty in establishing proof of delivery, the Supplier shall supply the Contracting Authority with the relevant delivery note signed by a duly authorised representative of the Contracting Authority, immediately upon request. The relevant invoice will be held "in dispute" until proof of delivery is established.

6.7 Each Invoice shall quote the Contracting Authority's product codes (as stated on the relevant Order) together with the applicable Price rate for each code, the Price as stated on the Order and the Delivery Address. VAT shall be itemised separately on each Invoice. All Invoices shall include the Supplier's VAT Registration Number. A separate Invoice must be rendered for each individual delivery of Goods, unless otherwise agreed in Writing between the parties. In the event that the Supplier makes a partial delivery of Goods the Supplier shall not be entitled to invoice for such partial delivery until all outstanding Goods have been delivered, unless the Contracting Authority has consented to such partial delivery.

6.8 Unless otherwise stated in the Order, the Contracting Authority shall pay for the Goods within 30 business days after receipt by the Contracting Authority of a proper invoice or, if later, after acceptance of the Goods by the Contracting Authority.

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

6.10 The Contracting Authority 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 Goods being supplied.

6.11 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 Contracting Authority without the prior consent of the Contracting Authority in writing.

6.12 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 Contracting Authority 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.

6.13 The Contracting Authority 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.

6.14 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 Contracting Authority.

6.15 The Supplier shall provide the Contracting Authority within thirty (30) days of each anniversary of the date of this Contract and within thirty (30) days of termination of this Contract with a statement giving accurate and complete details of the amount and value of the Goods sold by the Supplier to the Contracting Authority under this Contract during the year ending on the date of such anniversary or, in the event of termination of this Contract, during the period from the date of this Contract or the date of the last such statement submitted by the Supplier to the Contracting Authority (as appropriate) to the date of termination of this Contract.

6.16 The Supplier shall keep at its normal place of business detailed, accurate and up to date records of the amount and value of all Goods sold by it to the Contracting Authority hereunder. The Contracting Authority shall be entitled on reasonable notice to enter the Supplier's premises during normal office hours and to inspect such records in order to verify whether any statement supplied by the Supplier to the Contracting Authority pursuant to Clause 5.8 above is accurate and complete.

6.17 On request from the Contracting Authority, the Supplier shall, at its own expense, ensure that its external auditors provide the Contracting Authority with an annual audit certificate as soon as reasonably practicable after the end of the Supplier's financial year. In the annual audit certificate the auditors shall confirm that any statement supplied by the Supplier to the Contracting Authority, pursuant to Clauses 6.15 or 6.16 above, during that financial year is complete and accurate.

7. RISK AND PROPERTY

7.1 Title in the Goods shall pass to the Contracting Authority on delivery to and acceptance by the Contracting Authority unless payment is made prior to delivery, in which event title shall pass to the Contracting Authority once payment has been made. Where title in the Goods has passed to the Contracting Authority prior to delivery pursuant to this clause the Supplier shall keep such Goods separate from other Goods and shall clearly mark the Goods as the property of the Contracting Authority.

7.2 Nothing in this Contract shall be deemed to give the Supplier any right, title, licence, trade name, trade mark, patent, packaging design, intellectual property right or other interest of the Contracting Authority. The Supplier agrees that all the foregoing are and shall remain the exclusive property of the Contracting Authority unless otherwise agreed in Writing between the parties.

7.3 Notwithstanding the provisions of Clause 7.1 above, risk of damage to or loss of the Goods shall, unless, otherwise agreed between the parties, remain with the Supplier until delivery, acceptance and commissioning of the Goods to the Contracting Authority in accordance with the provisions of this Contract and, in particular, Clause 6 hereof.

8. WARRANTIES

8.1 The Supplier warrants to the Contracting Authority and it is a condition of the Agreement that the Goods:-

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

8.1.2 will be free from defects;

8.1.3 will correspond in all respects with the Order, Specifications and/or any sample supplied or advised to the Contracting Authority; and

8.1.4 will comply with all statutory requirements and regulations relating to the provision of the Goods.

8.2 Without prejudice to any other remedy, if any Goods are not supplied in accordance with the Contract, then the Contracting Authority shall be entitled:

(a) to require the Supplier to repair the Goods or to supply replacement goods of a type and specification approved in Writing by the Contracting Authority and to reimburse the Contracting Authority in respect of all losses incurred in recovering and returning such Goods in accordance with the Contract within fourteen (14) working days unless otherwise specified; or

(b) at the Contracting Authority's sole option, and whether or not the Contracting Authority has previously required the Supplier to repair the Goods or to supply any replacement goods, to treat the Contract as discharged by the Supplier's breach and require the repayment of any part of the Price which has been paid.

8.3 The Supplier shall comply with all applicable regulations or other legal requirements concerning waste management, manufacture, labelling, packaging,

packing and delivery of Goods according to tender as may be amended by the Parties in writing [by the Service Level Agreement] or otherwise.

8.4 The warranties and remedies provided for in this Condition 8 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 Contracting Authority of all or part of the Goods in respect of which such warranties and remedies are available.

8.5 Without prejudice to the generality of Clause [15.1], the Supplier shall indemnify the Contracting Authority in full against all liability, including, without limitation, loss, damages, costs and expenses (including legal expenses) awarded against or incurred or paid by the Contracting Authority as a result of or in connection with:

(a) breach of any warranty given by the Supplier in relation to the Goods;

(b) any claim that the Goods infringe or that their importation, use or re-sale, infringes the patent, copyright, design, right, trade mark or other intellectual property rights of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Contracting Authority;

(c) any liability under the Liability for Defective Products Act, 1991 in respect of the Goods; and

(d) any act or omission of the Supplier or its employees, agents or sub-contractors in supplying, delivering and installing the Goods.

8.6 The Supplier shall make good all damage that may be caused by an act or default of the Supplier, the Supplier's agents or servants, to any property of the Contracting Authority. The Contracting Authority shall retain the option to have the damage otherwise made good and to charge the Supplier with the expense.

9. NOTICES

9.1 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:-

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

9.1.2 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);

9.1.3 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

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

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

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

10. VALIDITY

10.1 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.

11. TUPE

11.1 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 Contracting Authority fully (without limitation) in respect of any losses, damages, costs or expenses of any kind incurred arising from its compliance with the TUPE Regulations.
11.2 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.

12. FORCE MAJEURE

12.1 Neither the Contracting Authority 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 Contracting Authority or any similar cause beyond the control of the Party (hereinafter referred to as a "**Force Majeure Event**").
12.2 Upon the happening of any Force Majeure Event, the Party who is in breach as a result of the circumstances outlined in Condition 12.1 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.
12.3 On the occurrence of Force Majeure Event, both Parties shall allow a fair and reasonable extension of the time for completion of this Agreement.
12.4 If the Force Majeure Event continues for 30 days then either Party may terminate at 14 days written notice.

13. PAY AND CONDITIONS

13.1 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.
13.2 To monitor compliance with 13.1 above, the Contracting Authority shall be entitled to make random checks requiring production of records if necessary. If the Contracting Authority so requests, the Supplier shall within 5 working days after the receipt of the request, give to the Contracting Authority 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.

13.3 If the Supplier has not complied with 13.1 above, the Contracting Authority 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 Contracting Authority may deduct the estimated amount from any payment due to the Supplier, until the Contracting Authority is satisfied that all proper amounts have been paid.

14. SAFETY AND INSURANCE

14.1 The Supplier shall in so far as same apply to the sale, delivery and performance of Goods:-

(a) comply and ensure that each of its employees, sub-contractors, 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 Contracting Authority's request, provide to the Contracting Authority 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 Contracting Authority on and as a condition to the achievement of taking over; and

(d) indemnify and hold harmless the Contracting Authority 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.

14.2 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 Goods, and without prejudice to the generality of the foregoing, against all the Supplier's liabilities under Condition 15.

14.3 The Supplier shall provide the Contracting Authority with proof of its insurance cover no later than the time stated in a written request to supply same from the Contracting Authority. 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 Contracting Authority and the

Supplier will furnish such insurance policies to the Contracting Authority prior to the commencement of this Agreement and will provide the Contracting Authority with copies thereof on request at any time.

14.4 The Supplier shall provide all facilities, assistance and advice required by the Contracting Authority or the Contracting Authority'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.

14.5 The Supplier shall be responsible for compliance with the safety and insurance obligations set out in this Condition 14 without reliance on the Contracting Authority.

15. INDEMNITIES AND LIABILITY

15.1 The Contracting Authority is relying wholly and exclusively upon the Supplier's skill, judgement and expertise in supplying the Goods and accordingly the Supplier shall be liable to the Contracting Authority for any loss or damage whatsoever, or howsoever or wherever caused arising directly or indirectly in connection with this Agreement save to the extent that such loss or damage arises as a direct result of the negligence or default of the Contracting Authority. Any approval, testing or acceptance by the Contracting Authority in accordance with this Agreement shall not in any way limit the Supplier's liability and obligations under this Agreement.

15.2 The Supplier agrees to indemnify the Contracting Authority 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 Contracting Authority, and agrees to indemnify the Contracting Authority 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 Contracting Authority 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 Contracting Authority, its servants and or agents.

Notwithstanding clause 15.2 above, the liability of the Supplier to the Contracting Authority shall be limited as follows:

(a) In the case of damage to physical or real property, the limit of liability shall be €1 million euro; and
(b) In respect of any other liability, the limit of liability shall be 120% of the value of the contract, that is € Y million euro.

16. COMMENCEMENT AND TERMINATION

16.1 The Parties agree that this Agreement shall commence on the date set out in the Order.

16.2 The Parties agree that this Agreement shall terminate forthwith in the following circumstances unless otherwise stated:

16.2.1 on the date set out in the Order;

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

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

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

16.2.5 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

16.2.6 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

16.2.7 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 Contracting Authority, or

16.2.8 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

16.2.9 at any time before delivery of the Goods on [30 days notice] from the Contracting Authority

16.3 In the event that this Agreement is terminated by the Contracting Authority in accordance with Clause 16.2.9, the Contracting Authority 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.

17. 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 Contracting Authority's written consent. The Contracting Authority is entitled to assign and transfer all or part of its rights and obligations under this Agreement and shall provide the Supplier with written notice of any such assignment or transfer.

18. SUB-CONTRACTING

18.1 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 Contracting Authority, 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 Contracting Authority.

18.2 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.

18.3 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.

19. CONFIDENTIALITY

19.1 Save as provided for in Sub Condition 19.2, 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.

19.2 The undertaking in Sub Condition 19.1 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 Contracting Authority; (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.

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

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

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

19.6 The Contracting Authority 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 Contracting Authority'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 Contracting Authority 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 Contracting Authority 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 Contracting Authority 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 Contracting Authoritys complying with its obligations under law, including the FOI Acts and the AIE Regulations.

20. WAIVER

20.1 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.

21. SEVERANCE

21.1 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.

22. DISPUTE RESOLUTION

22.1 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.

22.2 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.

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

22.4 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.

22.5 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

23. LAW AND JURISDICTION

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

24 ENTIRE AGREEMENT

24.1 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.

24.2 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.

Execution Page

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

PRESENT when the Common Seal of
…….. was affixed hereto:-