STANDARD TERMS & CONDITIONS PURCHASING

SCHEDULE E (GOODS)

THE UNIVERSITY OF LIMERICK STANDARD CONDITIONS OF PURCHASE

1. **INTERPRETATION**

1.1 In these Conditions:

"**Affected Party**" has the meaning given that to that term in Clause 15.2.

"**Buyer**" means The University of Limerick.

"**Buyer Materials**" means all materials, samples, drawings and specifications in any form (whether owned by the Buyer or a third party) which are provided by the Buyer to the Seller.

"**Conditions**" means the standard conditions of purchase set out in this document and (unless the context otherwise requires) includes any special terms and conditions agreed in writing between the Buyer and the Seller.

"**Confidential Information**" means, in relation to a party, information (in whatever form communicated or recorded) belonging or relating to that party, its business affairs or activities which: (a) that party has marked as confidential or proprietary, or (b) has been described as confidential by that party to the other (orally or in writing), or (c) due to its character or nature, a reasonable person in a like position to its recipient and under like circumstances would treat as confidential..

"**Contract**" means the contract for the sale and purchase of the Goods on the Conditions.

"**Delivery Address**" means the address stated on the Order.

"**Excluded Claim**" means any claim by the Buyer pursuant to any of Clauses 12.3, 13.1, 14, 19.7, 20 and 18.2.

"**Force Majeure Event**" has the meaning given to that term in Clause 15.1.

"**Guarantee Period**" means the period of twenty four months commencing on the date of acceptance of the Goods by the Buyer.

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

"**Goods**" means the goods (including any instalment of the goods or any part of them) described in the Order.

"**IPR**" means any and all intellectual property rights, including without limitation, all patents and patent rights, trademarks and trademark rights, trade names and trade name rights, service marks and service mark rights, service names and service name rights, brand names, copyrights and copyright rights, trade dress, business and product names, logos, slogans, trade secrets, industrial models, utility models, design models, designs, rights in confidential information, know-how, rights in the nature of unfair competition rights and rights to sue for passing off, and all pending applications for and registrations of patents, trademarks, service marks, and copyrights together with all connected and similar or analogous rights in any country or jurisdiction for the full term thereof.

"**Loss**" includes any demand, claim, proceeding, suit, judgement, loss, liability, cost, expense (including legal expenses), fee, penalty or fine.

"**Pre-existing IPR**" means all IPR existing prior to the date of the Contract and all IPR in any materials acquired or developed by or for the Seller or the Buyer independently of the Contract.

"**Price**" means the price of the Goods as stated in the Order.

"**Regulations**" means the European Union (Award of Public Authority Contracts) Regulations 2016 (Statutory Instrument 284 of 2016).

"**RFT**" means the Buyer's request for tender (if any) pursuant to which it invited tenders for the supply of the Goods.

"**Seller**" means the person so described in the Order.

"**Seller's Personnel**" means any of the Seller's employees, servants, agents or sub-contractors.

"**Services**" means the services (if any) described in the Order and such other services as are reasonably ancillary to such services and the delivery of the Goods.

"**Specification**" includes any plans, drawings, data or other information relating to the Goods or Services.

"**Statutory Requirements"** means all provisions relevant to the compliance by the Seller with its duties, either express or implied by the Contract, under every Act of the Oireachtas, and/or statutory instrument made thereunder, orders, local authority and other regulations or requirements applicable from time to time in Ireland.

"**Submission**" means the Seller's response to the RFT.

1.2 In these Conditions, unless the contrary intention is stated, a reference to: (a) the singular includes the plural and vice versa; (b) either gender includes the other; (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing; (d) a person includes that person's legal personal representative, permitted assigns and successors; (e) time shall be construed by reference to whatever time may from time to time be in force in Ireland; (f) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time; (g) a Recital, Clause or Schedule, is a reference to a recital, clause or schedule of these Conditions; (h) a statute, by-law, regulation, delegated legislation or order is to the same as amended, modified or replaced from time to time, and to any by-law, regulation, delegated legislation or order made thereunder; (i) 'including' means comprising, but not by way of limitation of any class, list or category; (j) 'business day' shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland; and (k) 'writing' shall include a reference to any electronic mode of representing or representing words in visible form.

1.3 The headings in these Conditions are for convenience only and shall not affect their interpretation.

2. **BASIS OF PURCHASE**

2.1 The Order constitutes an offer by the Buyer to purchase the Goods subject to the Conditions.

2.2 These Conditions shall apply to the Contract to the exclusion of any other terms and conditions on which any quotation has been given to the Buyer or subject to which the Order is accepted or purported to be accepted by the Seller.

2.3 No variation to the Order or these Conditions shall be binding unless agreed in writing by authorised representatives of the Buyer and the Seller.

3. **SPECIFICATIONS**

3.1 The quantity, quality and description of the Goods shall, subject as provided in these Conditions, be as specified in the Order and/or in any applicable Specification supplied by the Buyer to the Seller or agreed in writing by the Buyer and the Seller.

3.2 Any Specification supplied by the Buyer to the Seller or specifically by the Seller for the Buyer, in connection with the Contract together with the copyright, design rights or any other IPR in the Specification, shall be the

exclusive property of the Buyer. The Seller shall not disclose to any third party or use any such Specification except to the extent that it is or becomes public knowledge through no fault of the Seller, or as required for the purpose of the Contract.

4. **PRICE OF GOODS**

4.1 In consideration of the performance by the Seller of its obligations under the Contract the Price of the Goods shall be as stated in the Order and, unless otherwise so stated, shall be:

(a) exclusive of any applicable value added tax (which shall be payable by the Buyer subject to receipt of a VAT invoice); and

(b) inclusive of all charges for packaging, packing, shipping, carriage, insurance and delivery of the Goods to the Delivery Address and any duties, imposts or levies other than value added tax.

4.2 No increase in the Price may be made (whether on account of increased material, labour or transport costs, fluctuation in rates of exchange or otherwise) without the prior consent of the Buyer in writing.

4.3 The Buyer shall be entitled to any discount for prompt payment, bulk purchase, or volume of purchase customarily granted by the Seller, whether or not shown on its own terms and conditions of sale.

4.4 Where indicated in the Specification, the Price shall include the cost of instruction of the Buyer's personnel in the use and maintenance of the Goods and such instructions shall be in accordance with the requirements detailed in the Specification.

5. **TERMS OF PAYMENT**

5.1 The Seller shall be entitled to invoice the Buyer on or at any time after delivery of the Goods provided it is in receipt of a valid purchase order number from the Client and each invoice shall quote the number of the Order and a valid purchase order number issued by the Client. All invoices must be addressed to the Accounts Payable Department, Finance Division, University of Limerick. Where an invoice is subject to RCT (Relevant Contracts Tax), the contract number must be quoted on the invoice.

5.2 Unless otherwise stated in the Order and subject to the provisions of this Clause 5, the Buyer shall pay the Price of the Goods within 30 days of receipt by the Buyer's Accounts Payable Department, Finance Division, of a valid invoice (and such supporting documentation as may be required by the Buyer from time to time) or after acceptance of the Goods or Services in question by the Buyer whichever is the later. The Buyer shall pay the Price of the Goods after the acceptance of the Goods in question and on receipt of a valid invoice. Payments will only be made under the terms of the Prompt Payment of Accounts Act, 1997 unless other invoicing arrangements have been agreed **provided however** that if the Buyer disputes any portion of an invoice, the Buyer shall pay only the undisputed portion of such invoice and shall notify the Seller of the amount in dispute and the basis on which such amounts are disputed. The parties agree that the Buyer will not be liable to pay interest on any invoice which is overdue as a result of dispute.

5.3 Payment of the Price of the Goods is subject to:

(a) compliance by the Seller with the provisions of the Contract;

(b) the Buyer being in possession of the Seller's current tax clearance certificate and the Seller shall comply with all EU and domestic tax law and requirements including but not limited to the terms of Circular 43/2006 issued by the Department of Finance, a copy of which is available at www.finance.gov.ie. The Seller may supply the certificate and registration numbers, as they appear on the tax clearance certificate, to facilitate on-line verification of their tax status by the Buyer.

5.4 The Buyer shall be entitled to set-off any matured obligation owed by the Seller to the Buyer under the Contract (including, without limitation, the amount of any defects in the Services, and/or the amount of any claim or loss and/or expense of any damage which has been incurred (or is likely to be incurred) by the Buyer by reason of any breach of, or failure to observe the provisions of the Contract) against any obligation (whether matured or unmatured) owed by the Buyer to the Seller. If an obligation is unascertained or unliquidated, the Buyer may in good faith estimate that obligation and set off in respect of the estimate subject to the relevant party accounting to the other when the obligation is ascertained or liquidated. The Buyer will not be obligated to pay any amounts to the Seller under the Contract so long as any sums which are then due by the Seller to the Buyer under the Order remain unpaid, and any such amounts which otherwise be due will fall due from the Buyer only if and when the Seller has paid all such sums.

6. **INSPECTION OF GOODS**

6.1 At any time, prior to any dispatch of Goods to it, the Buyer (or any other person whom it may nominate) shall be entitled to inspect, examine and test the Goods at the Seller's premises and, if any Goods or any part of them are being manufactured on other premises, the Seller shall obtain for the Buyer permission to carry out a like inspection on such premises.

6.2 The Seller shall make available to the Buyer (or its nominee) (at the Seller's cost unless otherwise agreed in writing), all necessary resources making it possible for the Buyer to check the conformity of the Goods to the relevant Order.

6.3 The Seller must be able to supply all documentary evidence concerning the origin and quality of the raw materials used in its supply.

6.4 Any inspection, examination or test required or carried out by the Buyer shall not in any way affect the Seller's warranties or reduce or relieve the Seller of its obligations under the Contract or constitute a waiver by the Buyer and shall be without prejudice to any of the Buyer's other rights under the Contract. Without prejudice to the generality of the foregoing, the Buyer shall be entitled to inspect the Goods upon their arrival at the final destination to issue a refusal at any of these times, or to express any reservations. The Seller's responsibility shall not be reduced or relieved by any observations that the Buyer may make regarding instructions detailed in the Seller's designs or drawings and concerning the nature and quality of the materials used.

6.5 All tests necessary to inspection, conforming to the stipulations of the Order, will be carried out by the Seller (at the Seller's cost unless otherwise agreed in writing by the parties).

6.6 If, as a result of inspection or testing, the Buyer is not satisfied that the Goods will comply in all respects with the Contract, and the Buyer so informs the Seller within 7 days of inspection or testing, the Seller shall take such steps as are necessary (at no extra cost to the Buyer) to ensure compliance.

7. **DELIVERY**

7.1 The Goods shall be delivered to and the Services shall be performed at the Delivery Address on the date or within the period stated in the Order, in either case during the Buyer's usual business hours.

7.2 Where the date of delivery of the Goods is to be specified after the placing of the Order, the Seller shall give the Buyer reasonable notice of the specified date.

7.3 The time of delivery is of the essence of the Contract.

7.4 If for any reason delivery is not made in accordance with the Contract, the Buyer shall have the right to cancel the relevant Order in whole or in part.

7.5 A packing note quoting the number of the Order must accompany each delivery or consignment of the Goods and must be displayed prominently.

7.6 Unless expressly agreed to the contrary, the Buyer shall not be obliged to accept delivery by instalments. If, however, the Buyer does specify or agree to delivery by instalments, delivery of an instalment later than the date specified or agreed for its delivery shall, without prejudice to other rights or remedies of the Buyer, entitle the Buyer to terminate the whole of any unfulfilled part of the Contract without further liability to the Buyer. If the Goods are to be delivered by instalments, the Contract will be treated as a single contract and not severable.

7.7 The Goods shall be marked in a proper manner and in accordance with the Buyer'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 in the ordinary course. The name of the contents shall be clearly marked on each container and all containers of hazardous Goods (and all documents relating thereto) shall bear prominent and adequate warnings.

7.8 The Seller is solely responsible for compliance with all laws relating to the labelling, packaging and carriage of the Goods until delivery and for ensuring that such labelling, packaging, carriage and delivery are made in accordance with the best current industry practice and all applicable legal requirements and meet with all relevant government and local authority requirements. For the avoidance of doubt, the Seller shall be obliged to procure that all third party carriers and other contractors engaged by it shall comply with the foregoing.

7.9 Delivery shall include the unloading, stacking or installation of the Goods by the Seller's Personnel at such place as the Buyer or a duly authorised person shall reasonably direct.

7.10 The Buyer shall be under no obligation to accept or pay for any Goods delivered in excess of the quantity ordered. The risk in any over-delivered Goods shall remain with the Seller.

7.11 The Buyer shall be entitled to reject any Goods delivered which are not in accordance with the Contract, and shall not be deemed to have accepted any Goods until the Buyer has had a reasonable time to inspect them following delivery or, if later, within a reasonable time after any latent defect in the Goods has become apparent.

7.12 The Seller shall supply the Buyer in good time with any instructions or other information required to enable the Buyer to accept delivery of the Goods and performance of the Services.

7.13 The Seller shall box, crate or package as necessary all Goods for shipment without charge, unless otherwise specified in the Contract.

7.14 The Buyer shall not be obliged to return to the Seller any packaging or packing materials for the goods, whether or not any Goods are accepted by the Buyer.

8. RISK AND PROPERTY

8.1 Risk of damage to or loss of the Goods shall pass to the Buyer upon delivery to the Buyer in accordance with the Contract.

8.2 Title to the Goods shall pass to the Buyer upon delivery, unless payment for the Goods is made prior to delivery when it shall pass to the Buyer once payment has been made.

8.3 If the Buyer rejects the Goods, then title (to the extent the Goods have been paid for) and risk in the Goods shall pass to the Seller upon notice of such rejection.

9. ACCEPTANCE

The Buyer shall not be deemed to have accepted any Goods until after the Buyer has actually inspected the Goods at its own premises and ascertained that they are in accordance with the Contract, notwithstanding any prior acknowledgement of receipt or prior payment. The Buyer may reject Goods which are not in accordance with the Contract. In those circumstances, the Buyer shall be entitled to return any such Goods to the Seller at the Seller's cost. Breakages or damaged packages will not be accepted by the Buyer.

10. SERVICES

10.1 Where any Services are to be provided as part of the Order, the Seller agrees to provide the Buyer the with due care and diligence and to such high standard of quality as it is reasonable for the Buyer to expect in all the circumstances (and no less than reasonable skill and care), promptly in accordance with the instructions of the Buyer from time to time and in accordance with all applicable laws.

10.2 The Seller shall procure that all of the Seller's Personnel engaged by it in providing the Services possess such skills, knowledge, experience and qualifications as are necessary to fulfil the Services.

10.3 The Seller agrees that the Seller's Personnel engaged by it in providing the Services shall remain in the employ of the Seller and nothing herein shall constitute or establish a relationship of agency or employment between any of the Seller's Personnel and the Buyer. However, all the Seller's Personnel shall when working at the Buyer's premises conform to the general working terms and conditions of the Buyer.

10.4 The Seller shall use its best endeavours to ensure the continuity of the Seller's Personnel throughout the provision of the Services.

10.5 The Buyer shall have the benefit of all representations, warranties and undertakings implied by law in relation to the Services.

10.6 The Buyer may request the Seller to remove from performance under the Contract any of the Seller's Personnel, such right not to be unreasonably exercised.

11. SELLER'S OBLIGATIONS

In consideration of the payment of the Price and subject to Clause 5, the Seller shall:

(a) supply the Goods according to the Specification, in accordance with the RFT, in the manner set out in the Submission as accepted by the Buyer and in accordance with the Buyer's directions and the terms of the Contract;

(b) comply with and implement any policies and/or guidelines issued by the Buyer from time to time and notified to the Seller in writing; and

(c) provide the Services (if any) in accordance with good industry practice and in compliance with all applicable laws.

12. WARRANTIES AND LIABILITY

12.1 The Seller represents, warrants and undertakes to the Buyer that:

(a) it has the authority and right under law to enter into and to carry out its obligation and responsibilities under the Contract and to supply the Goods and the Services;

(b) it is entering into the Contract with a full understanding of its material terms and risks and is capable of assuming those risks;

(c) it is entering into the Contract with a full understanding of its obligations with regard to taxation, employment and environmental protection and is capable of assuming and fulfilling those obligations;

(d) it has the power to enter into and perform, and has taken all necessary corporate action to authorise the entry into, and performance and delivery of, the Contract and the transactions contemplated by the Contract;

(e) the status of the Seller, as declared in the "Declaration as to Personal Circumstances of Tenderer" in the Submission, which confirms that none of the excluding circumstances listed in Regulation 57 of the Regulations apply to the Seller, remains unchanged;

(f) the Goods delivered to the Buyer shall be of merchantable quality and fit for any purpose held out by the Seller or made known to the Seller in writing at the time the Order is placed and shall, unless a different period is specified in the Contract, remain fit for use for their intended purpose for the Guarantee Period;

(g) the Goods delivered to the Buyer shall be free from defects in design, materials and workmanship;

(h) the Goods delivered to the Buyer shall correspond with any relevant Specification or sample and with the description given by the Seller in accordance with the Submission;

(i) if a sample of the Goods was provided to the Buyer before delivery, the bulk of the Goods will correspond with the sample;

(j) the Goods delivered to the Buyer shall be free of encumbrances or retention of title clauses or similar provisions;

(k) it has not used or specified for use and will not use or specify for use (or permit the use or specification by others) as part of the Goods any substances, or material which are not in accordance with European Standards or Codes of Practice in so far as they may be applicable or relevant (and if there are not European Standards or Codes of Practice then the appropriate national Standards and Codes which shall be applicable or relevant) or any

materials or substances known to the trade or profession at the time of specification to be deleterious to health or safety or the durability or suitability in the particular circumstances in which the same is used;

(l) it has and shall continue in performing the Order to comply with the Statutory Requirements; and

(m) it owns, has obtained or is able to obtain, valid licences for all IPR that are necessary for the performance of its obligations under the Contract and for the Buyer to obtain the benefit of the Services.

12.2 Without prejudice to any other remedy or rights which the Buyer may have, if the Goods or Services are not supplied or performed in accordance with the Contract, then the Buyer shall be entitled:

(a) to require the Seller to repair the Goods or to supply replacement Goods or Services in accordance with the Contract within 7 days; or

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

12.3 The Seller shall indemnify the Buyer in full on demand against any and all Losses awarded against, suffered or incurred or paid by the Buyer as a result of or in connection with any:

(a) breach of any representation or warranty given by the Seller in relation to the Goods or Services;

(b) claim that the Goods infringe, or their use or resale infringes the patent, copyright, design right or trade mark or other IPR of any other person, except to the extent that the claim arises from compliance with any Specification supplied by the Buyer;

(c) liability under the Consumer Protection Act 1987 in respect of the Goods;

(d) act or omission of the Seller or the Seller's Personnel in supplying, delivering and installing the Goods; and

(e) act or omission of any of the Seller or the Seller's Personnel in connection with the performance of the Services.

12.4 In respect of any injury, damage or loss caused to third parties or their property by the Goods there shall be no automatic right of indemnity due from the Buyer to the Seller. Any clause in the Seller's standard terms and conditions of sale purporting to establish a right of indemnity from the Buyer to the Seller in the event of any injury, damage or loss caused to third parties or their property shall not be incorporated into the Contract.

13. LIABILITY & INSURANCE

13.1 The Seller shall indemnify the Buyer and keep the Buyer fully and effectively indemnified on demand in relation to all Losses which the Buyer may suffer or incur as a result of any negligence, any act or omission, breach of contract, breach of duty, insolvency, recklessness, bad faith, wilful default or fraud of the Seller or any of the Seller's Personnel or any of them.

13.2 Save in respect of fraud (including fraudulent misrepresentation), personal injury, death or in respect of any Excluded Claim neither party shall be liable for any indirect or consequential losses (including loss of profit, loss of revenue, loss of goodwill, indirectly arising damages, costs and expenses) suffered by the other under the Contract.

13.3 Should the Buyer find itself obliged to order replacement Goods elsewhere in consequence of the failure of the Seller to deliver Goods of approved quality, the Buyer shall be entitled to recover from the Seller any excess prices which may be paid by the Buyer and the Seller shall indemnify the Buyer on demand against all such costs.

13.4 The Seller shall effect and maintain at all times during the currency of the Contract and for a period of 24 months following its termination (at its own expense) general liability insurance in such indemnity amounts and subject to such elements of self insurance as would be affected and maintained by a prudent service provider in the position of the Seller.

13.5 Without prejudice to the generality of Clause 13.4, the Seller shall effect and maintain at all times during the currency of the Contract and for a period of 24 months following its termination (at its own expense) the following policies of insurance: (a) employer's liability insurance (including product liability insurance); and (b) general third party liability insurance against property damage or destruction or loss or loss of use and any death, illness, disease or personal injury, physical or mental, caused by, arising out of or in any way connected with the performance of the Contract; and (c) professional indemnity insurances in indemnity amounts satisfactory to the Buyer.

13.6 All insurances required to be effected by the Seller will be effected through or with (as applicable) insurance brokers and insurers of recognised standing.

13.7 The Seller shall supply the Buyer with evidence of compliance by the Seller with its obligations under Clause 13 as the Buyer may require from time to time including, without limitation, certified copies of the certificates of insurances relating thereto which certificates shall incorporate any exclusions. The Seller shall furnish the receipt for the last upon request by the Buyer from time to time. The Seller shall advise the Buyer immediately of any material change to its insured status.

14. TERMINATION

14.1 The Buyer shall be entitled to cancel the Order in respect of all or part only of the Goods and/or the Services by giving to the Seller at any time prior to delivery or performance in which event the Buyer's sole liability shall be to pay the Seller the Price for the Goods or Services in respect of which the Buyer has exercised its right of cancellation, less the Seller's net saving of cost arising from cancellation.

14.2 The Buyer may terminate the Contract at any time by giving 14 days' notice in writing to that effect to the Seller.

14.3 The Buyer shall have the right, in addition to any other rights which it has at law, to terminate the Contract immediately and without liability for compensation or damages in circumstances where the Buyer becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to the Seller.

14.4 The occurrence of an Event of Default in relation to the Seller will constitute repudiation (but not a termination) of the Contract by the Seller (whether the occurrence of that Event of Default is voluntary, involuntary or occurs by operation of law or pursuant to any decree or order of any court). If an Event of Default occurs and is continuing in relation to the Seller, then the Buyer may, at its option (and without prejudice to any other rights or remedies which it may have under the Contract or otherwise): (a) suspend the operation of the Contract for such period of time as it, in its absolute discretion, sees fit; or (b) accept such repudiation and by notice the Seller and with immediate effect terminate the Contract (but without prejudice to the continuing obligations of the Seller under the Contract) whereupon all rights of the Seller under the Contract shall cease; and/or (c) proceed by appropriate court or other action to enforce performance of the Contract and/or to recover damages for the breach of the Contract.

14.5 For the purposes of the Contract, each of the following shall be an Event of Default: (a) the Seller fails to comply with any obligation on its part under the Contract which failure is, in the opinion of the Buyer, material, and either that failure is not susceptible to remedy or, if it is susceptible to remedy, it is not remedied within 30 days of notice having been given by the Buyer to the Seller requiring that failure to be remedied; (b) without prejudice to Clause 14.5(a), the Seller or any member of the Seller's Personnel fails to comply with the requirements of Clause 25; (c) the Seller is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or admits inability to pay its debts as they fall due; or (d) the Seller suspends making payments on all or any class of its debts or announces an intention to do so, or a moratorium is declared in respect of any

of its indebtedness; or (e) any step (including the making of any proposal, the convening of any meeting, the passing of any resolution, the presenting of any petition or the making of any order) is taken with a view to a composition, assignment or arrangement with any creditors of, or the winding up, liquidation or dissolution of, the Seller; or any liquidator, receiver or examiner is appointed to or in respect of the Seller or any of its assets; (f) the Seller ceases or threatens to cease to carry on business; or (g) the Buyer becomes aware of any conflict of interest on the part of the Seller which cannot, in the opinion of the Buyer, be removed by other means; and/or (h) the Buyer becomes aware of any registrable interest on the part of the Seller.

14.6 Termination or expiry of the Contract shall not affect any rights, remedies, obligations or liabilities of the parties that have accrued up to the date of termination or expiry, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination or expiry.

14.7 The provisions of this Clause 14 and Clauses 1, 12.3, 13.1, 18.2, 19, 20, 21, 26 and 27 shall survive the termination or expiry of the Contract however it arises, and shall continue to bind the Seller without limit in time.

15. **FORCE MAJEURE**

15.1 A "**Force Majeure Event**" means an event or circumstance or combination of events and/or circumstances not within the reasonable control of the Affected Party which has the effect of delaying or preventing that party from complying with its obligations under the Contract including but not limited to acts of God, war, out-break of disease, insurrection, riot, civil disturbance, rebellion, acts of terrorism, government regulations, embargoes, explosions, fires, floods, tempests, or failures of supply of electrical power, or public telecommunications equipment or lines, excluding industrial action of whatever nature or cause (strikes, lockouts and similar) occurring at the Seller (or subcontractor or agent) places of business.

15.2 In the event of any failure, interruption or delay in the performance of either party's obligations (or any of them) resulting from any Force Majeure Event, that party (the "**Affected Party**") shall promptly notify the other party in writing specifying: (a) the nature of the Force Majeure Event; (b) the anticipated delay in the performance of obligations; and (c) the action proposed to minimise the impact of the Force Majeure Event; and the Affected Party shall not be liable or have any responsibility of any kind for any loss or damage thereby incurred or suffered by the other party; provided always that the Affected Party shall use all reasonable efforts to minimise the effects of the same and shall resume the performance of its obligations as soon as reasonably possible after the removal of the cause.

15.3 If the Affected Party does not comply with Clause 15.2 it forfeits its rights under that Clause.

15.4 If the Force Majeure Event continues for 30 days or more, then either party shall be entitled, by the giving of 14 days notice in writing to the other party, to terminate the Contract.

15.5 In circumstances where the Seller is the Affected Party, the Buyer shall be relieved from any obligation to make payments under the Contract save to the extent that payments are properly due and payable for obligations actually fulfilled by the Seller in accordance with the terms and conditions of the Contract.

16. **HEALTH AND SAFETY**

16.1 The Seller shall comply with the requirements of Irish and international legislation and agreements relating to the supply, packaging, labelling and carriage of hazardous goods.

16.2 The Seller shall ensure that Goods comply with current health and safety legislation and the legislation implementing any relevant EC Directive. The Buyer may require the Seller to show that the Goods bear a CE mark and may ask for a copy of the EC Declaration of Conformity.

16.3 Without prejudice to the generality of the foregoing, the Seller shall comply with all necessary safety precautions and safety legislation relevant to the Services including, but without limitation, the Safety, Health and Welfare at Work Act, 2005, and any amendments thereof and/or regulations rules or orders made pursuant thereto, including the Safety Health & Welfare at Work (Construction) Regulations 2006 (in so far as they are applicable to the Services), the Safety Health and Welfare at Work (General Applications) Regulations 1993, 2001 & 2003, the Confined Space Regulations 2001 and any amendments thereof.

17. **POLICIES AND PROCEDURES**

17.1 The Seller shall ensure that each of the Seller's Personnel shall be aware of, and shall comply with the Buyer's policies and procedures. It shall be a term of the Contract that the Seller shall direct the Seller's Personnel to attend any training or orientation provided by the Buyer in relation to the Buyer's policies and procedures, at no cost to the Buyer.

17.2 If there is any alleged breach of the Buyer's policies and procedures by the Seller or any of the Seller's Personnel, the Buyer reserves the right to require the Seller to remove those Seller's Personnel from the Buyer's premises and from performance of the Services.

17.3 The Seller shall procure that the Seller's Personnel participate in any investigations enquires or hearings provided for under any of the Buyer's policies, and the failure by the Seller or any of the Seller's Personnel to participate in any such procedure shall entitle the Buyer to require the Seller to remove any of the Seller's Personnel from its premises.

18. **INDEPENDENT CONTRACTOR**

18.1 In performing the Services or carrying out its obligations under the Contract, the Seller shall act as independent contractor and not the agent of the Buyer.

18.2 The Seller acknowledges and agrees that it not intended that there should be transferred to the Buyer the obligations of any person as employer arising under any contract of employment, in consequence of, or in connection with, the entry by the parties into, or the performance by them of their obligations under, the Contract, or the termination of the Contract, or the transfer to the Buyer of any function to be performed by it under the Contract. If, notwithstanding that intention, any such obligations are transferred to the Buyer by operation of law (whether pursuant to the European Communities (Protection of Employees' Rights on Transfer of Undertakings) Regulations, 2003 or otherwise), then the Seller shall indemnify the Buyer on demand against all Losses which may be suffered or incurred by the Buyer arising out of or in connection with any such transfer, or any contract of employment so transferred to the Buyer, or the termination of any such contract of employment by the Buyer subsequent to any such transfer (which the Buyer shall be free in its absolute discretion to terminate without prejudice to its rights under this Clause).

19. **INTELLECTUAL PROPERTY**

19.1 All IPR in all reports, data manuals and/or other materials (other than software) (including without limitation all and any audio or audio visual recordings, transcripts, books, papers, records, notes, illustrations, photographs, diagrams) produced for the purposes of the Contract (collectively the "**Materials**") (or any part or parts thereof) shall vest in the Buyer and the Seller so acknowledges and confirms. For the avoidance of doubt, the Seller hereby assigns all IPR, title and interest in the Materials (including by way of present assignment of future copyright) to the extent that any such IPR title or interest may be deemed by law reside in it in the Materials to the Buyer absolutely. The Seller further agrees to do and execute (and shall procure that each of the Seller's Personnel do and execute) all matters, acts, things and documents that are necessary to finalise the assignment and transfer of any IPR to the Buyer or register the Buyer as the owner of registrable rights.

19.2 All Buyer Materials are and shall remain the exclusive property of the Buyer. The parties acknowledge and agree that all IPR in and to all the Buyer Materials are vested and shall remain vested in the Buyer and its licensors.

19.3 The Seller shall not use the Buyer Materials for any other purpose other than the supply of the Goods pursuant to the Contract. The Seller acknowledges and agrees that no licence is granted to the Seller in respect of the Buyer Materials other than expressly granted by the provisions of these Conditions. The Seller shall return (at its own cost) all Buyer Material to the Buyer at any time upon receipt of a request from the Buyer.

19.4 Save as expressly set out in this Clause 19 all Pre-Existing IPR shall remain the sole property of the party who owned, acquired or developed such intellectual property.

19.5 The Seller shall waive or procure a waiver of any moral rights subsisting in copyright produced under or in performance of the Contract.

19.6 The Seller shall ensure that all and any necessary consents and/or licences for any software, instrument, modality or methodology are obtained and in place before use for the purposes of the Contract (to include but not be limited to ensuring that the Seller shall be vested with all necessary rights so as to enable the Buyer to enjoy the benefit of the Services for its business purposes).

19.7 The Seller shall indemnify the Buyer in full on demand against Losses awarded against or incurred or paid by the Buyer as a result of or in connection with any claim brought against the Buyer for actual or alleged infringement of a third party's IPR arising out of, or in connection with, the receipt, use of supply of the Goods and/or the (excluding the Buyer Materials).

19.8 Without prejudice to the Buyer's other rights and remedies, at the option of the Buyer for and in respect of any such breach, the Seller shall at its expense and option:

(i) procure the necessary rights for the Buyer to continue use;

(ii) replace the relevant deliverable with a non-infringing equivalent;

(iii) replace the relevant deliverable to make it non-infringing while giving equivalent performance; or

(iv) if the Seller cannot obtain the remedies in (i), (ii) or (iii) above, it may direct the return of the deliverable and refund to the Buyer the Price paid for such deliverable less a reasonable amount for the Buyer's use of the deliverable up to the time of return, provided such reasonable amount is due to the owner of the said deliverable, together with all losses (whether direct, indirect or consequential) thereby accruing to the Buyer as a result of the breach.

19.9 Upon the termination or expiry of the Contract for whatever reason, the Seller shall immediately deliver up to the Buyer all the Materials prepared up to the date of termination or expiry. As an exception to its obligations under this Clause 19.9 the Seller may retain one copy of the Materials, in paper form, in the Seller's legal files for the purpose of and only to the extent necessary for ensuring compliance with its obligations under the Contract.

19.10 The provisions of this Clause 19 shall survive the expiration or termination of the Contract for any reason.

20. CONFIDENTIALITY

20.1 Each party shall keep confidential the other party's Confidential Information and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information other than as necessary for the exercise of its rights, and performance of its obligations, under the Contract.

20.2 Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the exercise of its rights, and performance of its obligations, under the Contract, and to procure that such persons are made aware of, and agree to observe the obligations of confidentiality in Clause 20.1.

20.3 The provisions of Clauses 20.1 and 20.2 shall not apply to information which: (a) was, at the time of receipt by the recipient party, published or otherwise generally available to the public; or (b) has, after receipt by the recipient party, made generally available to the public, through no act or omission of the recipient party or its servants, agents or contractors; or (c) the recipient party can demonstrate was already lawfully in its possession at the time of receipt, without any restrictions on its disclosure; or (d) the recipient party can demonstrate, was independently developed by it without reference to the Confidential Information; (e) is obtained by the recipient party from a third party free from any obligation of confidentiality for the benefit of the disclosing party; or (f) is by law or by any court or order of any governmental or regulatory authority required to be disclosed, to the extent of the relevant disclosure requirement; or (g) the Buyer by request of any person or body or authority whose request the Buyer or persons associated with the Buyer (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

20.4 If the Seller is required by law or by any order of any court or governmental or regulatory authority to disclose the Confidential Information of the other party, it shall promptly notify the Buyer of receipt of notice of that requirement and, at the request and cost of that Buyer, shall assist it in opposing any such disclosure.

20.5 The Seller confirms that it will, from time to time, during the currency of this Agreement as may be requested by the Buyer submit full personal details (including those of subcontractors) who are assigned to provide the Services (or any part thereof) under the Contract. The Seller further acknowledges that checks may be carried out in relation to all such personnel by police authorities and the Seller shall comply with all reasonable directions of the Buyer arising therefrom.

20.6 In circumstances where the Buyer is subject to the provisions of the Freedom of Information Act, 2014 or the European Communities (Access to Information on the Environment Regulations 2017 to 2014), then in the event of the Buyer receiving a request for information related to the Contract, the Buyer shall consult with the Seller in respect of the request. The Seller shall identify any information that is not to be disclosed on grounds of commercial sensitivity, and shall state the reasons for this sensitivity. The Buyer will consult the Seller about this commercially sensitive information before making a decision on any Freedom of Information request received. The Buyer accepts no liability whatsoever in respect of any information provided which is subsequently released (irrespective of notification) or in respect of any consequential damage suffered as a result of such obligations.

21. DATA PROTECTION

21.1 In these Conditions the following terms shall have the meanings respectively ascribed to them:

"**Authorised Person**" means any of the persons occupying the roles in the Buyer identified in that specific regard in the RFT or the Order;

"**Data**" means all Confidential Information, whether in oral or written (including electronic) form, created by or in any way originating with the Buyer (including but not limited to its employees, agents, independent contractors and/or sub-contractors) and all information that is the output of any computer processing, or other electronic manipulation of any information that was created by or in any way originating with the Buyer provided under the Contract and includes any Personal Data;

"**Data Controller**" has the meaning given under the Data Protection Laws;

"**Data Processor**" has the meaning given under the Data Protection Laws;

"**Data Protection Laws**" means all applicable national and EU data protection laws, regulations and guidelines, including but not limited to Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (the "**General Data Protection Regulation**"), and any guidelines and codes of practice issued by the Office of the Data

Protection Commissioner or other supervisory authority for data protection in Ireland.

"**Data Subject**" has the meaning given under the Data Protection Laws;

"**Data Subject Access Request**" means a request made by a Data Subject in accordance with rights granted under the Data Protection Laws to access his or her Personal Data;

"**Personal Data**" has the meaning given under Data Protection Laws;

"**Processing**" has the meaning given under the Data Protection Laws;

21.2 The Seller shall comply with all applicable requirements of the Data Protection Laws.

21.3 The Parties acknowledge that for the purposes of the Data Protection Laws, the Buyer is the Data Controller and the Seller is the Data Processor in respect of Data which is Personal Data. The RFT or the Order sets out the scope, nature and purpose of Processing by the Seller, the duration of the Processing and the types of Personal Data and categories of Data Subject.

21.4 Without prejudice to the generality of Clause 21.2, the Seller shall, in relation to any Personal Data processed in connection with the performance by the Seller of its obligations under the Contract:-

(a) process that Personal Data only on the written instructions of the Buyer which instructions shall be: (A) documented in writing; and (B) given by an Authorised Person; and

(b) ensure that it has in place appropriate technical and organisational measures, reviewed and approved by the Buyer, to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it);

(c) ensure that all personnel who have access to and/or process Personal Data are obliged to keep the Personal Data confidential;

(d) not sell, transfer, disclose or otherwise allow access to any Data to any party other than its Personnel, save where the prior written consent of the Buyer has been obtained;

(e) not copy or maintain any Data on any other systems, application or other medium other than as required for the provision of the Services;

(f) not transfer any Personal Data outside of the European Economic Area unless the prior written consent of the Buyer has been obtained and the following conditions are fulfilled:

i. appropriate safeguards are in place in relation to the transfer, to ensure that Personal Data is adequately protected in accordance with Chapter V of Regulation 2016/679 (General Data Protection Regulation);

ii. the Data Subject has enforceable rights and effective legal remedies;

iii. the Seller complies with its obligations under the Data Protection Laws by providing an adequate level of protection to any Personal Data that is transferred; and

iv. the Seller complies with reasonable instructions notified to it in advance by the Buyer with respect to the processing of the Personal Data;

(g) take all steps reasonably required to ensure that the Data is accurately recorded and kept up to date.

21.5 The Seller shall not supply the Goods or perform the Services in such a way as to cause the Buyer to breach any of its obligations under Data Protection Laws.

21.6 The Seller shall make available to the Buyer all information necessary to demonstrate its compliance with the obligations set out in the Data Protection Laws and shall allow the Buyer access to the Seller's premises, personnel and relevant records to the extent necessary to enable it to verify the Seller's compliance with Data Protection Laws and its obligations under the Contract.

21.7 The Seller shall promptly notify the Buyer if it receives a Data Subject Access Request to have access to any Personal Data or any other complaint, correspondence, notice, request any order of the Court or request of any regulatory or government body relating to the Buyer's obligations under the Data Protection Laws and provide full co-operation and assistance to the Buyer in relation to any such complaint, order or request (including, without limitation, by allowing Data Subjects to have access to their data).

21.8 The Seller shall without undue delay report in writing to the Buyer any data compromise involving Personal Data, or any circumstances that could have resulted in unauthorised access to or disclosure of Personal Data.

21.9 The Seller shall promptly but not later than 24 (twenty-four) hours after becoming aware of it notify the Buyer of any unauthorised access to, or unauthorised use, alteration, disclosure, accidental loss or destruction of, any Data in the custody of the Seller (each a "**data breach**").

21.10 In the event of any data breach, the Seller shall:

(a) take prompt action at its own expense on the instruction of the Buyer to remedy the cause of the data breach;

(b) bear the costs of investigation into said data breach;

(c) promptly, at its own expense, provide the Buyer on request with all information required to fulfil its obligations, as data controller, under the Data Protection Laws; and

(d) promptly, at its own expense, assist the Buyer in complying with its obligations under Articles 32 to 36 of the General Data Protection Regulation.

21.11 The Seller shall assist the Buyer in ensuring compliance with its obligations under the Data Protection Laws with respect to security, impact assessments and consultations with supervisory authorities and regulators.

21.12 At any time during the course of the Contract, or upon termination or expiry of the Contract, the Seller shall, upon the request of the Buyer, immediately securely deliver to the Buyer or destroy all Data as may be requested by the Buyer and shall certify such destruction or delivery in writing to the Buyer on request from time to time.

21.13 The Seller shall permit the Buyer, the Office of the Data Protection Commissioner or other supervisory authority for data protection in Ireland, and/or their nominee to conduct audits and or inspections of the Seller's facilities, and to have access to all data protection, confidentiality and security procedures, data equipment, mechanisms, documentation, databases, archives, data storage devices, electronic communications and storage systems used by the Seller in any way for the supply of the Goods and the provision of the Services. The Seller shall comply with all reasonable directions of the Buyer arising out of any such inspection, audit or review.

21.14 The Seller shall fully comply with, and implement policies which are communicated or notified to the Seller by the Buyer from time to time.

21.15 The Seller shall maintain complete and accurate records and information to demonstrate its compliance with this Clause 21 and allow for inspections and contribute to any audits by the Buyer or the Buyer's designated auditor.

21.16 The Seller shall:-

(a) take all reasonable precautions to preserve the integrity of any Personal Data which it processes and to prevent any corruption or loss of such Personal Data;

(b) ensure that a back-up copy of any and all such Personal Data is made at such frequency as is required by Good Industry Practice in the Seller's industry and this copy is recorded on media from which the data can be reloaded if there is any corruption or loss of the data; and

(c) in such an event and if attributable to any default by the Seller or any sub-contractor, promptly restore the Personal Data at its own expense or, at the

Buyer's option, reimburse the Buyer for any reasonable expenses it incurs in having the Personal Data restored by a third party.

21.17 The Buyer does not consent to the Seller appointing any third party processor of Personal Data under this Agreement.

21.18 The Seller shall indemnify and keep indemnified the Buyer on demand from time to time from and against all Losses suffered or incurred by the Buyer arising out of or in connection with any breach by the Seller of its obligations under this Clause 21.

21.19 The provisions of this Clause 21 shall survive termination and or expiry of the Contractor for any reason.

22. **NON-EXCLUSIVITY**

It is specifically understood that the Contract shall be interpreted as a non-exclusive agreement. Accordingly, nothing in the Contract shall preclude the Buyer from either purchasing goods (or Goods) from any other party or entering into agreements for services of a similar nature with any other party, in each case without limitation.

23. **MEDIA**

No media releases, public announcements or public disclosures relating to the Contract or its subject matter, including but not limited to promotional or marketing material, shall be made by the Seller with the prior written consent of the Buyer.

24. **CONFLICTS, REGISTRABLE INTERESTS AND CORRUPT GIFTS**

24.1 The Seller confirms that it has carried out a conflicts of interest check and is satisfied that that neither it nor any subcontractor nor agent as the case may be has any conflicts in relation to the Goods and/or the Services and its obligations undertaken under the Contract. The Seller hereby undertakes to advise the Buyer immediately should any conflict or potential conflict of interest come to its attention during the term of the Contract and to comply with the Buyer's directions and those of the Buyer's employees and officers in respect thereof.

24.2 Any registrable interest involving the Seller (and any subcontractor or agent as the case may be) and the Buyer, the Ceann Comhairle (Speaker), or any member of Government, or any member of the Oireachtas, or their relatives must be fully disclosed to the Buyer immediately upon such information becoming known to the Seller (and subcontractor or agent as the case may be) and to comply with the Buyer's directions in respect thereof, to the satisfaction of the Buyer. In the event of such disclosure, the Buyer shall have the right (in addition to any other rights which it has at law) to terminate the Contract immediately and without liability for compensation or damages. The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995 (as amended) a copy of which is available on request.

24.3 The Seller shall not offer or agree to give any public servant or civil servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this Clause 24.3 or the commission of any offence by the Seller, any subcontractor, agent or employee under the Prevention of Corruption Acts, 1889 to 2005 or the Criminal Justice (Corruption Offences) Act, 2018 shall entitle the Buyer to terminate the Contract immediately and without liability for compensation or damages and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Seller of the amount or value of any such gift, consideration or commission.

25. **GARDA VETTING**

It shall be a condition of the Contract that the Seller shall for the term of the Contract procure that all of the Seller's Personnel ("**Relevant Persons**") where any such persons may have unsupervised access to children and/or vulnerable adults in the course of the supply of the Goods or the provision of the Services are subject to and shall have successfully completed a background check via the Garda Central Vetting Unit (GCVU) and the Garda Vetting process as required by The National Vetting Bureau (Children and Vulnerable Persons) Acts 2012 to 2016. The Seller shall be required to provide all such information and documentation as the Buyer may require in this connection and shall comply (and procure compliance by the Relevant Persons) with the Buyer's Garda Vetting/Police Clearance policies and procedures from time to time.

26. **STATUS & DISCHARGE OF OBLIGATIONS**

26.1 The Seller agrees that each member of the Seller's Personnel shall remain in the employ of the Seller and nothing in the Contract shall constitute or establish a relationship of agency or employment between any member of the Seller's Personnel and the Buyer regardless of the degree of supervision that may be exercised over any member of the Seller's Personnel by the Buyer.

26.2 The Seller shall comply with all applicable laws and labour standards in respect of the Seller's Personnel. Without prejudice to the generality of the foregoing the Seller shall:

(a) comply with all statutory terms and conditions and sector agreements applicable to all workers in Ireland in relation to those members of the Seller's Personnel;

(b) deal with any disciplinary, grievance or other employment issues referred to it by any member of the Seller's Personnel or the Buyer, in accordance with proper policies and procedures (including disciplinary procedures) and with all applicable laws provided that all such matters shall be dealt with at the Seller's premises and not at or within the immediate environs of the Buyer's premises (other than with the prior agreement or at the request of Buyer); and

(c) comply, and procure that each of the Seller's Personnel complies, with all applicable laws regarding residence permits, work permits and visas.

26.3 The Seller shall, so far as practicable, keep the Buyer informed and consult with it in respect of any proposed disciplinary or other actions proposed to be taken against any of the Seller's Personnel where such action is reasonably likely to result in damage to or adverse publicity concerning the Seller.

26.4 The Seller shall discharge all its obligations as employer in respect of each member of the Seller's Personnel for its own account and shall indemnify and keep indemnified on demand the Buyer from and against all Personnel Liabilities arising from the Seller's failure to perform and discharge any such obligation and against all Personnel Liabilities arising out of or as a result of:

(a) any act or omission by the Seller with respect to any members of the Seller's Personnel;

(b) all emoluments and outgoings in relation to each member of the Seller's Personnel (including without limitation all wages, bonuses, PAYE, pay related social insurance contributions, pension contributions and otherwise);

(c) any claim or proceedings threatened or instituted against the Buyer by any member of the Seller's Personnel whether arising under contract, common law or statute in relation to that person's employment by the Supplier in connection with this Agreement including, but not limited to, claims under the Unfair Dismissals Acts 1977-2007, Redundancy Payments Acts, 1967 to 2007, the Industrial Relations Acts 1946-2004, the Organisation of Working Time Act, 1997, Minimum Notice and Terms of Employment Acts, 1973 to 2001, Terms of Employment (Information) Acts, 1994 to 2001, Employment Equality Acts, 1998 to 2008, Payment of Wages Act, 1991 and the Protection of Employees (Fixed-Term Work) Act 2003; and

(d) any statement communicated to or action done by the Seller to any member of the Seller's Personnel which has not been agreed in advance by the Buyer in writing.

26.5 If the Buyer reasonably determines at any time that any of the Seller's Personnel are not suitable for provision of the Services it shall notify the

Supplier in writing and the Supplier shall remove or shall procure the removal of, the relevant member of the Service Team.

26.6 In this Clause:

"Personnel Liability" means all claims (including but not limited to claims for redundancy payments, unlawful deduction of wages, unfair, wrongful or constructive dismissal compensation, compensation for sex, sexual orientation, race, religion, belief or disability discrimination, claims for equal pay, compensation for less favourable treatment of part-time workers and fixed term employees, and any claims whether in tort, contract or statute or otherwise), demands, actions, proceedings and any award, compensation, damages, tribunal awards, fine, loss, order, penalty, payment made by way of settlement and costs and expenses reasonably incurred in connection with a claim or investigation (including without limitation any investigation by the Equality Authority, the National Employment Rights Authority or any other enforcement, regulatory or supervisory body and of implementing any requirements which may arise from any such investigation) and legal costs and expenses.

27. **GENERAL**

27.1 Notices and other communications under or in connection with the Conditions may be given in writing by hand, by ordinary pre-paid post, by facsimile or by e-mail, save that service of any notice of any claim, dispute, termination, breach or legal proceedings in connection with the Contract shall not be made by e-mail. Any such notice, if so given, shall be deemed to have been served: (a) if sent by hand, when delivered; (b) if sent by post, one business day after posting; (c) if sent by facsimile, upon production by the sender's facsimile transmission system of a receipt confirming transmission of the communication to the correct facsimile number; and (d) if sent by e-mail, six hours after sending provided the sender has not received notice of failed or delayed delivery.

27.2 Nothing in the Contract shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties or any of them, and neither of the parties shall have any right or authority to act on behalf of the other or to bind the other in any way.

27.3 Each party shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document and thing as may be reasonably requested of it by any other party to implement the Contract.

27.4 If the whole or any part of a provision of the Contract is or becomes illegal, invalid or unenforceable, that will not affect the legality, validity or enforceability of the remainder of the provision in question or any other provision of the Contract.

27.5 The parties recognise that printed purchase orders, invoices and other commonly used form documents relating to the performance of any obligations hereunder may contain terms which conflict with the one or more terms of the Contract. In case of any such conflict, the relevant terms of the Contract shall prevail.

27.6 The Seller may not, without the prior written consent of the Buyer: (a) assign, transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under the Contract; or (b) purport to transfer, sub-contract or delegate any of its obligations under the Contract.

27.7

(a) The Seller shall be deemed to be the prime contractor under the Contract and the Seller assumes full responsibility for the discharge of all obligations under the Contract and shall assume all the duties, responsibilities and obligations associated with the position of prime contractor. The Seller as prime contractor under the Submission hereby assumes liability for all subcontractors permitted by the Buyer in writing and shall ensure that any such approved subcontractors shall comply in all respects with the relevant terms of the Contract.

(b) Where the Buyer becomes aware that any of the exclusion grounds set out in Regulation 57 of the Regulations apply to any subcontractor, the Buyer reserves the right to require the Seller to immediately replace such subcontractor and the Seller shall comply with such requirement. The Seller shall include in every sub-contract a right for the Seller to terminate the sub-contract where any of the exclusion grounds apply to the subcontractor and a requirement that the subcontractor, in turn, includes a provision having the same effect in any sub-contract which it awards.

27.8 The Contract together with the Order (and all attachments thereto including the Specification) and these Conditions contain the sole and entire agreement between the parties in relation to its subject matter and supersedes all prior written and oral arrangements, understandings, representations, warranties and agreements between them in that regard. For the avoidance of doubt, the Seller shall be obliged to comply with any additional terms set out in an Order.

27.9 Each of the rights of each party under the Contract may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that party may have under the Contract, law or otherwise; and may be waived only in writing and specifically. Delay by a party in exercising, or the non-exercise by a party of, any such right will not constitute a waiver of that right.

27.10 The Contract (and any non-contractual obligations arising under or in connection with the Contract) shall be governed by, and construed in accordance with, the laws of Ireland.

27.11 This Clause 27.11 is for the benefit of the Buyer only. Subject as provided below, the Irish courts have exclusive jurisdiction to settle any dispute arising out of or in connection with the Contract and the parties submit to the exclusive jurisdiction of the Irish courts. Nothing in this clause limits the right of the Buyer to bring proceedings against the Seller arising out of or in connection with this agreement: (a) in any other court of competent jurisdiction; or (b) concurrently in more than one court of competent jurisdiction.