

DATED

2016

**LOCAL GOVERNMENT OPERATIONAL
PROCUREMENT CENTRE**

and

[

]

MULTI-PARTY FRAMEWORK AGREEMENT

for Ready Mix Concrete Supply Only 2016 - 2018

THIS FRAMEWORK AGREEMENT is made on 2016

BETWEEN

1. The Local Government Operational Procurement Centre (LGOPC) of The Reeks Gateway, Killarney, County Kerry as Central Purchasing Body (CPB) under the auspices of Kerry County Council, County Buildings, Rathass, Tralee, Co. Kerry a Local Authority (hereinafter called "KCC") of the One Part and
2. [] having its registered office at
[] (hereinafter referred to as "**the Supplier**") of the other part.

WHEREAS:

- A. LGOPC is a central purchasing body within the meaning of Directive 2004/18/EC of the European Parliament and Council (as amended). LGOPC enters into this Framework Agreement on its own behalf and on behalf of other Framework Purchasers as listed in Schedule 3 hereto that may wish from time to time to purchase Ready Mix Concrete products.
- B. The Supplier is engaged in the business of supplying Ready Mix Concrete products. The Supplier submitted the Tender Submission (as defined below) in response to LGOPC's tender competition and, following an assessment and evaluation of the Tender Submission, LGOPC wishes to appoint the Supplier to its multi-party framework to provide Ready Mix Concrete products, if instructed to do so from time to time by Framework Purchasers, subject to and in accordance with the terms and conditions of this Framework Agreement.
- C. The Supplier has agreed to be appointed to the framework on the terms and conditions set out in this Framework Agreement.

NOW IT IS HEREBY AGREED as follows:-

Definitions and Interpretation

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

"Commencement Date" means May 2016

"Contract Period" means the period of duration of this Framework Agreement as set out in Clause 2;

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

"Framework Agreement" means:

- (i) these terms and conditions, including the Schedules;
- (ii) the Mini-Competition Contract
- (iii) the Request for Mini-Tender
- (iv) the Proposal
- (v) the Request For Applications; and
- (vi) the Tender Submission

In the event of any ambiguity or discrepancy between these terms and conditions and the Schedules, then these terms and conditions shall prevail;

In the event of any ambiguity or discrepancy between the Mini-Competition Contract and these terms and conditions, then the provisions of the Mini-Competition Contract shall prevail.

In all other respects, in the event of any inconsistency or conflict between the documents identified at (i) to (vi) above, precedence shall be given to the above documents in descending order (so that, by way of example, these terms and conditions shall prevail over the Request for Mini Tenders).

"Framework Suppliers" means those Suppliers who have been appointed to the framework;

"Framework Purchaser" means those bodies listed in Schedule 3 hereto that may wish from time to time to purchase the Product from Framework Suppliers pursuant to this Framework Agreement;

"Mini-Competition Contract" means the agreement to be entered into by the Framework Purchaser and the Supplier under and pursuant to which the Supplier will provide the Product in accordance with the terms and conditions contained therein. An indicative example of a Mini-Competition Contract is set out at Schedule 5;

"Mini-Competition" means a tender competition between the Framework Suppliers conducted in accordance with Clause 3;

"Price" shall have the meaning given to it by Clause 5;

The "Product" means ready mix concrete products in line with the Specification attached at Schedule 1

"Proposal" means the proposal submitted by the Supplier to the Framework Purchaser in response to a Request for Mini-Tenders (and the term "Framework Supplier's Proposal" shall be construed accordingly);

"Request for Mini-Tenders" means an invitation to submit a Proposal issued by the Framework Purchaser pursuant to Clause 3, an indicative sample of which is set out in Schedule 4;

"Request for Applications" means the request for applications as issued by the LGOPC on **10th February, 2016** together with any clarifications issued in respect of same;

"Specification" means the specifications or other information relating to the Products over the Contract Period, attached at Schedule 1 hereto;

"Tender Submission" means the Supplier's tender submission submitted to Corporate Services, Kerry County Council on **23rd March, 2016**.

1. Entire Agreement

- 1.1 This Framework Agreement constitutes the entire agreement between the parties and contains all the terms which the parties have agreed with respect to its subject matter and shall prevail over and supersede all prior agreements, understandings, statements and communications between the Supplier and any Framework Purchaser. Without prejudice to the generality of the foregoing, the Framework Agreement shall apply to the exclusion of any terms and conditions which the Supplier may purport to apply at any time, whether contained in any acknowledgement of a purchase order or otherwise.
- 1.2 Neither party has relied on any other written or oral agreement, representation, arrangement or understanding.
- 1.3 The Supplier acknowledges that it has not been induced to enter into this Framework Agreement by a statement or promise which this Framework Agreement does not contain. The LGOPC is not liable in equity, contract or tort or in any other way for a representation that is not set out in this Framework Agreement.

2. Scope of Appointment and Framework Period

- 2.1 In consideration for payment by the LGOPC of the sum of €1 and for other good and valuable consideration to the Supplier (receipt of which is hereby acknowledged by the Supplier) and subject to the terms and conditions set out in this Framework Agreement, the LGOPC hereby appoints the Supplier on a non-exclusive basis to supply the Product if instructed to do so from time to time pursuant to Clause 3, and the Supplier hereby accepts such appointment, in each case upon the terms and subject to the conditions of this Framework Agreement.
- 2.2 The appointment of the Supplier to the framework does not constitute a commitment or guarantee by any of the Framework Purchasers to procure any Product from the Supplier and does not confer any exclusivity on the Supplier. The Framework Purchasers may procure the Product in other ways outside of the framework from any provider or from other national/regional/local frameworks/tenders in place.
- 2.3 The Framework Agreement shall take effect on the Commencement Date and shall continue in full force and effect for a period of twenty four months from and including the Commencement Date (the "Contract Period"), unless it is otherwise terminated in accordance with the provisions of this Framework Agreement or otherwise lawfully extended in line with the provisions of the Request for Applications. For the avoidance of any doubt, the term of a Mini-Competition Contract may last longer than the Contract Period. Notwithstanding the expiry of the Framework Period, a Mini-Competition Contract that is not completed prior to the end of the Framework Period shall be governed by this Framework Agreement.

3. Mini-Competition Contracts

- 3.1 Where a Framework Purchaser wishes to acquire Product pursuant to the Framework Agreement, it will do so by means of a Mini-Competition. The Framework Purchaser shall issue a Request for Mini-Tenders to all Framework Suppliers that the Framework Purchaser believes to be capable of providing the Product via the Supplygov system, inviting each to submit a Proposal.
- 3.2 The Supplier shall comply with any procedures, processes, time limits, instructions or other requirements issued by the Framework Purchaser in relation to the Mini-Competition and shall bear any and all costs associated therewith.
- 3.3 Suppliers awarded a Mini-Competition Contract shall provide the Product at the prices specified in their Tender Submissions or such lower prices tendered pursuant to a Request for Mini-Tenders. For the avoidance of doubt, Proposals submitted in response to a Request for Mini-Tenders must not exceed the price(s) tendered by the Supplier in its Tender Submission.

- 3.4 Proposals received in response to a Request for Mini-Tenders will be evaluated on the basis of Price only. The Framework Supplier that submits the lowest priced Proposal shall be awarded the maximum marks.
- 3.5 The Framework Purchaser shall not be bound to accept the lowest priced or any Proposal submitted in response to a Request for Mini-Tenders.
- 3.6 If following a Mini-Competition, a Framework Purchaser selects the Supplier to provide the Product, the Framework Purchaser shall raise a purchase order which shall be appended to a Mini-Competition Contract and issued directly by email to the Supplier.
- 3.7 By signing and returning or otherwise acknowledging a Mini-Competition Contract, the Supplier acknowledges and agrees that it shall have entered into a legally binding contract with the Framework Purchaser to supply the Product specified in the relevant Mini-Competition Contract to the Framework Purchaser incorporating terms and conditions set out in this Framework Agreement. In any circumstance where the Supplier does not formally accept a Mini-Competition Contract, dispatch or delivery of the Product by the Supplier to the Framework Purchaser shall be deemed conclusive evidence of the acceptance of a Mini-Competition Contract and the terms and conditions of the Mini-Competition contract thereby constituted.
- 3.8 Each Framework Purchaser shall be responsible for awarding Mini-Competition Contracts in accordance with the Mini-Tender procedure set out in this Framework Agreement and LGOPC shall not have any responsibility or liability whatsoever or howsoever arising from the award of any Mini-Competition Contract or outcome of a Mini-Tender.
- 3.9 The Supplier shall perform all Mini-Competition Contracts in accordance with the requirements of this Framework Agreement, the terms and conditions of the respective Mini-Competition Contracts and in accordance with Irish law.
- 3.10 Default by a Framework Purchaser or Supplier in relation to any one Mini Competition Contract shall not entitle the other to treat such as a breach of the entire Framework Agreement and/or terminate this Framework Agreement.

4. The Supplier's Obligations

- 4.1 The Supplier shall supply the Product meeting the Specification to the Framework Purchaser and shall ensure that its staff shall provide the Product to the Framework Purchaser:
 - 4.1.1 in accordance with the terms of the Framework Agreement, including, for the avoidance of doubt the Tender Submission, the Proposal and the Mini-Competition Contract;
 - 4.1.2 diligently, conscientiously and in a professional manner and with all due care and skill;
 - 4.1.3 in compliance with all reasonable instructions of the Framework Purchaser in relation to the supply of the Product;
 - 4.1.4 in adherence with best industry standards as regards quality control and assurance
 - 4.1.5 in compliance with all requirements and/or obligations of any law, statute, statutory instrument, rule, order, regulation, directive and/or byelaws or other legislative measures;
 - 4.1.6 in absolute co-operation with the Framework Purchaser;
 - 4.1.7 maintaining the minimum quality levels of Product as set out in the Specification appended at Schedule 1.
- 4.2 The Supplier shall employ sufficient staff to provide the supply of the Product that shall be properly trained, skilled and qualified.

- 4.3 The Supplier shall, and shall ensure that its sub-contractors shall, ensure that the rates of pay and conditions of employment of each employee, including in relation to sick pay and pension contributions of each employee, comply with all applicable law and that those rates of pay are no less favourable than those laid down by the National Minimum Wage Act.
- 4.4 Failure by the Supplier to meet its obligations under this Clause shall be considered a material breach of the Framework Agreement.

5. Price

- 5.1 Subject to 3.3 above the Price shall be as set out in the Mini-Competition Contract.
- 5.2 The Supplier shall supply the Product at the Price(s) tendered in the Proposal submitted pursuant to a Mini-Tender.
- 5.3 Unless otherwise stated, the Price shall be:
- 5.3.1 exclusive of any applicable Value Added Tax (which shall be payable by the Framework Purchaser subject to receipt of a VAT invoice in accordance with the Mini-Competition Contract);
 - 5.3.2 payable in euro (€); and
 - 5.3.3 inclusive of any costs and/or expenses incurred by the Supplier in the supply of the Product and the Supplier shall not seek to recover such costs and/or expenses from the Framework Purchaser.
- 5.4 As provided under clause 3.3, the Price shall not exceed the price(s) set out in the Supplier's Tender Submission. For the avoidance of doubt, the price(s) tendered by the Supplier in its Tender Submission represents the maximum price that it may propose in response to any Request for Mini-Tender for the Contract Period.

6. Terms of Payment

- 6.1 The Supplier shall send an invoice to the Framework Purchaser on delivery of the Product or at such other time(s) as set out in the Mini-Competition Contract. Each invoice must include -:
- 6.1.1 The Suppliers name and address;
 - 6.1.2 The Suppliers VAT Registration Number;
 - 6.1.3 Invoice number and date;
 - 6.1.4 The Framework Purchaser's purchase order number;
 - 6.1.5 The reference number from the Supplygov system where the Request for Mini-Tenders is published;
 - 6.1.6 The origin of the Product (naming the quarry / depot from where the Product will be supplied)
 - 6.1.7 The quantity of Product supplied; and
 - 6.1.8 The Price
 - 6.1.9 A CE marking statement on the docket specific to delivery consignment or an attached CE marking statement with an unambiguous reference to the delivery docket and consignment and linked to the relevant Declaration of Performance
 - 6.1.10 The CE marking statement must reference the point of delivery of the product and distribution process as appropriate

- 6.2 Subject to the Framework Purchaser being satisfied as to the due performance of the Mini-Competition Contract in line with clause 8, the Supplier shall be paid the Price established through the Mini-Tender as set out in the purchase order and in the Mini-Competition Contract.
- 6.3 Each Framework Purchaser may retain or set off against the Price any amount owed to that Framework Purchaser by the Supplier on any account whatsoever.
- 6.4 Discharge of any invoice shall be subject to the Framework Purchaser being in possession of the Supplier's current tax clearance certificate. The Supplier shall not be entitled to payment for and the Framework Purchaser shall not be obliged to pay any interest or penalties incurred as a result of late payment caused by the Supplier's failure to provide a current tax clearance certificate in a timely manner.

7. Confidentiality

- 7.1 During the Contract Period and at any time after the termination or expiry of this Framework Agreement (for any reason) each of the Parties to this Framework Agreement agrees to hold confidential all information, documentation and other material received, provided or obtained (whether in writing, orally or by another means and whether directly or indirectly) arising from their participation in this Framework Agreement ("Confidential Information") and shall not disclose same to any third party except -:
 - 7.1.1 to its professional advisors subject to the provisions of this clause 7; or
 - 7.1.2 as may be required by law; or
 - 7.1.3 as may be necessary to give effect to the terms of this Framework Agreement subject to the provisions of this clause 7; or
 - 7.1.4 in the case of the Framework Purchaser by request of any person or body or authority whose request the Framework Purchaser or persons associated with the Framework Purchaser (including but not limited to the Legislature and/or the Executive and/or the Civil Service) considers it necessary or appropriate to so comply.

- 7.2 The Supplier undertakes that it will properly instruct its staff on the absolute need to maintain privacy and confidentiality of all matters affecting the business of the Framework Purchaser or any persons doing business with the Framework Purchasers or in any way arising from documents or records of any kind which may come under the hand of the Supplier or its staff while engaged by a Framework Purchaser.
- 7.3 The Supplier undertakes to comply with all reasonable directions of the Framework Purchaser with regard to the use and application of all and any Confidential Information. The Supplier acknowledges that the security of the Local Authorities and the State and its information is of paramount important to the Framework Purchaser. Accordingly the Supplier confirms that it will from time to time, during the currency of this Framework Agreement as may be requested by the Framework Purchaser submit full personal details (including those of subcontractors) of persons who are assigned to supply the Product under this Framework Agreement. The Supplier further acknowledges that checks may be carried out in relation to all such personnel by authorities and the Supplier shall comply with all reasonable directions of the Framework Purchaser arising there from.

8. Contract Performance Review

- 8.1 The Framework Purchasers may review the Supplier's performance from time to time during the Term according to the below Performance Measurement Table.
- 8.2 On completion of a Mini-Competition Contract, if so requested by the Framework Purchaser, the Supplier shall collate and provide to the Framework Purchaser the information required for the Framework Purchaser to review that Supplier's performance according to the Performance

Measurement Table below. The Framework Purchaser will complete a Performance Evaluation Form in the manner described in section 4.1.13 of the Request for Applications and shall also record performance against the Performance Measurement Table.

- 8.3 The Supplier is said to have reached Level 1, Level 2 or Level 3, if, during the review for one of the indicators listed in the below table, the number of occurrences of that indicator equals or exceeds the number listed in the column headed "Level 1", "Level 2", or "Level 3".
- 8.4 If the Supplier has reached Level 1, the Framework Purchaser will give that Supplier a written notification and the Supplier must demonstrate to the Framework Purchaser's satisfaction that it has implemented steps to redress the problem.
- 8.5 If the Supplier has reached Level 2, the Framework Purchaser will exclude that Supplier from each Mini-Tender in which it is due to participate until the Supplier has demonstrated to the Framework Purchaser's satisfaction that it has implemented steps to redress the problem. Until the foregoing has been satisfactorily remedied, Mini-competitions may be run without prejudice as if the Supplier was excluded and the Framework Agreement had been terminated with the Supplier.
- 8.6 Only the LGOPC has authority to terminate a Supplier from this Framework Agreement. The Framework Purchaser may notify the LGOPC if a Supplier has reached Level 3 and the LGOPC may terminate the Framework Agreement as between the LGOPC and that Supplier pursuant to clause 9 below.

Performance Measurement Table

Employers Objective	Health and Safety		Performance	Contract Administration
	<i>Management of Safety</i>		<i>Mobilisation</i>	<i>Every request for Tender should be answered</i>
Indicator	Failure to maintain safety measures as set out in the Safety statement for handling and delivery.	Requirement for immediate cessation of delivery on foot of H&S concerns	Failure to deliver the nominated Product(s) on the dates as agreed at RFT stage	Failure to tender when invited
Measurement Period	Term	Term	Term	Term
Level 1 (Rule 8.4)	N/A	N/A	2	2
Level 2 (Rule 8.5)	1	1	3	4
Level 3 (Rule 8.6)	2	2	5	5

- 8.7 The Supplier shall implement such recommendations and comply with any Framework Purchaser's findings to the extent necessary to ensure that the Supplier continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.
- 8.8 In addition to the performance review as may be conducted by the Framework Purchasers pursuant to Clause 8.1 above, the performance of the Supplier under this Framework Agreement shall be subject to review on an annual basis by the LGOPC. Annual evaluation meetings may be held during the term of this Framework Agreement. Mutually agreeable dates will be determined for these meetings, the purpose of which will be to provide a forum for the Framework Purchaser, LGOPC and the Supplier to review performance and other key issues in connection with the Framework Agreement. The LGOPC, the Framework Purchasers and the Supplier shall be committed to continuously improving the Supplier/Framework Purchaser relationship.
- 8.9 The Supplier shall implement such recommendations and comply with the LGOPC's findings to the extent necessary to ensure that the Supplier continues to meet its obligations in accordance with the requirements set out in this Framework Agreement.
- 8.10 The Supplier shall keep and maintain until a minimum of six (6) years after the expiry of the Contract Period, full and proper records and all documents relating to the performance of its

obligations under this Framework Agreement and shall allow the LGOPC and/or each Framework Purchaser and any auditors of or other advisers to the LGOPC and/or a Framework Purchaser to access at any time and from time to time any of the Supplier's premises, personnel and such records and documents for the purposes of -:

8.10.1 fulfilling any legally enforceable request by any court, tribunal or regulatory body; or

8.10.2 undertaking verifications of the accuracy of the Price or identifying suspected fraud; or

8.10.3 undertaking verifications that the Product is being (and has been) provided in accordance with this Framework Agreement.

8.11 Conduct of Audits:

8.11.1 The requirement for audits is not applicable to this Framework Agreement

9. Termination

9.1 Without prejudice to any other rights or remedies to which it may be entitled, the LGOPC shall be entitled at any time to terminate this Framework Agreement without liability to the Supplier by giving written notice to the Supplier to take effect immediately or on the date specified in the said notice if -:

9.1.1 the Supplier commits a material breach of any term or condition of this Framework Agreement or the relevant Mini-Competition Contract or fails to perform any obligation or responsibility hereunder, and if such breach is capable of being remedied, fails to remedy the breach within thirty (30) days of the notice given by the Framework Purchaser or the LGOPC requiring the Supplier to do so;

9.1.2 the Supplier delivers the Product which does not meet the requirements of this Framework Agreement, the Specification and/or a Mini-Competition Contract including the Delivery Date;

9.1.3 the Supplier contravenes any of Clause 4;

9.1.4 the Supplier contravenes Clause 7;

9.1.5 the Supplier reached Level 3 under the Performance Measurement Table as described in Clause 8;

9.1.6 the Supplier becomes bankrupt, or convenes a meeting for the purposes of, proposes to make or makes any composition or arrangement with, or conveyance or assignment for the benefit of its creditors, or any application is made under any bankruptcy Act for the time being in force for a sequestration of its estate, or a trustee is granted by it on behalf of its creditors, or if the Supplier, being a company, enters into a voluntary or compulsory liquidation (other than for the purpose of an amalgamation or reconstruction, the terms of which have been agreed by the LGOPC), or if a receiver or examiner is appointed over any of its assets, or if the Supplier is unable to pay its debts within the meaning of Section 214 of the Companies Act, 1963 (as amended by Section 123 of the Companies Act, 1990), or the Supplier takes or suffers any analogous action under any other applicable law;

9.1.7 The LGOPC reasonably believes that any of the events mentioned in the clause above or any analogous event is about to occur in relation to the Supplier in any jurisdiction and notifies the Supplier accordingly;

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

9.1.9 the Supplier is struck off the register of companies;

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

10. Assignment, Transfer and Sub-Contracting

- 10.1 The Supplier shall not sub-contract, assign or transfer this Framework Agreement or any part thereof or the benefit or advantage of this Framework Agreement to any third party without the prior written consent of the relevant Framework Purchaser or LGOPC.
- 10.2 In the event of such consent being given, the Supplier shall ensure that the sub-contractor is a reasonable and prudent supplier and that the sub-contractor shall carry out its obligations in accordance with the terms of this Framework Agreement. Notwithstanding the foregoing, the Supplier acknowledges that it remains fully liable and responsible for the provision of the Product and the acts and omissions of the sub-contractor as if they were its own.
- 10.3 The Supplier shall also maintain during the term of this Framework Agreement and for 6 years thereafter records and documentation relating to the sub-contractor and the Product provided by it and shall make same available to the LGOPC upon request.
- 10.4 This Framework Agreement shall be binding upon successors and assigns of each Framework Purchaser and the Supplier and the name of a party appearing in this Framework Agreement shall be deemed to include the names of its successors and assigns provided always that nothing shall permit any assignment by either party except as expressly provided.

11. Waiver

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

12. Force Majeure

- 11.1 No delay or failure in performance by either party hereto shall constitute default hereunder or give rise to any claim for damages or loss including anticipated profits if such delay or failure is caused by Force Majeure. Unless otherwise instructed by Framework Purchasers, the Supplier shall recommence performance as soon as possible after the Force Majeure has ceased.
- 11.2 Force Majeure shall mean an occurrence beyond the control and without the fault or negligence of the party affected and which the said party is unable to prevent or provide against by the exercise of reasonable diligence including, but not limited to: - acts of God or the public enemy; expropriation or confiscation of facilities; any form of Government intervention; war, hostilities, rebellion, terrorist activity; local or national emergency, sabotage or riots; floods, unusually severe weather conditions which could not reasonably have been anticipated; fires, explosions or other catastrophes; national or district strikes or any other concerted acts of workmen or other similar occurrences other than strikes or concerted acts of the Supplier's workforce.
- 11.3 If any delay or failure in performance, as set out above, persists for 14 days or more, Framework Purchasers shall have the right to terminate the relevant Mini-Competition Contract by giving 7 days notice in writing to the Supplier.

12. Conflicts Registrable Interests and Corrupt Gifts

- 12.1 The Supplier confirms that it has carried out a conflicts of interest check and is satisfied that it has no conflicts in relation to the supply of the Product and its obligations undertaken under this Framework Agreement. The Supplier hereby undertakes to advise the Framework Purchaser forthwith should any conflict or potential conflict of interest come to its attention during the currency of this Framework Agreement and to comply with the Framework Purchaser's directions in

respect thereof. Any registrable interest involving the Supplier (and any subcontractor or agent as the case may be) and the Framework Purchaser, or their relatives must be fully disclosed to the Framework Purchaser immediately upon such information becoming known to the Supplier and to comply with the Framework Purchaser's directions in respect thereof, to the satisfaction of the Framework Purchaser.

- 12.2 The terms "registrable interest" and "relative" shall be interpreted as per section 2 of the Ethics in Public Office Act, 1995. The Supplier shall not offer or agree to give any public servant any gift or consideration or commission of any kind as an inducement or reward for doing or forbearing to do or for having done or forborne to do any action in relation to the obtaining or execution of this or any other public contract. Any breach of this clause 10 or the commission of any offence by the Supplier, any sub-contractor, agent, or employee under the Prevention of Corruption Acts, 1889 to 2005 shall entitle the Framework Purchaser to terminate this Framework Agreement forthwith and to recover the amount of any loss resulting from such cancellation, including but not limited to recovery from the Supplier of the amount or value of any such gift, consideration or commission.

13. Delivery

- 13.1 The Supplier shall deliver the Product on or before the Delivery Date, unless otherwise agreed to in writing by the Framework Purchaser in accordance with the Framework Purchaser's requirements. Time of delivery of the Product shall be the essence of this Framework Agreement, unless otherwise agreed in writing.
- 13.2 If a Delivery Date cannot be met by the Supplier, the Supplier shall promptly notify the Framework Purchaser. Notwithstanding such notice, unless a substitute delivery date for the Product has been expressly agreed by the Framework Purchaser in writing, the Supplier's failure to effect the delivery of the Product on the Delivery Date shall entitle the Framework Purchaser, without prejudice to any other remedy it may have, to terminate the Mini-Competition Contract.
- 13.3 The Framework Purchaser shall not be deemed to have taken delivery of the Product until a delivery note has been signed by a duly authorised representative of the Framework Purchaser. For the avoidance of doubt, the taking of delivery of the Product shall not infer that the Framework Purchaser has satisfied itself as to the quality and conformance to Specification of the Product.

14. Insurance

- 14.1 The Supplier shall maintain in force during the term of this Agreement full and comprehensive insurance policies in respect of all customary liabilities and risks undertaken by the Supplier in connection with the provision of the supply of the Product including but not limited to:
- 14.1.1 Employers liability insurance with a limit of indemnity of no less than €13 million. Such policy shall include an indemnity to each Framework Purchaser as principal.
- 14.1.2 Public liability insurance with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to each Framework Purchaser as principal.
- 14.1.3 Products Liability Policy with a limit of indemnity of no less than €6.5 million. Such policy shall include an indemnity to each Framework Purchaser as principal.
- 14.2 The Supplier shall ensure that its insurance policies are taken out with reputable insurers acceptable to the LGOPC within the jurisdiction of the EU and that the level of cover and other terms of insurance are acceptable to and agreed by the Framework Purchasers.
- 14.3 The Supplier shall comply with all terms and conditions of its insurance policies at all times. If cover under the insurance policies shall lapse or not be renewed or be changed in any material way or if the Supplier is aware of any reason why the cover under its insurance policies may lapse or not be renewed or be changed in any material way, the Supplier shall notify the LGOPC without delay.

- 14.4 It shall be the Supplier's responsibility to ensure that any agent or sub-contractor of the Supplier effects and maintains all insurance required by law and all such other insurance as are necessary for the provision of the supply of the Product. Any deficiencies in the cover or policy limits of the insurance policy of such agents or sub-contractors shall be the sole responsibility of the Supplier.
- 14.5 The Supplier shall not do or suffer to be done anything which may render the said policy or policies of insurance void or voidable.

15. Risk and Title

- 15.1 Title to the Product (if applicable) shall pass on delivery to the Framework Purchaser unless payment is made prior to the Delivery Date, in which event, title shall pass to the Framework Purchaser on payment. Where title in the Product has passed to the Framework Purchaser prior to the Delivery Date pursuant to this Clause 15, the Supplier shall keep such Product separate from other Product and clearly mark the product as the property of the Framework Purchaser.

16. Miscellaneous Provisions

- 16.1 Any amendments to the terms of this Framework Agreement shall be signed by the Parties to this Framework Agreement and endorsed on this Framework Agreement.
- 16.2 If any provision of this Framework Agreement is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of this Framework Agreement and the remainder of the provision in question shall not be affected thereby.
- 16.3 It is acknowledged by all parties that the Supplier will at all times be an independent contractor, and nothing in this Framework Agreement will be construed (and the Supplier will not hold out its relationship) as constituting a partnership, joint venture, representation, agency or employer and employee relationship between any Framework Purchaser and the Supplier.
- 16.4 This Framework Agreement and any contractual obligations or disputes arising out of or in connection with this Framework Agreement shall be governed and construed in accordance with the laws of Ireland. The Parties irrevocably agree that the courts of Ireland shall have exclusive jurisdiction to hear and decide any suits, actions or proceedings and to settle any disputes which may arise out of or are in connection with this Framework Agreement.
- 16.5 IN WITNESS whereof the parties hereto have executed this Framework Agreement the day and year first herein WRITTEN.

Signed on behalf of LGOPC by:

A duly authorised representative

Date

Signed on behalf of the Supplier by:

A duly authorised representative

Date

SCHEDULE 1 - The Specification

The Product shall comply with the Specification in the Instructions Document, and at Request for Tenders with any requirements set out in any Mini-Competition.

SCHEDULE 2 – DECLARATIONS

The Declarations have been completed as part of Instructions Document requirements.

SCHEDULE 3 - Framework Purchasers

The Framework Purchasers are as nominated in the Schedule attached to the Instructions Document.

SCHEDULE 4 – Sample Request for Mini-Competition Tenders

[Insert Date]

[Insert Name and Address of Supplier]

Dear Sirs,

We refer to the Framework Agreement for the provision of the supply of the Product dated [● 2016]. Terms and expressions defined in the Framework Agreement shall bear the same meanings where used in this Request for Mini-Competition Tenders.

[Insert name of Framework Purchaser] hereby issues a Request for Mini-Competition Tenders in accordance with **Clause 3** of the Framework Agreement inviting a Proposal from you for the supply of -:

Insert precise description/specification of the Product including the required timing for their delivery and any other relevant information

You are invited to submit a Proposal to include the following -:

- A Price for the provision of the Product. Pricing must be in euro (€) and inclusive of all costs and expenses.
- A Statement confirming that the Product meeting the Specification can be delivered by **[insert date]**.

[One/Two] signed hardcopies of the Proposal must be submitted to **[insert details]** no later than **[Insert details]**. All deliveries must be clearly marked [●]. Deliveries must not bear the name, address or other marking which may identify the Supplier. Proposals received after the deadline will not be considered. Responsibility for proof of delivery to the correct location before the required closing date rests with the Supplier.

Proposals received in response to this Request for Mini-Competition Tenders will be evaluated on the basis of quality and price.

Should you have any queries in respect of this Request for Mini-Competition Tenders, please contact [●] by email at [●] [or by telephone at [●]] no later than [●]. **[Insert name of Framework Purchaser]** will endeavour to respond to all reasonable queries received promptly, but does not undertake to respond to all queries. **[Insert name of Framework Purchaser]**'s response will be communicated to all Framework Suppliers to whom this Request for Mini-Competition Tenders has been issued, unless the **[Insert name of Framework Purchaser]**, at its absolute discretion, is satisfied that the query and/or its response should be properly regarded as confidential or commercially sensitive.

We look forward to receipt of your Proposal.

Yours faithfully, **etc.**

SCHEDULE 5 – Sample Mini-Competition Contract

[*Insert Date*]

[*Insert Name and Address of the Supplier*]

(hereinafter referred to as "the Supplier")

[Mini-Competition Contract Number/Purchase Order Number: [●]]

Dear Sirs

We refer to the Framework Agreement for the provision of [●] dated [●]. Terms and expressions defined in the Framework Agreement shall bear the same meanings where used in this Mini-Competition Contract.

[*Insert name of Framework Purchaser*] issued a Request for Mini Tenders in accordance with Clause 3 of the Framework Agreement and invited a Proposal from you for the provision of [●] on[●].

You submitted a Proposal on [●], which is attached at Appendix 1 hereto. [*Insert name of Framework Purchaser*] now wishes to engage the Supplier to provide the Product more particularly described in paragraph 1 below subject to and in accordance with the provisions of the Framework Agreement and this Mini-Competition Contract. [*Insert name of Framework Purchaser*] has issued the attached purchase order to effect this Mini-Competition Contract.

1. **Product (ready mix concrete)**

The Supplier shall provide the following Product:

[*Insert precise description/specification of the Product*]

2. **Delivery**

The Supplier shall deliver the Product to:

[*Insert date(s) and times*]

3. **Other terms and conditions**

[*Insert as applicable*]

4. **Price and Payment**

Subject to the provisions of the Framework Agreement and to the due compliance by the Supplier with the Supplier's obligations and undertakings under the Framework Agreement and delivery of the Product, the [*insert name of Framework Purchaser*] agrees to pay the Supplier the [sum(s)] stated hereunder at the [time(s)] stated hereunder:

[*Insert price and payment terms*].

No contract in respect of the Product described in this Mini-Competition Contract shall exist until this Mini-Competition Contract is signed by both parties.

We would be obliged if you would kindly counter-sign and return this letter to acknowledge acceptance of the terms outlined above.

Yours faithfully,

SIGNED by

a duly authorised representative
for and on behalf of the [*insert name of Framework Purchaser*]
in the presence of:-

COUNTER-SIGNED in acceptance of the above instructions by:

For and on behalf of [*insert name of the Supplier*]
in the presence of:-

Date:

[Insert Proposal as Appendix 1 of the Mini-Competition Contract and Append Purchase Order]