



STANDARD TERMS FOR SERVICES AND SUPPLIES

Version 7 / January 2013

This Agreement is not to be used on contracts where the HSE intends to purchase the Service Provider's Intellectual Property (as defined in this Agreement).

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PART ONE

GENERIC CLAUSES

This Part One applies to the procurement of both Services and Supplies

1. INTERPRETATION

- 1.1. The Contract is separated into the following parts:
 - 1.1.1. Generic Clauses (Part One) – this part applies to the procurement of both Services and Supplies;
 - 1.1.2. Confidentiality Agreement Clauses (Part Two) – this part applies to the treatment of information obtained during the procurement of both Services and Supplies;
 - 1.1.3. Services Contract Clauses (Part Three) – this part applies only if the HSE is procuring Services;
 - 1.1.4. Supplies Contract Clauses (Part Four) – this part applies only if the HSE is procuring Supplies;
 - 1.1.5. Construction Contract Clauses (Part Five) – this part applies to the exclusion of the other parts of the Contract if the HSE is procuring construction works or engaging construction design consultants;
 - 1.1.6. Dispute Resolution Procedure (Part Six) – this part applies to the procurement of both Services and Supplies.
- 1.2. Headings and sub-headings are for ease of reference only.
- 1.3. References to Clauses are references to Clauses of the Contract.
- 1.4. References to a document include a reference to that document as amended.
- 1.5. References to laws or Legal Requirements include changes revisions, re-enactments and replacements.
- 1.6. Words in the singular include the plural and the other way around.
- 1.7. Words in a gender include all genders.
- 1.8. Terms such as *including*, *in particular*, *such as*, and *for example* are not to be read as exhaustive, or to limit, but may extend the generality of the provisions to which they relate.

2. DEFINITIONS

- 2.1. *Days* are calendar days.
- 2.2. *Goods* means things to be supplied by the Service Provider to the HSE for the Job, as identified in the Official Purchase Order.
- 2.3. *HSE* means the Health Service Executive.
- 2.4. *HSE's People* means the HSE's members, officers, employees, servants or agents including other HSE Service Providers and Contractors, and their sub-Service Providers and sub-Contractors.
- 2.5. *Information* means any and all *Information*, (irrespective of the format - paper, electronic or otherwise) belonging to the HSE, including but not limited to the following:

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- 2.5.1. Personal Information concerning the HSE's clients, patients or staff, including confidential Information concerning the physical and mental health of the HSE's clients, patients and staff;
 - 2.5.2. Information regarding the business affairs of the HSE generally, and as regards the Service;
 - 2.5.3. Information regarding the policies, procedures and work practices of the HSE;
 - 2.5.4. Goods and services (including, without limitation, audit, consultancy and related services);
 - 2.5.5. Information regarding the existence, content, progress or conclusion of any negotiations between the HSE and the Service Provider relating to the Service;
 - 2.5.6. Confidential codes or other Information concerning access to the HSE's computer networks and/or information systems.
- 2.6. *Delete* for the purposes of this agreement means removing all Information which is electronically held in such a way that it can never be retrieved from the device on which it is held.
- 2.7. *Intellectual Property* means any and all rights pertaining to discoveries, trade secrets, confidential business information, financial, marketing and business data, concepts, ideas, improvements to existing technology (whether or not written down or otherwise converted to tangible form), patents, patent applications, designs, trade marks, service marks, goodwill, copyright, moral rights, know-how, and all other forms of industrial or intellectual property (in each case in any part of the world and whether or not registered or registerable).
- 2.8. *Stage* means a stage of the Job identified in the Official Purchase Order.
- 2.9. The *Job* means supplying the Goods or providing the services identified in the Official Purchase Order.
- 2.10. *Legal Requirements* means the requirements of:
- 2.10.1. Any governing law, rule or statutory regulation applicable in Ireland;
 - 2.10.2. Any person who, pursuant to European Community or Irish law, has authority in relation to the Job (apart from requirements of the HSE under the Contract);
 - 2.10.3. Any guidance, policy or directions with which the Service Provider is contractually bound to comply.
- 2.11. *Official Purchase Order* means the HSE's purchase order for the Job, in the official format of the HSE and which is issued by an authorised officer of the HSE to the Service Provider identifying:
- 2.11.1. The Service Provider,
 - 2.11.2. The Job;
 - 2.11.3. The Price;
 - 2.11.4. The purchase order number;
 - 2.11.5. The HSE Authorising Officer.
- 2.12. *Person* includes human persons and corporate and unincorporated bodies.
- 2.13. *Price* is the price for the Job identified in the Official Purchase Order.
- 2.14. *Service Provider* is the person to do the Job as identified in the Official Purchase Order.
- 2.15. *Service Provider's People* means persons assisting the Service Provider for the Job, (including officers, employees and sub-Service Providers and sub-contractors) of any tier.

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2.16. *Tax Point* is the date at which VAT applies.

2.17. *Working days* are days that are not a Saturday, Sunday, a public holiday established under the Organisation of Working Time Act 1997, Christmas Eve or Good Friday.

2.18 *Writing or In writing* shall include writing by electronic means.

3. ACCEPTANCE OF THE TERMS OF THE CONTRACT

3.1. This Contract is formed between the HSE and a Service Provider when the HSE issues to the Service Provider an Official Purchase Order.

3.2. This Contract, consisting only of the Official Purchase Order and these standard terms, is the entire agreement between the parties about its subject and it supersedes any previous oral or written negotiations, commitments, representations, communications and agreements.

3.3. Once it has received an Official Purchase Order, by commencing the provision of Services or by delivering Supplies to a date and location as specified by the HSE:

3.3.1. The Service Provider acknowledges that it is bound by the terms of the Contract;

3.3.2. The Service Provider accepts in full and without restriction the terms of the Order and the Standard Terms as the sole basis of this Contract.

Whatever the Service Provider's own conditions of sale may be, which the Service Provider hereby waives, unless any exceptions to the contrary are specifically and explicitly approved by the HSE in writing in any particular case.

4. JOINT AND SEVERAL LIABILITY

If more than one human, legal person is identified as the Service Provider, they are jointly and severally liable to the HSE for due performance of the Contract.

5. PRICE

5.1. The Service Provider must do the Job at its own expense.

5.2. The HSE must pay the Service Provider the Price for doing the Job according to the Contract.

5.3. Since the Service Provider has determined the Price, the Service Provider is taken to have satisfied itself before entering into this Contract that the Price is correct and sufficient, and to have taken account of all that is required to perform this Contract, and to have included in the Price all costs of the Job including:

5.3.1. Transporting;

5.3.2. Handling, packing, loading, unloading, unpacking, checking and insuring any Goods;

5.3.3. Providing operation and maintenance manuals for any Goods;

5.3.4. All required supervision;

5.3.5. Installing and commissioning (to include start-up, calibration, testing and related activities);

5.3.6. All applicable government and local authority taxes, levies or charges.

6. PAYMENTS

6.1. Unless otherwise directed by HSE all payments under this Contract will be by electronic funds transfer.

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- 6.2. The HSE shall be under no obligation to accept or pay for any Goods supplied earlier than the delivery date.
- 6.3. When the Job or a Stage has properly completed, the Service Provider must submit an invoice to the representative of the HSE notified to it by the HSE for that purpose stating:
 - 6.3.1. The name and address of the Service Provider;
 - 6.3.2. The invoice number and invoice date and/or Tax Point;
 - 6.3.3. The number of the Official Purchase Order;
 - 6.3.4. The product codes and descriptions for the Job, and a breakdown of the part of the Price applicable to each code;
 - 6.3.5. The Price;
 - 6.3.6. if there is VAT, VAT itemised separately by VAT code and the Service Provider's VAT Registration Number.

The invoice will be in a format requested by the HSE including in electronic format if so requested. The HSE reserves the right to require that invoicing be carried out by way of electronic invoicing as defined by S.I. 639/2010 (the Value Added Tax Regulations 2010).

- 6.4. If the Job includes Goods, the invoice must show the delivery address as stated on the Official Purchase Order and be accompanied by a delivery note that was signed by an authorised representative of the HSE when the Goods were properly delivered. If the delivery note is not included, the sum set out in the invoice shall not become due and owing until proof of delivery is provided by the Service Provider to the HSE.
- 6.5. If this Contract provides for interim payment for completion of Stages of the Job, the Service Provider must submit an interim invoice for the Stage portion of the Price when the Stage has been properly completed. The interim invoice must comply with this Clause.
- 6.6. If the HSE is satisfied that:
 - 6.6.1. The Job or Stage of the Job has been completed according to this Contract;
 - 6.6.2. The Service Provider has complied with this Clause;
 - 6.6.3. The Service Provider has a current tax clearance certificate where payments by HSE to the Service Provider total €10,000 or more (including VAT) in a 12 month period;
 - 6.6.4. The invoice complies with section 17 of the Value Added Tax Act 1972.

The HSE must pay the amount due, less any deduction permitted under this Contract, within 45 days after the HSE received the invoice.

7. DEBTS TO HSE

- 7.1. The HSE may recover any money due from the Service Provider under or for breach of this Contract:
 - 7.1.1. As a simple contract debt due and recoverable in any Court of competent jurisdiction;
 - 7.1.2. By deducting the money from any other money due or to become due to the Service Provider under this Contract or any other contract between the parties.

8. VAT

- 8.1. All amounts due under this Contract are inclusive of VAT.
- 8.2. If any supply under this Contract is or becomes chargeable to VAT then all amounts due under

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this Contract are inclusive of VAT.

9. LEGAL REQUIREMENTS

- 9.1. The Service Provider shall, in performing the Contract, comply with all Legal Requirements and ensure that the Service Provider's People comply with all Legal Requirements.
- 9.2. The Service Provider shall ensure that the Job complies with all Legal Requirements.

10. SOCIAL RESPONSIBILITY

- 10.1. The Service Provider must in the performance of the contract observe the requirements and standards of any International Conventions, Covenants and Agreements to which Ireland is a signatory or contracting party and which may be directly effective and justiciable in Ireland.
- 10.2. The Service Provider will be expected to adopt, embrace, support and implement in so far as these may impinge on the performance of his duties and obligations under the contract, the ten principles of the United Nation's Global Compact covering human rights, labour standards, the environment and anti-corruption.
- 10.3. The Service Provider shall pay rates of wages and observe hours and conditions of labour not less favourable than those established, in the trade or industry in the district where the work is carried out, by agreement, machinery of negotiation or arbitration to which the parties are organisations of employers and trade unions representative respectively of substantial proportions of employers and workers engaged in the trade or industry in the district (hereinafter referred to as established rates and conditions) or, failing such established rates and conditions in the trade or industry in the district, established rates and conditions in other districts where the trade or industry is carried on under similar general circumstances.
 - 10.3.1. In the absence of any such agreement or established rates and conditions as defined in section 10.3 the Service Provider shall pay rates and wages and observe hours and other conditions of labour not less favourable than those which are or would be paid and observed by Government in the trade in the district where the work is carried out.
- 10.4. The Service Provider must ensure that the employers of all work persons do all of the following:
 - 10.4.1. Pay all wages and other money due to each work person;
 - 10.4.2. Ensure that work persons' wages are paid in accordance with the Payment of Wages Act 1991 and are never more than 1 month in arrears or unpaid;
 - 10.4.3. Pay all pension contributions and other amounts due to be paid on behalf of each work person;
 - 10.4.4. Make all deductions from payments to work persons required by law, and pay them on as required by law;
 - 10.4.5. Keep proper records (including time sheets, wage books and copies of pay slips) showing the wages and other sums paid to and the time worked by each work person, deductions from each work person's pay and their disposition, and pension and other contributions made in respect of each work person, and produce these records for inspection and copying by persons authorised by the HSE, whenever required by the HSE;
 - 10.4.6. Produce other records relating to the rates of pay, deductions from pay, conditions of employment, rest periods and annual leave of work persons for inspection and copying by persons authorised by the HSE, whenever required by the HSE;
 - 10.4.7. Respect the right under law of work persons to be members of trade unions;
 - 10.4.8. Observe, in relation to the employment of work persons on HSE sites, the Safety,

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Health and Welfare at Work Act 2005, and all employment law including the Employment Equality Act 1998, the Industrial Relations Acts 1946 to 2004, the National Minimum Wage Act 2000 and regulations, codes of practice, legally binding determinations of the Labour Court and registered employment agreements under those laws.

- 10.5. If the HSE so requests, the Service Provider must, within 5 working days after the request, give to the HSE a statement showing the amount of wages and other payments due at the date of the request to and in respect of each work person, or, in respect of work persons not employed by or otherwise working for the Service Provider, ensure that their employer or the person for whom they are working does the same.
- 10.6. The HSE may seek information under the provisions of this Clause 10 (Social Responsibility) only for the purpose of ensuring the obligations described in this Clause 10 to work persons have been properly discharged. All information provided under the provisions of this Clause 10 will be returned to the person providing it or destroyed if the HSE is satisfied that the person providing the information has complied with legal obligations to work persons.
- 10.7. If the Service Provider has not complied with this Clause 10, the HSE may (without limiting its other rights or remedies) estimate the amount that should have been paid to work persons and contributions that should have been made on their behalf, and the HSE may withhold the estimated amount from any payment due to the Service Provider, until the HSE is satisfied that the required amounts have been paid.
- 10.8. If the Service Provider does not comply with this Clause 10, it must pay to the HSE any costs the HSE incurs in investigating and dealing with the non-compliance.

11. EARLY WARNING

Where a party has difficulty in meeting its contractual obligations, it shall immediately notify the other party.

12. PROGRAMME

- 12.1. Unless otherwise agreed, the Service Provider must start the Job on the date of the Contract.
- 12.2. The Service Provider must do the Job regularly and diligently, and complete it and any Stages within the period stated in the Official Purchase Order.

13. SUSPENSION

- 13.1. The HSE may notify the Service Provider that it is considering suspending the Job and may invite the Service Provider's response. The HSE may by notice suspend the Service Provider's performance of all or part of the Job even without inviting the Service Provider's response. The notice takes effect immediately unless a later date is stated in it. The suspension is for any fixed period stated in the notice, or if none until further notice. The Service Provider must suspend the Job accordingly.
- 13.2. On any suspension by the HSE, the Service Provider is entitled on a quantum meruit basis to a reasonable portion of the Price and costs properly incurred for the portion of the Job properly completed before the suspension. The Service Provider is not entitled to any other payment or damages for suspension.

14. PROVISION OF INFORMATION

The HSE's response or failure to respond to any communication from the Service Provider does not constitute or imply any review or verification by the HSE, or relieve the Service Provider from any responsibility or liability.

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15. INTELLECTUAL PROPERTY RIGHTS

- 15.1. The Service Provider hereby grants to the HSE, or shall procure from the date of this Contract the direct grant to the HSE of, a royalty-free, transferable, irrevocable, perpetual licence to use such Intellectual Property as may be necessary for the HSE to receive the benefit of this Contract and of any particular Job.
- 15.2. Service Provider will defend and indemnify HSE against all claims, proceedings, liability, loss, damages, costs, demands and expenses arising in connection with, caused by or resulting from the use by Service Provider in the performance of that Job or the use by HSE in receipt of the Job or of any information or material that is alleged by any party to infringe, or that infringes the Intellectual Property of such party, provided that:
 - 15.2.1. HSE notifies Service Provider in writing at the earliest practicable opportunity after learning of the claim;
 - 15.2.2. Service Provider has sole control of the defence and all related settlement negotiations subject to prior consultation with and input from the HSE as appropriate where the HSE's rights, interests or reputation are likely to be affected or put at risk;
 - 15.2.3. HSE provides Service Provider with all reasonable assistance, information and authority necessary to perform Service Provider's obligations under this Section, subject to such provision being permitted by law. Service Provider will reimburse HSE's reasonable out-of-pocket expenses incurred in providing such assistance.

16. ACCESS TO PREMISES

- 16.1. Where the Service Provider needs access to the HSE's premises, the Service Provider shall comply with all safety and security requirements of the HSE and shall ensure that all of the Service Provider's People shall likewise comply with such requirements.
- 16.2. The HSE shall give the Service Provider access to any documents that it needs to do the Job.

17. TERMINATION FOR SUBSTANTIAL BREACH (EITHER PARTY)

Either party may terminate this Contract for a substantial breach by the other party of any of its obligations under this Contract.

18. TERMINATION DUE TO INSOLVENCY ETC OF THE SERVICE PROVIDER

- 18.1. The Contract hereby created shall automatically cease and determine by operation of law, without prejudice to the HSE's contractual rights and remedies, should any of the following events occur:
 - 18.1.1. The Service Provider makes an arrangement or composition for the benefit of creditors;
 - 18.1.2. The Service Provider commits an act of bankruptcy, or becomes bankrupt;
 - 18.1.3. A resolution is passed or order is made to wind-up the Service Provider;
 - 18.1.4. A liquidator, examiner, receiver, administrative receiver, manager, or trustee is appointed to or takes possession of, or distress, execution, or other process is levied or enforced over, the Service Provider or a substantial part of the Service Provider's business, undertaking or assets;
 - 18.1.5. The Service Provider ceases or threatens to cease carrying on business or is, or is regarded by law or a court to be, insolvent or unable to pay its debts as they fall due;
 - 18.1.6. Any similar event to the above happens in any place where the Service Provider resides, or is incorporated, or does business;

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- 18.1.7. The Service Provider has been convicted by a judgment which has the force of res judicata in accordance with the legal provisions of the country of any offence concerning his professional conduct;
- 18.1.8. The Service Provider has been guilty of grave professional misconduct proven by any means which the HSE can lawfully demonstrate;
- 18.1.9. The Service Provider has been the subject of a conviction by final judgment for:
 - 18.1.9.1 Participation in a criminal organisation, as defined in Article 2(1) of Council Joint Action 98/733/JHA(20);
 - 18.1.9.2 Corruption, as defined in Article 3 of the Council Act of 26 May 1997(21) and Article 3(1) of Council Joint Action 98/742/JHA(22) respectively;
 - 18.1.9.3 Fraud within the meaning of Article 1 of the Convention relating to the protection of the financial interests of the European Communities (23);
 - 18.1.9.4 Money laundering, as defined in Article 1 of Council Directive 91/308/EEC of 10 June 1991 on prevention of the use of the financial system for the purpose of money laundering (24).
- 18.1.10. The Service Provider dies or becomes incapable of doing the Job.

19. HSE TERMINATING AT WILL

- 19.1. The HSE may terminate this Contract at any time without cause on giving 28 days notice but such unilateral termination shall be without prejudice to any contractual rights and remedies inhering in the Service Provider under this Agreement.

20. NOTICE OF TERMINATION

- 20.1. To terminate for substantial breach under Clause 17(Termination for Substantial Breach), a party must first notify the other that it is contemplating termination, stating the grounds and what if any remedial result by the other will prevent termination, followed (in the absence of proof of that result from the other) by termination notified at least 14 and at most 90 days after the first notice, and taking effect on a date stated in the second notice that is at most 28 days after that second notice.
- 20.2. Termination by HSE, other than for the Service Provider's substantial breach, will take effect on a date notified by the HSE that is at most 28 days after the notice.

21. EFFECTS OF EXPIRY AND TERMINATION

21.1. Expiry

If the Official Purchase Order states a period of time during which this Contract is to be performed or identifies that this Contract will cease on a particular day, the Contract will expire on the date identified.

21.2. Effect

On termination or expiry:

- 21.2.1. The Service Provider must stop doing the Job except for any tasks specified by the HSE or necessary for the Service Provider's duties under law relating to health and safety;
- 21.2.2. The Service Provider must give the HSE any documents to which the HSE is entitled as soon as practicable;
- 21.2.3. The benefit of any contract relating to the Job will stand assigned to the HSE or its

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nominee, with effect from the date of any claim to the assignment from the HSE to the Service Provider;

21.2.4. Both parties remain liable for amounts due and breaches before termination or expiry.

21.3. The provisions of Clauses 1.3, Clause 14 (Provision of Information), Clause 24 (Insurance), Clause 23 (indemnity), Part Two Confidentiality Agreement Clauses and Clause 49 (Defective Supplies) shall survive the termination or expiry of this Contract.

22. COMPENSATION ON TERMINATION

22.1. On termination for substantial breach or Service Provider's insolvency, the terminating party is entitled to damages as if the termination was for the other's repudiation of the Contract.

22.2. On any termination by either party, the Service Provider is entitled to a reasonable portion of the Price and costs properly incurred for the portion of the Job properly completed before the termination. All Service Provider costs must be vouched accordingly unless otherwise agreed by the HSE. The HSE's liability on termination will not exceed the Price.

22.3. Neither party is entitled to any other payment or damages for any termination.

23. INDEMNITY

23.1. The Service Provider shall indemnify, hold harmless and defend the HSE from all claims, costs (including legal costs), expenses, damages, liability, losses, suits and actions which may be taken against the HSE by third parties in respect of:

23.1.1. Sickness, injury or death of any person;

23.1.2. Loss of or damage to any property;

23.1.3. Disclosure of information in breach of the terms and conditions of the agreement.

Arising from or in the course of the Service Provider's performance or non-performance of this Contract and such indemnity shall be fully underwritten by an appropriate policy or policies of insurance maintained by the Service Provider with a reputable Insurance Company for such amount or amounts as are prescribed in Clause 24 (Insurance) hereof and the said policy or policies duly extended and endorsed with this indemnity shall be submitted to the HSE for inspection prior to the commencement of the Contract.

24. INSURANCE

24.1. Unless otherwise agreed in writing, the Service Provider must maintain insurances as follows:

Type of insurance	Minimum cover for any one claim	Permitted deductible for any one claim	Period
Property Cover on all Risks basis	Full replacement value and associated expenses	€6,500	From date of Contract until Goods delivered and accepted by HSE
Product liability for any Goods	€6,500,000	€6,500	From date of Contract until completion of the Job.
Professional indemnity for any professional services (or design works).	€6,500,000	€50,000	From date of Contract until 6 years after completion of Job
Public liability for death, personal injury, loss of and damage to property	€6,500,000	€6,500	From date of Contract until completion of the Job
Employer's liability for	€12,700,000	€0	From date of Contract until

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sickness, injury and death of employees			completion of the Job
Motor Insurance required by law	Third Party Property Damage - €2.6m. Third Party Personal Damage - Unlimited.	€0	From date of Contract until completion of the Job

- 24.2. Save for the Service Provider's insurance policy for professional indemnity, the Service Provider must give the HSE on request copies of its insurance policies required by this Contract and evidence that the insurances remain in effect.
- 24.3. The Service Provider's insurance policy for Employers/Public Liability shall contain a provision indemnifying the HSE against any claim made in respect of which the Service Provider is entitled to indemnity.
- 24.4. The Service Provider's insurance of Goods must, if the HSE so requests, name the HSE as co-insured.
- 24.5. If the Service Provider does not on request prove that its insurances are fully in force as required by this Contract, the HSE may insure and recover the cost from the Service Provider.
- 24.6. The insurances shall be placed with reputable insurers approved by the HSE (or by the Irish Financial Regulator as may be appropriate) and shall include an Irish / EU law jurisdiction clause.

25. COMMUNICATIONS

- 25.1. Notices, consents and other communications required by this Contract must be in writing.
- 25.2. Communications may be delivered by fax, email, hand, courier or recorded post to the parties' contact details stated in the Official Purchase order, or subsequently notified, or by other means agreed between the parties. A communication is presumed (unless the contrary is proved) to have been received by the other party on the:
- 25.2.1. Date of faxing, e-mailing, to the other party according to the particulars that are electronically recorded by the transmission;
- 25.2.2. Date shown in a signed receipt for due delivery by hand, courier, recorded post.

26. LANGUAGE

Communications, documents and labelling must be in English, except where the Contract or the law specify other languages.

27. TRANSFERS

- 27.1. The Service Provider may not validly assign this Contract benefit without the HSE's advance written consent.
- 27.2. The Service Provider may not validly sub-contract any of the Job, unless agreed or requested in writing by the HSE.
- 27.3. The Service Provider is responsible for the acts and omissions of the Service Provider's People as if they were its own.
- 27.4. The Service Provider shall assign to the HSE the benefit of all warranties, indemnities and other covenants received by the Service Provider from any third party in connection with the Supplies.
- 27.5. "The Purchaser is entitled to assign and/or transfer all or part of its rights and obligations under this Agreement. Any reference to the Purchaser shall include its successors and assigns.

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28. NO SOLICITATION

The Service Provider must not employ or offer employment to, or cause employment to be offered to, any HSE officer or employee whose duties included procuring the Job for a period of 12 months after the officer or employee has left the HSE.

29. INFORMATION

- 29.1. When requested by the HSE, the Service Provider shall provide the HSE in writing and in the format requested by the HSE, with an accurate and complete record of the amount and value of the Job provided by the Service Provider to the HSE during the preceding year.
- 29.2. The Service Provider shall keep at its normal place of business detailed, accurate and up to date records of the amount and value of the Job provided by it to the HSE.
- 29.3. The Service Provider shall facilitate the HSE by allowing designated HSE staff to inspect such records if required in the Service Provider's premises during normal business hours on receiving reasonable prior notice for that purpose.
- 29.4. On request from the HSE, the Service Provider shall, at its own expense, ensure that its external auditors provide to the HSE, as soon as reasonably practicable after the end of the Service Provider's financial year, confirmation that any statement supplied by the Service Provider to the HSE pursuant to Clauses 29.1 and 29.2 (Information) above during that financial year is complete and accurate.
- 29.5. Ownership of Information;
Service Provider shall, at its own expense and using its own equipment, store information reported and received by the Service Provider from HSE's employees and others in the course of performing Services under this Agreement. Service Provider agrees that all reports, forms, records, files, data and other materials derived from such information and all updates and additions thereto are the exclusive property of HSE. If HSE wishes to request a data file transfer upon termination of this Agreement, Service Provider will arrange for such transfer on payment by the HSE of any reasonable costs involved based on format and size of data to be transferred.

30. THE LAW

The Contract is governed by Irish law.

31. EXTENT OF LIABILITY

- 31.1. The HSE has no liability to the Service Provider in connection with this Contract or the Job (whether for breach of Contract, breach of duty, including statutory duty, or any other duty, negligence, or anything else) except that stated in this Contract.
- 31.2. The Service Provider acknowledges that any breach by it of this Contract may cause financial losses to the HSE not only directly but by liability to others, and acknowledges that it will be liable for those losses.

32. WAIVER

Failure or neglect by the HSE to enforce at any time any of the provisions hereof shall not be construed nor deemed to be a waiver of the HSE's rights hereunder, nor in any way affect the validity of the whole or any part of this Contract, nor prejudice the HSE's rights to take subsequent action.

33. VALIDITY

If any provision of this Contract is held by any competent authority to be invalid, unlawful or unenforceable in whole or part, the validity of the other provisions of this Contract and the remainder of

PART TWO: CONFIDENTIALITY AGREEMENT CLAUSES

the provision in question shall not be affected thereby.

PART TWO

CONFIDENTIALITY AGREEMENT CLAUSES

This Part Two applies to the treatment of information obtained during the procurement of both Services and Supplies

34. OBLIGATIONS OF THE SERVICE PROVIDER

In consideration of the HSE directly making the Information available to the Service Provider, or the Service Provider otherwise acquiring the Information, the Service Provider shall:

- 34.1. Not take or remove any Information from HSE premises without having received the written authorisation of the HSE. Such written authorisation must be issued in advance of the first instance and will apply thereafter;
- 34.2. Manage and process any Information which they acquire from the HSE in accordance with the Data Protection Act 1988, The Data Protection (Amendment) Act 2003 and Directive 2002/58/EC of the European Parliament and of the Council;
- 34.3. Maintain secret and confidential all Information furnished to it or otherwise acquired by its servants, employees, agents, subsidiaries or sub-contractors save and to the extent that such Information has been made available to the public by the HSE or by any third party lawfully in possession thereof and entitled to make such disclosure without restriction;
- 34.4. Take appropriate measures to ensure the reliability of the Service Providers servants, employees, agents, subsidiaries or sub-contractors who have access to the Information; The Service Provider must be in a position to provide the HSE with a named list of their servants, employees, agents, subsidiaries or sub-contractors authorised to have access to Information;
- 34.5. Not disclose Information to any of the Service Provider's servants, employees, agents, subsidiaries or sub-contractors unless and only to the extent that such person needs to know such Information for the purposes of providing services in connection with the Service, and provided that such person has been made aware of the restrictions in this Agreement on the disclosure of the Information and has agreed in writing to comply with such restrictions;
- 34.6. Not disclose any Information to any third party without the prior written consent of the HSE;
- 34.7. Not use the Information directly or indirectly for any purpose other than in connection with the provision of services to the HSE regarding the Service;
- 34.8. Not reverse engineer, de-compile or disassemble Information or attempt to use the Information in any form other than machine readable object code, or allow a third party to do any of the above;
- 34.9. Not make any press announcement or otherwise publicise the business relationship with the HSE in any way including, without limitation, using the name of the HSE in any publicity material, unless authorised to do so by the HSE;
- 34.10. Only use the Information solely for the purposes of fulfilling the requirements of the Service;
- 34.11. Implement appropriate human, organisational and technological controls to protect against accidental loss, destruction, damage, alteration, or disclosure of the Information;
- 34.12. Take the necessary precautions for the prevention of unauthorised access to, the Information and in particular:

PART TWO: CONFIDENTIALITY AGREEMENT CLAUSES

- 34.12.1. Keep all Information obtained from the HSE or otherwise relating to the Service separate from all documents and other records of the Service Provider;
 - 34.12.2. Only make such copies of the Information as are necessary for the provision of services to the HSE regarding the Service;
 - 34.12.3. Mark all documentation containing the Information as being subject to the terms of this Agreement and indicate that it is contrary to the terms of this Agreement to copy, disclose or use in any manner or fashion such documentation without the prior written consent of the HSE;
 - 34.12.4. Have all necessary access controls to include authentication and authorisation for access to Information to ensure its security and confidentiality.
- 34.13. Ensure all documents and other tangible objects containing or representing Information which have been disclosed by the HSE to the Service Provider, and all copies there of which are in the possession of the Service Provider, shall be returned to the HSE upon the completion of the Service. If requested, give the HSE access to them or (at cost) copies. In addition, the Service Provider will confirm, in writing, at the completion of the Service that all electronic Information received from the HSE has been deleted from any of the Service Provider's devices which store Information;
- 34.14. Immediately inform the HSE of any actual or suspected breach in their security which could give rise to the actual or potential loss, theft, unauthorised release or disclosure of Information or any part thereof. In such an event the Service Provider will immediately supply the HSE with all the relevant facts surrounding the actual or suspected breach.
- 34.15. For the purposes of Freedom of Information the Service Provider shall:
- 34.15.1. Procure that its servants, employees, agents, subsidiaries or sub-contractors shall assist the HSE, at no additional charge and within such timescales as the HSE may reasonably specify, in meeting any requests for Information which are made to the HSE under the Freedom of Information Act 1997, such assistance to include (but not be limited to) the provision of a copy of the requested Information;
 - 34.15.2. Notwithstanding anything to the contrary in this Agreement, if the HSE receives a request for Information pursuant to the Freedom of Information Act 1997, the HSE shall be entitled to disclose all Information (in whatever form) as is necessary to comply with the Freedom of Information Act, 1997;
 - 34.15.3. If, at the request of the Service Provider, the HSE seeks to withhold Information protected by this Agreement and a competent authority determines, or the parties subsequently agree, that the Information is not exempt, then the Service Provider shall reimburse the HSE for all costs (including but not limited to legal costs) incurred by the HSE in seeking to withhold such Information from a request under the Freedom of Information Act, 1997;
 - 34.15.4. Not (and shall procure that its servants, employees, agents, subsidiaries or sub-contractors do not) respond directly to a request for Information under the Freedom of Information Act, 1997 unless expressly authorised to do so by the HSE.
- 34.16. Ensure the security of Information stored on mobile computing devices, such as laptop or, notebook computers or, Personal Digital Assistants or, mobile storage device such as CDs, DVD's or portable hard drives.
- 34.16.1. Only in exceptional circumstances and with the written consent of the HSE, should the Service Provider hold Information on mobile computing or mobile storage devices. Should the business requirements necessitate the holding of Information on such devices then the Service Provider shall ensure that only the Information absolutely necessary for their purpose is stored in this format and that the Information is held on such devices only for the minimum amount of time necessary and furthermore, after

PART TWO: CONFIDENTIALITY AGREEMENT CLAUSES

such period that they will delete all Information from these devices.

- 34.16.2. Where the use of mobile computing or mobile storage devices is a necessity then the Service Provider will take all necessary precautions to ensure the safety of these devices from theft or loss. As a minimum all mobile computing and mobile storage devices must be protected by the use of strong complex passwords.
 - 34.16.3. The Service Provider must ensure that all Information held on mobile devices is secured by strong encryption. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy. At any time during the term of this Agreement the HSE may request the Service Provider to set out in writing the current encryption measures used and the Service Provider will provide this information within 5 days. If, in the reasonable opinion of the HSE, the encryption standard employed by the Service Provider is not sufficient, the Service Provider will implement, at their expense, whatever encryption standards are proposed by the HSE. At no time should cipher keys be held on the mobile device for the data which they secure. In addition, the Service Provider will at all times hold cipher keys in a secure fashion.
 - 34.16.4. Under no circumstances encrypted or otherwise is the Service Provider sanctioned by the HSE to download or store Information on USB memory sticks/keys.
- 34.17. Ensure the security of Information in transit. Where it is necessary to transfer the Information, the Service Provider must take all necessary precautions to ensure the security of the Information before, during and after transit.
- 34.17.1. The Service Provider shall ensure that all transfers of the Information are legal, justifiable, and only the minimum Information absolutely necessary for a given purpose is transferred.
 - 34.17.2. All transfers of information should, where possible, only take place electronically via secure on-line channels or electronic mail. Where the Service Provider transfers Information electronically, in any form and by any means, the Information must be encrypted using strong encryption. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy.
 - 34.17.3. Where it is not possible to transfer the Information electronically, the Information may be encrypted and copied to a mobile storage device (with the exception of USB memory sticks/keys) and transported manually. The encryption methods used must satisfy or better the requirements of the HSE Encryption Policy. The encrypted mobile storage media, should wherever possible, be hand delivered by the Server Provider to, and be signed for by, the intended recipient. If this is not possible, the use of registered post or some other certifiable delivery method must be used.
- 34.18. Transfers of Information outside of the Republic of Ireland.
- 34.18.1. The Service Provider must seek the written consent of the HSE prior to the Service Provider sending Information outside the jurisdiction of the Republic of Ireland. The HSE may, at its discretion, prohibit the Service Provider from sending Information outside the jurisdiction of the Republic of Ireland.
 - 34.18.2. Where the HSE has consented to the transfer of Information outside the Republic of Ireland, the Service Provider may only transfer information to a legal entity located in:
 - 2.17.2.1 A country within the European Economic Area;
 - 2.17.2.2 A country outside the European Economic Area but approved for this purpose by the EU Commission;
 - 2.17.2.3 The United States of America only when the Information transferee has agreed in writing to be bound by the Safe Harbour rules.

PART TWO: CONFIDENTIALITY AGREEMENT CLAUSES

34.19. If so requested by the HSE, the Service Provider shall:

- 34.19.1. Permit the HSE or its representatives (subject to reasonable and appropriate confidentiality undertakings), to inspect and audit the Service Provider's data processing facilities and activities (and/or those of its agents, subsidiaries and sub contractors) and comply with all reasonable requests or directions by the HSE to enable the HSE to verify and/or procure that the Service Provider is in full compliance with its obligations under this contract;
- 34.19.2. Make available for audit by the HSE or its representatives, (subject to reasonable and appropriate confidentiality undertakings), all staff procedures, processes and instructions that the Service Provider employ for the management of Information;
- 34.19.3. Permit the HSE or its representatives, (subject to reasonable and appropriate confidentiality undertakings), to inspect the contracts (Model Contracts), that the Service Provider has in place, governing the transfer of any Information from the Service Provider to legal entities located outside the European Economic Area;
- 34.19.4. Forthwith return to the HSE (or as it directs) all written material, photographs, Information and documentation obtained from the HSE together with all copies and reproductions made by the Service Provider;
- 34.19.5. Forthwith destroy all notes, memoranda and Information kept in electronic form containing copies or abstracts of the Information.

35. DISCLOSURE REQUIRED BY LAW

In the event that the Service Provider is legally required to disclose any of the Information to a third party, the Service Provider undertakes to notify the HSE of such requirement prior to any disclosure and, unless prohibited by law, to supply the HSE with copies of all communications between the Service Provider and any third party to which such disclosure is made.

The Service Provider must co-operate with the HSE in bringing any legal or other proceedings to challenge the validity of the requirement to disclose Information.

36. NO WARRANTY

Nothing in this Agreement shall constitute a warranty by the HSE as to the accuracy of any of the Information, and the HSE will not be liable to the Service Provider or to any other party to which any of the Information may be disclosed for any loss or damage howsoever caused, arising directly or indirectly out of the inaccuracy of any of the Information.

37. NO LIEN ON DOCUMENTS

The Service Provider has no lien on any documents.

38. NO LICENCE

The Service Provider acknowledges that the Information is of a special and unique character and that the Information and any patent, copyright or other intellectual property rights of whatever nature attaching thereto are and will remain the property of the HSE and nothing in this Agreement will be construed as giving the Service Provider a licence in respect of such patent, copyright or other intellectual property rights.

39. SURVIVAL OF OBLIGATION

The non-disclosure obligations of this Agreement will survive and continue and will bind the Service Provider's legal representatives, successors and assigns notwithstanding that the Service may not be actually implemented by the parties.

PART TWO: CONFIDENTIALITY AGREEMENT CLAUSES

PART THREE: SERVICES CONTRACT CLAUSES

PART THREE

SERVICES CONTRACT CLAUSES

This Part Three applies only if the HSE is procuring Services

40. PERFORMANCE OF SERVICES

When the Job includes professional services, without limiting other obligations, the Service Provider must do the Job with the skill, care, diligence, efficiency and professional conduct which ought reasonably to be expected from a Service Provider with the qualifications and experience suitable for the Job.

41. TERM SERVICES

- 41.1. If the Job is for services to be performed throughout the Job period the HSE shall, when it requires the services to be provided, send the Service Provider written notification of the services to be provided and the date, time and place of delivery and the Service Provider shall deliver those services on the date so specified, which shall not be less than 5 days after the date of the notification.
- 41.2. If the Job does not specify the quantum of services to be provided by the Service Provider, the HSE does not provide any guarantee regarding the quantity of Services that will be required over the Job period.

PART FOUR: SUPPLIES CONTRACT CLAUSES

PART FOUR

SUPPLIES CONTRACT CLAUSES

This Part Four applies only if the HSE is procuring Supplies

42. DELIVERY OF SUPPLIES

- 42.1. The Service Provider shall deliver the Supplies on the date and to the location notified to the Service Provider by the HSE and shall be responsible for the proper delivery of the Supplies.
- 42.2. If the Job is for multiple, unspecified, deliveries, the HSE shall, when it requires a delivery to be made during the period of the Job, send the Service Provider written notification of the quantity of Supplies and the date, time and place of delivery and the Service Provider shall deliver those Supplies on the date so specified, which shall not be less than 5 days after the date of the notification.
- 42.3. If the Job does not specify the quantity of Supplies to be provided by the Service Provider, the HSE does not provide any guarantee regarding the quantity of Supplies that will be required over the Job period.
- 42.4. The Service Provider shall provide such packaging of Supplies as is required to prevent their damage or deterioration in transit.
- 42.5. The Service Provider shall be responsible for obtaining any import licences, permits or other consents necessary for the importation and delivery of Supplies and shall produce evidence of same if requested to do so by the HSE.
- 42.6. The Service Provider shall indemnify and hold the HSE harmless against and from all claims, suits and actions for damages, losses and expenses resulting from the transport of the Supplies and shall negotiate and pay all claims arising from their transportation.

43. PARTIAL DELIVERY

- 43.1. Partial delivery of an order shall not be made without the prior written consent of the HSE.
- 43.2. In case of partial delivery, all packages etc, advice notes, packing notes and invoices must be clearly marked "Partial Delivery".

44. RISK AND TITLE

- 44.1. Title in the Supplies shall pass on delivery to and acceptance by the HSE unless payment is made prior to delivery, in which event, title shall pass to the HSE once payment has been made. Where title in the Supplies has passed to the HSE prior to delivery pursuant to this condition the Service Provider shall keep such Supplies separate from other Supplies and shall clearly mark the Supplies as the property of the HSE.
- 44.2. Notwithstanding the provisions of Clause 44.1(Risk and Title), risk of damage to or loss of the Supplies shall, unless otherwise agreed between the parties, remain with the Service Provider until delivery, acceptance and commissioning of the Supplies to the HSE in accordance with the provisions of these Conditions of Contract and, in particular, Clause 49 (Defective Supplies) hereof.

45. TIMING

- 45.1. Unless otherwise agreed to in writing by the HSE the Service Provider shall deliver the Supplies on the delivery date specified by the HSE or where no delivery date is specified, within 90 days from date of order.
- 45.2. The Supplies shall be delivered to the delivery address specified by the HSE during the HSE's usual business hours.

PART FOUR: SUPPLIES CONTRACT CLAUSES

- 45.3. Time of delivery of the Supplies shall be of the essence of this Contract, unless otherwise agreed.

46. PACKING, MARKING AND DOCUMENTATION

- 46.1. All packages, cases, pallets and other containers must be clearly and individually marked "Health Service Executive", and clearly state the Official Purchase Order number and product codes. The following shall appear on the outside of each pack:
- 46.1.1. A description of the Supplies;
 - 46.1.2. The quantity contained in each pack;
 - 46.1.3. Storage and/or handling instructions;
 - 46.1.4. Expiry date of contents, if applicable;
 - 46.1.5. Relevant materials safety information, if applicable.
- 46.2. A note must be included in each package stating the Official Purchase Order number, quantities and description of items contained in each box; the product codes (stated on the Official Purchase Order), the delivery date and the delivery address.
- 46.3. The HSE may (unless otherwise agreed in writing) require the Service Provider to dispose, at the Service Provider's cost, of all packaging materials. Failure by the Service Provider to effect disposal within 14 days of delivery shall entitle the HSE to arrange disposal with another Service Provider and any costs incurred by the HSE in effecting disposal of packaging shall be paid by the Service Provider to the HSE or set off against any monies owed to the Service Provider pursuant to Clause 7 (Debts to HSE).

47. RETURNS

The HSE accepts no liability in regard to the satisfactory return to the Service Provider of any consignment or part of a consignment delivered in error.

48. QUALITY OF SUPPLIES

The Service Provider warrants that the Supplies will:

- 48.1. Correspond with their description;
- 48.2. Be equal in all respects to any samples provided;
- 48.3. Comply with any technical specification and any other requirements of this Contract;
- 48.4. Be capable of any standard of performance specified by the HSE, but in any event shall be of merchantable quality;
- 48.5. Be fit for any particular purpose made known to the Service Provider by the HSE either expressly or by implication;
- 48.6. Shall not have any defect arising from design, materials or workmanship;
- 48.7. Be subject to the manufacturer's warranty.

49. DEFECTIVE SUPPLIES

- 49.1. If any Supplies, are found to be defective or otherwise not in accordance with the Contract, or the Service Provider has failed to deliver on time, or the HSE has notified the Service Provider of a shortage of Supplies or damage to the Supplies and has given the Service Provider all reasonable opportunity to remedy, the HSE may:
- 49.1.1. Require the Service Provider, at the Service Provider's expense, to fulfil its obligations

PART FOUR: SUPPLIES CONTRACT CLAUSES

in all respects within fourteen days or such other period as is specified by the HSE;

- 49.1.2. Terminate the Contract (in full or in part) and the Service Provider shall refund any part of the Price which has been paid in respect of the defective, late or undelivered Supplies;
- 49.1.3. Purchase substitute Supplies elsewhere;
- 49.1.4. At the Service Provider's risk and expense, return any Supplies already supplied under the Contract;
- 49.1.5. Recover from the Service Provider any direct, indirect and/or consequential losses, cost and liabilities incurred by the HSE (including without limitation, the costs of any replacement Supplies);
- 49.1.6. Reject the Supplies by giving notice to the Service Provider, with reasons.
- 49.1.7. Require the Service Provider to promptly replace defective Supplies.
- 49.2. The HSE's right of rejection shall continue irrespective of whether the HSE has accepted, inspected, used or paid for, the Supplies.
- 49.3. The whole of any consignment of Supplies may be rejected by the HSE if a reasonable sample of the Supplies taken randomly from the consignment is found not to conform substantially with the requirements of the Contract.
- 49.4. The HSE shall be under no obligation to accept or pay for any Supplies delivered in excess of the quantity ordered.
- 49.5. If the HSE elects not to accept such over-delivered Supplies it shall be entitled to give notice in writing to the Service Provider to remove them within 7 days of receipt by the Service Provider of such notice and to refund to the HSE any expenses incurred by the HSE as a result of such over-delivery (including but not limited to the costs of moving and storing them) failing which the HSE shall be entitled to dispose of such Supplies and to charge the Service Provider for the costs of such disposal.
- 49.6. The risk in any over-delivered Supplies shall remain with the Service Provider until they are collected by or on behalf of the Service Provider or disposed of or purchased by the HSE, as appropriate.
- 49.7. In the event that a product recall or defect notice is issued by the manufacturer or a medical device regulatory body in any country in relation to the supplies, the Service Provider shall notify the HSE of the said recall or defect within five days of the earliest recall or defect notice.

50. SUPPLY OF DOCUMENTS

The Service Provider shall supply to the HSE free of charge all technical drawings, service manuals, and maintenance specifications written in the English language with all relevant updating documents, which relate to the Supplies.

51. INSPECTION AND SAMPLES

- 51.1. The HSE may at all reasonable times during manufacture, assembly or processing inspect and test the Supplies (including all designs, materials and other components).
- 51.2. If required by the HSE, samples of Supplies shall be submitted, at the Service Provider's cost and expense, to the HSE for evaluation and approval.

52. AFTER SALES SERVICE

Unless otherwise agreed in writing, the Service Provider shall:

- 52.1. Provide the HSE's People with training in the use and maintenance of the Supplies;

PART FOUR: SUPPLIES CONTRACT CLAUSES

- 52.2. Supply to HSE spare parts necessary for the Supplies at a reasonable cost, not exceeding that charged under like circumstances to other customers of the Service Provider;
- 52.3. Authorise the HSE to negotiate with and purchase spare parts for the Supplies directly from Service Providers to the Service Provider;
- 52.4. Provide the supplies free of any restrictions or impediments, which may exist between the Service Provider and Service Providers to the Service Provider;
- 52.5. Maintain sufficient stock levels so as to be in a position to meet the HSE's requirements for Supplies as notified to the Service Provider prior to signing this Contract;
- 52.6. Give advance notice to HSE Procurement regarding all sales and marketing activity planned to take place on HSE sites.

PART FIVE

CONSTRUCTION CONTRACT CLAUSES

**This Part Five applies to the exclusion of the other parts of the Contract if the HSE
is procuring works or engaging construction consultants**

53. WORKS CONTRACT

No order for works is authorised until a Public Works Contract published by the Department of Finance is signed.

54. CONSTRUCTION CONSULTANTS

No order for the engagement of construction consultants is authorised until the Government Standard Conditions of Engagement for Construction Consultants, as published by the Department of Finance is signed.

PART SIX

DISPUTE RESOLUTION PROCEDURE

This Part Six applies to the procurement of both Services and Supplies.

55. AMICABLE DISPUTE SETTLEMENT

- 55.1. If any dispute arises between the parties, the parties shall first make every effort to settle the dispute amicably as follows:
 - 55.1.1. Any dispute is to be notified in writing by a person at senior management level in one party to a person at senior management level in the other party;
 - 55.1.2. The senior parties will have 6 days in which to resolve the dispute.
- 55.2. The parties agree that they shall bear their own costs in the procedure set out in this Clause 55.

56. MEDIATION

- 56.1. If a dispute is not resolved under the amicable dispute settlement (above) the parties shall follow the dispute resolution procedures set out in this Clause 56.
- 56.2. Any Party shall give to the other Parties a written notice of the dispute or difference (a **Dispute Notice**), setting out its nature and such particulars as shall be then available to that Party. Within [10] Business Days of a Dispute Notice being deemed to have been duly served in accordance with Clause 25 (Communications) all the Parties shall consult and negotiate with each other and, recognising their mutual interests, shall attempt to reach a binding settlement in writing satisfactory to all the Parties.
- 56.3. If all the Parties do not reach a binding settlement in writing within a period of [10] Business Days (the **Negotiating Period**) of the date on which the Dispute Notice shall be deemed to have been duly served in accordance with Clause 25 (Communications), then any Party may, by a further written notice served on all the other Parties in accordance with Clause 25, within a further period of [10] Business Days commencing on the Business Day following the expiry of the Negotiating Period, request mediation of the dispute or difference.
- 56.4. Unless otherwise agreed in writing between the Parties:
 - 56.4.1. The mediator shall be nominated at the request of either party by the International Centre for Dispute Resolution (**ICDR**) in accordance with the rules of ICDR and the mediation shall be conducted in accordance with the International Mediation Rules of the ICDR, in each case being the relevant rules for the time being and from time to time in force;
 - 56.4.2. The costs of the mediator shall be borne and discharged [as to 50% by the Service Provider and as to the remaining 50% by the HSE], and the costs of all experts and any other third parties who, at the request of any Party, shall have been instructed in the mediation, shall be for the sole account of, and shall be discharged by, that Party;
 - 56.4.3. The mediation shall be conducted in Dublin, Ireland, at a venue agreed upon by the Parties and the mediator or, failing such agreement, at a venue selected by the mediator in his discretion;
 - 56.4.4. The mediation shall commence not later than [20] Business Days following a request for mediation being made in accordance with the provisions of Clause 56.3 above.
- 56.5. In the event that:
 - 56.5.1. Mediation is not requested within the period of [10] Business Days commencing on

PART SIX: DISPUTE RESOLUTION PROCEDURE

the Business Day following the expiry of the Negotiating Period;

- 56.5.2. Having been so requested, the mediation does not take place within [20] Business Days of the request for mediation;
- 56.5.3. A binding settlement in writing is not reached within [10] Business Days after commencement of the mediation.

And, in any such case, the dispute or difference referred to in Clause 56.1 remains unresolved, the provisions of Clause 57 (Arbitration) shall apply as regards any such unresolved dispute or difference.

57. ARBITRATION

- 57.1. Any dispute that is referred to in this Clause 57 shall be finally settled by arbitration in accordance with the UNCITRAL Model Law as provided for in the Arbitration (International Commercial) Act 1998.
- 57.2. For purposes of those rules, the person or body to appoint the arbitrator, if not agreed by the parties, is the ICDR.

58. JURISDICTION

Subject to the above provisions of Clause 55 (Amicable Dispute Settlement), Clause 56 (Mediation) and Clause 57 (Arbitration), the parties submit to the jurisdiction of the Irish courts to settle any dispute that may arise out of or in connection with the Contract.

59. AGENT FOR SERVICE

If the Service Provider has notified the HSE of an agent for service of legal proceedings on the Service Provider, the Service Provider confirms to the HSE that it has irrevocably appointed that person as its agent for the service of all documents relating to legal proceedings, and that failure of the agent to notify the Service Provider of receipt of a document will not invalidate any proceedings or the service of the document.

60. OBLIGATIONS TO CONTINUE DURING A DISPUTE

Despite the existence of a dispute, the parties shall continue to perform their obligations under the Contract in good faith.