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**CHARTERED
SURVEYORS**
IRELAND

Facilities Management Handbook - Property and Facilities Management Contracts

Guidance Note



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This document is intended as a reference point only for a Facility or Property Manager when dealing with or reviewing Facility and Property Management Contracts.

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The Facilities Management Sub-Committee, SCSl

Foreword

Facility and Property Managers are often required to engage the services of specialist providers and sub-contractors to assist them in the provision of services for their client / organisation. These client services can range from Cleaning, Catering or Security. These can be labour intensive to one-off contracts such as the maintenance of a specialist piece of plant, the supply of Safety Equipment or the provision of independent expert advice.

Informal arrangements made verbally and in good faith can work when everything is going well between two parties however, if at a later date, difficulties arise, the lack of a signed written agreement can cause problems that can sometimes lead to disputes and unnecessary stress to one or both parties.

Putting some thought and effort into drafting and agreeing the details of an arrangement or contract beforehand can save money and time for all involved. This document is designed to help you understand the key legal and commercial issues that you will need to address when preparing and negotiating these documents.

A lot of work has gone into developing this handbook. I would like to thank my colleagues on the committee for their assistance, in particular I wish to recognise the work of Louise Kirwan and Jacquie Brett who developed the main body of the handbook. I would also like to thank the support of Byrne Wallace for their advice on the handbook.

Finally, this document is prepared for guidance purposes only. It is vital that you seek legal advice on any contract document you prepare or receive before signing it.

David O'Brien
Chairman, Facilities Committee

SCSI guidance notes

This is a guidance note. It provides advice to SCSI members on all aspects of their practice. Where procedures are recommended for specific professional tasks, these are intended to embody 'best practice', i.e. procedures which in the opinion of SCSI meet a high standard of professional competence.

Members are not required to follow the advice and recommendations contained in the note. They should, however, note the following points. In the event of an allegation of professional negligence being made against a surveyor, the court is likely to take account of the contents of any relevant guidance notes published by SCSI in deciding whether or not the surveyor has acted with reasonable competence.

In the opinion of SCSI, a member conforming to the practices recommended in this note should have at least a partial defence to an allegation of negligence, by virtue of having followed these practices. However, members have the responsibility of deciding when it is inappropriate to follow the guidance.

It does not follow that members will be adjudged to have been negligent if they have not followed the practices recommended in this note. It is for each surveyor to decide on the appropriate procedure to follow in any professional task. However, where members depart from the practice recommended in this note, they should do so only for a good reason. In the event of litigation, the court may require them to explain why they decided not to adopt the recommended practice. The guidance note has been prepared to promote best practice in terms of boundary identification, demarcation and dispute resolution in Ireland. Circumstances can arise where the suggested best practice in this guidance note cannot be applied.

This guidance note therefore should not compel chartered surveyors to an inappropriate course of action. Transparency simply requires that in the event that the guidance note is inappropriate, the reasons for this are shared with all relevant parties and a record kept.

In addition, guidance notes are relevant to professional competence, in that each surveyor should keep themselves up-to-date and should have informed themselves of relevant guidance notes within a reasonable time of their promulgation.

Document status defined

SCSI and RICS produce a range of standards products. These have been defined in the table below.

Document status defined		
Type of document	Definition	Status
SCSI practice statement	Document that provides members with mandatory requirements of the Rules of Conduct for members	Mandatory
SCSI code of practice	Standard approved by SCSI that provides users with recommendations for accepted good practice as followed by conscientious surveyors	Mandatory or recommended good practice (will be confirmed in the document itself)
SCSI guidance note	Document that provides users with recommendations for accepted good practice as followed by competent and conscientious surveyors	Recommended good practice
SCSI information paper	Practice based information that provides users with the latest information and/or research	Information and/or explanatory commentary

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Section 1

Quick Reference: Frequently Asked Questions

1.1 What is a Contract?

A contract is formed when parties reach an agreement or are deemed to have reached an agreement and the law recognises rights and obligations arising from the agreement.

There are three fundamental elements in any simple contract and they are:

(a) Agreement:

The parties must have or be deemed to have reached agreement

(b) Intention:

The parties must have intended or be deemed to have intended to create legal relations

(c) Consideration:

According to the terms of the agreement, some advantages by the parties is the essence of a bargain. Any advantage or benefit moving from one party to another is known as consideration, For Example: in a Cleaning Contract the provision of the cleaning services is the consideration

1.2 What Manner Must the Contract Come In?

An agreement can be made in any manner provided the parties are in communication. It can be by word of mouth or by inference from the conduct of the parties and the circumstances of the case but in most cases in the Facilities and Property Management Sectors it is recommended by both for clarity and the elimination of misunderstanding later, that the contract be **in written form**.

1.3 Who Can Enter Into a Contract?

Minors and the mentally incompetent lack the legal capacity to enter into contracts. All others are generally assumed to have full power to bind themselves by entering into contracts. In Ireland, the legal age for entering into contracts is 18. The test for mental capacity is whether the party understood the nature and consequences of the transaction in question.

Corporations have the power to enter into contracts. They make contracts through the acts of their agents, officers, and employees. Whether a particular employee has the power to bind the corporation to a contract is determined by an area of law called agency law or corporate law. If you doubt whether an individual with whom you are dealing has authority to enter into a contract with you, insist that the contract be reviewed and signed by the corporation's president / CEO / Secretary.

A corporation has a separate legal existence from its founders, officers, and employees. Generally, the individuals associated with a corporation are not themselves responsible for the corporation's debts or liabilities, including liability for breach of contract.

1.4 What Services Should a PM or FM Consider Including in a Written Contract?

In the Property and Facilities Sector, written and signed contracts may be required for a variety of different types of services, varying from the provision of a Reception services, to the maintenance of a piece of plant. The following is a list of services divided into five categories which you may need to consider. It is by no means an exhaustive list as every building and organisation manages services in their building and operations differently.

Services to be provided

Service Type	Service Description	Category	Possible Frequency
Soft Service	Cleaning	Service Provided	Daily
Soft Service	Security	Service Provided	Daily
Soft Service	Intruder & Fire Alarm Monitoring 24/7	Service Provided	Daily
Soft Service	Provision of a Reception Service	Service Provided	Daily
Soft Service	Courier, Taxi and Post	Service Provided	Daily

Goods to be provided

Service Type	Service Description	Category	Possible Frequency
Soft Service	Stationery	Supply Goods	As Required
Soft Services	Cleaning Consumables	Supply Goods	As Required
Hard Services	Electrical Consumables	Supply Goods	As Required
Soft Services	First Aid Consumables	Supply Goods	As Required
Hard Services	Miscellaneous Equipment (ladders, tools etc)	Supply Goods	As Required

Preventative Maintenance to be provided

Service Type	Service Description	Category	Possible Frequency
Hard Services	Key Holding & Alarm Response	Maintenance	Annual
Hard Services	Catering	Maintenance	Daily
Hard Services	Waste Management	Maintenance	Weekly
Hard Services	Fire Alarm	Maintenance	Quarterly
Hard Services	CCTV/Access Control Systems	Maintenance	Quarterly
Hard Services	Intruder Alarm	Maintenance	Quarterly
Hard Services	Fire Extinguishers	Maintenance	Quarterly
Hard Services	Sprinklers	Maintenance	Quarterly
Hard Services	Water Treatment	Maintenance	Quarterly
Hard Services	Emergency Lighting	Maintenance	Quarterly
Soft Services	Window Façade Cleaning	Maintenance	Bi-Annually

Hard Services	Lifts (Passengers, Goods, Disabled,)	Maintenance	Quarterly
Soft Services	Turnstiles/Revolving Doors/Security Barriers	Maintenance	Bi-Annually
Soft Services	Pest Control	Maintenance	Quarterly
Hard Services	HVAC Plant	Maintenance	Quarterly
Hard Services	Various Mechanical & Electrical	Maintenance	Monthly
Hard/Soft Services	Health & Safety Training, Audits, Risk Assessments	Consultancy	As Required
Soft Services	Provision of Catering or Hospitality	Labour Costs	As Required

Call Out Services to be provided

Service Type	Service Description	Category	Possible Frequency
Hard/Soft Services	Call out Maintenance Service (in and out of normal business hours)	Service Provided	As Required
Soft Services	Alarm Responses & Security Patrols or Check Calls	Service Provided	As Required

Consultancy which may be required

Service Type	Service Description	Category	Possible Frequency
Hard/Soft Services	Health & Safety Training, Audits, Risk Assessments	Service Provided	As Required
Hard Services	Architectural, Mechanical & Electrical, Acoustics etc	Service Provided	As Required
Soft Services	Space Planning	Service Provided	As Required

1.5 Before Entering a Contract with a Supplier or a Client, What are the Main Issues to be Understood and Agreed?

Expectations between parties can often be quite different and it is vital that both sides enter into the arrangement being fully aware of what each party is signing up to.

It should be noted, that the Detail of Service, probably the most important aspect after price can be addressed in the SLA paragraph.

1.6 What is a Service Level Agreement (SLA) and How Does it Differ from a Contract?

A SLA is a document which often is written in conjunction with a contract, to describe the services carried out in detail including, things like:

- who will carry out the work,
- what level of competency those people will have,
- when it will be done,
- where,
- with what equipment,
- type of equipment etc.
- penalties for failure to deliver service.

A SLA can also be used to document the Environmental, Health & Safety Aspects of the work to be carried out.

1.7 What are Terms and Conditions?

The Terms and Conditions of any Contract are the key elements of the agreement and will be dealt with in detail in Section 2 of this document. Typically in a contract, the following are the main Terms and Conditions which should be included.

- | | |
|---|---|
| 1. Interpretation | 11. Force majeure |
| 2. Basis of Contract | 12. Assignment |
| 3. Supply of Services | 13. Notices |
| 4. Customer Remedies | 14. Waiver |
| 5. Customer's Obligations | 15. Severance |
| 6. Charges and Payment | 16. No Partnership or Agency |
| 7. Intellectual Property Rights | 17. Variation |
| 8. Indemnity and Insurance | 18. Governing Law and Jurisdiction |
| 9. Confidentiality | 19. Notable Omissions |
| 10. Termination and its Consequences | 20. No Limitation of Liability |

Note: It is important to note the terms "parties" to the contract and also the "property"

1.8 When can a Contract be Discharged or Terminated?

A contract can be discharged in any of the following ways:

- **Performance:**
Where the Service Provider does not provide all of the services signed up to in the contract.
Where the service provider completes the work/service and the contract is now at an end.

- **Agreement:**
Where for whatever reasons, both sides agree to cancel the arrangement.

- **An Accepted Breach:**
Whereby some or all terms and conditions in the contract are breached.

- **By Frustration:**
Where the fundamental purpose of the contract becomes either frustrated or rendered impossible and any attempted performance would amount to something quite different.

The “**termination**” clause deals with how parties can end the agreement. Regularly there is an initial period whereby “getting out” is easier for both sides. Once the initial period is over, notice to be given for termination purposes can be anything from 14 days to 3 years.

The Facilities Manager must make sure that they get the maximum flexibility for the Client so that in the event of one of the above occurring, the service can be terminated without penalties imposed on the Client and that there will be a proper handover to the new service provider.

1.9 What Happens if the Service Provider Does Not Perform to the Satisfaction of the Client?

A contract needs to be managed appropriately in order to ensure that the Service Provider performs to the satisfaction of the Client. Contract management is successfully achieved by ensuring that the parameters of a contract are adhered to as detailed in the contract. This is achieved through a continual process of management during the term of the contract.

Contract Management Process:

- Read through the contract and ensure you understand the detail. Highlight key details including time frames/dates, job duties, responsibilities of key personnel identified in the contract. Log these dates on your calendar to track the targeted completion times.

- Make sure that you schedule the due date meetings and appointments so that these events take place in a timely fashion to track the overall progress of the contract. These meetings should be used to gauge the overall progress of the contract and should be used to address issues and concerns as they arise.

- Ensure that detailed notes are kept, for example, who was spoken to, when and where and in the presence of whom. It is useful to maintain contact with the service provider by email or phone on a weekly basis, in between meetings.

- All managers and subcontractors involved (depending on the contract) should be requested to send you a detailed update list on a weekly basis. The updates should be sent by email or fax.

so that a paper trail on contract progress can be maintained. All correspondence should be maintained in an appropriate manner.

- Maintain an accurate and up to date listing of materials used, fixes completed, contract work schedules, labour hours etc. Review, assess and evaluate the contract budget on a monthly basis in order to maintain costs and increase productivity.
- Additional meetings should be held as required to manage problems. It is important to address issues immediately in order to manage the risk of a major issues occurring.

A contract is ably supported by SLAs (Service Level Agreements) and KPIs (Key Performance Indicators), examples of which are contained in Section 3 of this document.

As you can see once a contract is managed using the methodology above, the opportunity for a Service Provider to fail to perform to the standard of the client is virtually removed.

1.10 What Happens if There is no Written Contract between Parties?

From time to time people collaborate on projects without ever entering into a formal contract. This works fine until there is a misunderstanding or one party feels their expectations are not being met. It is true to say that in most instances people start off with the best of intentions and do not intend for things to go wrong. However, experience has shown that negotiations can break down, relationships can become difficult, outside influences impact events or threats of litigations can destroy the unity. A contract therefore may be verbal or written however, there are three key elements that must be in place for a contract to be binding and they are as follows:

- Agreement (comprising of an offer and acceptance)
- Intention to create legal relations
- Consideration

Agreement:

An agreement is reached by one party (“offeror”) making an offer to the other party (“offeree”) and the offeree then accepting that offer. The offer must be clear, definite and explicit.

It is important to identify the difference between an offer and an invitation to treat or deal.

An invitation to **treat** is not an offer, it is an invitation to negotiate a possible offering, however, the offeror can refuse to deal, and the offeree can refuse to accept any offer without any legal implications being applied to either party. For example, a price on display in a window is the seller’s invitation to negotiate the sale of the item at that price and not the sellers offer to sell the item at the display price.

Intention to Create Legal Relations:

It is important to establish that both parties intended entering into a binding agreement.

For example:

Offering a friend a lift is not a legally binding contract. However, giving a work colleague a lift home when they contribute to the travelling expenses could constitute a binding contract.

Contractually bound intentions are distinguishable between commercial, business and social arrangements. Commercial and business arrangements will be enforceable as legal contracts whereas social arrangements will not. Social arrangements are generally identified as statements of intention by the courts, but not binding agreements. The courts recognise commercial or business agreements as intentions to be legally bound. However, the opportunity exists for this presumption to be proven untrue by the submission of evidence to the contrary.

Consideration:

All contracts must be supported by consideration; it is the final element that makes a contract legal.

Consideration can be classified as follows;

- Consideration may be executed, done in response to a promise. eg. Returning a lost dog to claim a reward that was promised or,
- Consideration may be executory, an action or non action in response to the promise. eg If “Y” promises to dig “X”s garden, and in response to this offer “X” promises to pay €10 for the works completed. A binding contract exists as soon as the act or promise is exchanged.

The courts have developed rules in governing consideration, they are as follows;

- Consideration must be real and sufficient with some value, high or low. If a contract has been entered into freely, the courts will not assess the value of the consideration as long as the value is reasonable, free and honest. If a person decides to sell a car worth €15,000 to someone for €5,000, the courts will not intervene unless there has been fraud, duress or there has been some element that is not in the contract. In the eyes of the law, the consideration does not need to be adequate.
- A party can only enforce a promise if consideration or value has been given.
- The consideration must not be past: If the act has been committed before the promise has been made, the consideration does not exist eg. If X cleans Y’s windows before Y arrives home, then calls Y to inform them of the act and Y agrees to pay, if Y changes their mind about paying X cannot succeed in getting payment as the consideration is past.
- Consideration must not be illegal: To promise illegal drugs as consideration is illegal and such a contract would not be in the public’s interest.

There are significant benefits to having a written contract; parties are forced to engage on a formal basis, the detail is documented which brings clarity between parties. It is a useful tool should legal action relating to a breach of contract be taken.

1.11 What Happens if a Contract is Drawn Up and Signed and the Supplier Issues Different Terms & Conditions on the Back of the Invoices to the Client?

Terms and conditions listed on the back of an Invoice are usually the basic elements of a contract. The Master Contract is the fundamental terms and conditions of the contract. It is important when entering into a contract that you issue your contract to the Service Provider. The Service Provider will then have an opportunity to carry out a legal review of the document before they sign off. It would be prudent to ensure the following statement is listed in the contract:

“The terms and conditions contained in this Agreement will prevail over and apply to the exclusion of any and all other terms and conditions which the Supplier may seek to stipulate, incorporate, refer to or purport to apply, whether orally, or in writing and any contained in or referred to in any document of the Supplier”



Section 2

Terms & Conditions Explained

2.1: Introduction

It is important to note that a contract should be created by your legal team based on the information you provide to them including the scope of service requirements.

Facilities Management and Property Management are broad ranging professions with an assortment of contract needs relating to, single site individual contracts to large silo, pan European, international or global contracts. Therefore, it is essential that the contract is prepared in line with the service requirements and is created in conjunction with a legal team.

In this section we have prepared a sample contract. Its function is to provide you with an example of how a contract is pulled together and what layout should be applied. The clause numbering contained in this document is specific to this particular sample document. If you take an opportunity to review other contracts you will see that the number formatting differs. It is important to note that this is only a sample document to highlight some practicalities in drafting a contract.

All contract components are important, however, two components that need very careful consideration are:

- Termination Clause – recommended 90 days without cause
- Redundancy Clause

It is also important to note that the contract that is signed last is the legally binding document. If changes are made and not incorporated into the contract then they may not have legal standing.

2.2 Clause 1: Interpretation

What Is It?

The definitions and rules of interpretation in clause 1 apply to the whole contract. Great care needs to be taken with definitions, as the construction of key parts of the contract depends on them. Please check each definition carefully to make sure it means what you intend it to mean.

Interpretation: Sample Clause

Definitions: In these conditions, the following definitions apply

Business Day:

A day (other than a Saturday or Sunday) on which <ENTER COMPANY NAME> is open for business

Charges:

The charges payable by the Customer for the supply of the services

Conditions:

Terms and conditions are as amended from time to time in accordance with clause relevant to the delivery and performance.

Contract:

The contract between the Customer and the Supplier for the supply of services in accordance with the conditions.

Customer:

[INSERT NAME OF CUSTOMER registered in Ireland with company number]

Customer Materials:

In respect of the Goods and any goods that are transferred to CUSTOMER COMPANY NAME as part of the Services, including, without limitation, the Deliverables, or any part of them, the Supplier warrants that it has full, clear and unencumbered title to all such items and that at the date of delivery of such items to CUSTOMER COMPANY NAME, it will have full and unrestricted rights to sell and transfer all such items to CUSTOMER COMPANY NAME.

The Supplier hereby assigns to CUSTOMER COMPANY NAME, with full title guarantee and free from all third party rights, all Intellectual Property Rights in the products of the Services, including for the avoidance of doubt, the Deliverables and any Software developed for CUSTOMER COMPANY NAME under this Agreement.

The Supplier undertakes that it shall, promptly at CUSTOMER COMPANY NAME(S) request, do (or procure to be done) all such further acts or things and the execution of all such other documents to substantiate the rights of CUSTOMER COMPANY NAME, or as CUSTOMER COMPANY NAME may require for the purpose to secure the full benefit of this Agreement, including all right, title and interest in and to the Intellectual Property Rights assigned to CUSTOMER COMPANY NAME under this clause.

All CUSTOMER COMPANY NAME Materials are and shall remain the exclusive property of CUSTOMER COMPANY NAME and no right, interest or entitlement in same, or in any Intellectual Property Rights of CUSTOMER COMPANY NAME shall be granted or deemed to have been granted hereunder.

Deliverables:

Means all documents, products and materials developed by the Supplier or its agents, contractors, licensees and employees as part of or in relation to the Services in any form or media, including without prejudice to the generality of the foregoing, all maps, plans, drawings and specifications, diagrams, illustrations, designs, pictures, photographs, graphics or logos, CD's audio or visual recordings, books, papers, methodologies, processes instruction and training manuals, computer programmes, data reports and databases (including any draft or iterations of the foregoing).

Intellectual Property Rights:

Means all patents, rights to inventions, utility models, industrial models, copyright and related rights, logos an slogans, trademarks, service marks, trade, business service, brand and domain names, rights in trade dress or get-ups, rights in goodwill or to sue for passing off, unfair competition rights, rights in computer software and rights in or relating to databases, typography rights, rights in design, rights in confidential information (including know-how and trade secrets) and all and any other proprietary rights, in each case whether registered or unregistered and including all applications for and renewals of extensions of such rights, and all similar or equivalent rights or forms of protection in any country or jurisdiction throughout the world.

Pre Existing Intellectual Property

Means all Intellectual Property rights existing prior to the date of this Contract and all Intellectual Property in any materials acquired or developed by or for the Supplier or the Customer independently of this Contract and any Intellectual Property rights in the Supplier's standard hardware or software products

Order:

The Customer's order for the supply of services, as set out [in the Customer's purchase order form or in the Customer's written acceptance of the Supplier's quotation or overleaf as the case may be.]

Services:

The services, including without limitation any deliverables, to be provided by the supplier under the Contract as set out in the specification.

Specification:

The description or specification for the services agreed in writing by the Customer and the Supplier.

Supplier:

The person or firm from whom the Customer purchases the Services.

Construction:

In these Conditions, the following rules apply:

- a **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
- a **reference to a party** includes its [personal representatives], successors or permitted assigns;
- a **reference to a statute or statutory provision** is a reference to such statute or statutory provision as amended or re-enacted. A reference to a statute or statutory provision includes any subordinate legislation made under that statute or statutory provision, as amended or re-enacted;
- any phrase introduced by the terms **including, include in particular** or any similar expression shall be construed as illustrative and shall not limit the sense of the words preceding those terms; and
- a **reference to writing or written** includes faxes and e-mails.



2.3 Clause 2: Basis of Contract / Whose Contract Prevails

What Is It?

In this example, Clause 2 sets out how to contract between you and the supplier. It also seeks to ensure that your standard terms and conditions, rather than those of the supplier, are incorporated into the contract. It may not be effective if your standard terms are not accepted by the supplier – for example, where the supplier tries to impose its own standard terms by printing them on the reverse of its quotation. This is known as “battle of the forms” and it can be difficult to resolve. If it happens, it may be better to deal with the conflict of terms directly by discussing the terms with the supplier and, if possible, specifically agreeing any variations in writing.

Basis of Contract: Sample Clause

Under Clause 2.1:

You will make the offer to the supplier for the supply of services through the order. The order is your request for the supply of services, which may be your purchase order, or your acceptance of the supplier’s quotation. As you are making the offer, you and your operational staff should be vigilant against attempts by a supplier to accept your offer on its own terms and conditions, and to rebut such attempts if necessary.

Under Clause 2.2:

The Order shall be deemed to be accepted when:

- a. the supplier issues written acceptance of the Order; OR
- b. any act by the supplier consistent with fulfilling the Order,
- c. at which point and on which date the contract shall come into existence
(**commencement date**).

Under Clause 2.3:

States that these conditions are to apply to the contract between the parties, and that they are to prevail over any conditions that the supplier may try to impose.

Although this sort of clause is not always fully effective, it is included because it may lead the supplier’s operational staff to assume that there is nothing to be gained from seeking to impose their own terms and conditions.



2.4 Clause 3: Supply of Services

What Is It?

In this example, the purpose of Clause 3 is to set out the principal obligations on the supplier to provide the services. As these terms and conditions will be used for a variety of non-IT services, the obligations are not specific to a particular type of service. More specific obligations should be included in the specification of the services that you agree with the supplier.

Clause 3 sets out the key obligations and responsibilities of the supplier, including the provision of services in accordance with the contract, and to ensure that the services and deliverables conform to the specification. Where deliverables are provided, it is important to expressly ensure that the supplier provides these in compliance with its specification, and fit for purpose as this protection is not implied by law.

The standard of the provision of services is set out in Clause 3.3 i.e. to perform with the best care, skill and diligence in accordance with the best practice in the supplier's industry or trade. This is a higher standard than that implied by law (which is that of reasonable care and skill, in other words not provide the services negligently). In addition, the clause obliges the supplier to use the best quality materials and techniques, and any such materials transferred to you must be free of defects.

Supply of Services: Sample Clause

Under Clause 3.1:

The supplier shall from the [commencement date OR the date set in the order] and for the duration of the contract provide the services to the Customer in accordance with the terms of the contract.

Under Clause 3.2:

The Supplier shall meet any performance dates for the Services specified in the [Order] OR notified to the Supplier by the Customer.

Under Clause 3.3:

In providing the Services, the Supplier shall:

- a. Co-operate with the Customer in all matters relating to the Services, and comply with all instructions of the Customer;
- b. Perform the Services with the best care, skill and diligence in accordance with best practice in the Supplier's industry, profession or trade;
- c. Use personnel who are suitably skilled and experienced to perform tasks assigned to them, and in sufficient number to ensure that the Supplier's obligations are fulfilled in accordance with this Contract;
- d. Ensure that the Services and Deliverables will conform with all descriptions and specifications set out in the Specification, and that the Deliverables shall be fit for any purpose expressly or impliedly made known to the Supplier by the Customer;

- e. Provide all equipment, tools and vehicles and such other times as are required to provide the Services;
- f. Use the best quality goods, materials, standards and techniques, and ensure that the Deliverables, and all goods and materials supplied and used in the Services or transferred to the Customer, will be free from defects in workmanship, installation and design;
- g. Obtain and at all times maintain all necessary licenses and consents, and comply with all applicable laws and regulations;
- h. Observe all health and safety rules and regulations and any other security requirements that apply at any of the Customer's premises;
- i. (Hold all materials, equipment and tools, drawings, specifications and data supplied by the Customer to the Supplier (Customer Materials) in safe custody at its own risk, maintain the Customer Materials in good condition until returned to the Customer, and not dispose or use the Customer Materials other than in accordance with the Customer's written instructions or authorisation;
- j. Not do or omit to do anything which may cause the Customer to lose any licence, authority, consent or permission on which it relies for the purposes of conducting its business, and the Supplier acknowledges that the Customer may rely or act on the Services; and [ADD IN ANY OTHER RELEVANT OBLIGATIONS]

2.5 Clause 4: Customer Remedies

What Is It?

In this example, Under Clause 4, if the Supplier does not perform by the relevant performance dates, the customer will have a number of remedies, including the right to terminate the contract. This ensures that time for performance of the services is of the essence, and therefore puts a high standard on the Supplier's delivery obligation.

Customer Remedies: Sample Clause

Under Clause 4.1:

If the Supplier fails to perform the Services by the applicable dates, the Customer shall, without limiting its other rights or remedies, have one or more of the following rights:

- a. to terminate the Contract with immediate effect by giving written notice to the Supplier;
- b. to refuse to accept any subsequent performance of the Services which the Supplier attempts to make;
- c. to recover from the Supplier any costs incurred by the Customer in obtaining substitute services from a third party;
- d. where the Customer has paid in advance for Services that have not been provided by the Supplier, to have such sums refunded by the Supplier; OR
- e. to claim damages for any additional costs, loss or expenses incurred by the Customer which are in anyway attributable to the Supplier's failure to meet such dates.

Under Clause 4.2:

These conditions shall extend to any substituted or remedial services provided by the Supplier.

Under Clause 4.3:

The Customer's rights under this contract are in addition to its rights and remedies implied by statute and common law.

2.6 Clause 5: Customer's Obligations

What Is It?

In this example, Clause 5 sets out the customer's obligations under the contract (other than payment of the charges, which is dealt with in Clause 6). It is reasonable to give basic commitments about access and information to the supplier.

There may also be other industry specific obligations of the customer that may need to be included here.

Customer's Obligations: Sample Clause

Clause 5:

The Customer shall:

- a. provide the Supplier with reasonable access at reasonable agreed times to the Customer's premises for the purpose of providing the Services;
- b. provide such information to the Supplier as the Supplier may reasonably request and the Customer considers reasonably necessary for the purpose of providing the Services; and
- c. [ANY OTHER RELEVANT OBLIGATIONS].
- d. Acquainting him/herself with site conditions for the purpose of providing the service.



2.7 Clause 6: Charges & Payment

What Is It?

The relevant charges should be set out in the order. These standard terms and conditions assume that the charges will be on a fixed-price basis, which is more favourable than a time-and-materials basis (although a supplier will typically seek to build in a premium in fixed-price charging). A time-and-materials basis charging structure, or a combination of both could also be included.

Charges & Payment: Sample Clause

Clause 6.1:

The charges for the Services shall be set out in the order, and shall be the full and exclusive remuneration of the Supplier in respect of the performance of the Services. Unless otherwise agreed in writing by the Customer, the Charges shall include every cost and expense of the Supplier directly or indirectly incurred in connection with the performance of the Services.

Clause 6.2:

The Supplier shall invoice the Customer on completion of the Services. Each invoice shall include such supporting information required by the Customer to verify the accuracy of the invoice, including but not limited to the relevant purchase order number.

Clause 6.3:

In consideration of the supply of the Services by the Supplier, the Customer shall pay the invoiced amounts within [NUMBER] days of the date of a correctly rendered invoice to a bank account nominated in writing by the Supplier.

Clause 6.4:

All amounts payable by the Customer under the Contract are exclusive of amounts in respect of value added tax chargeable for the time being (**VAT**). Where any taxable supply for VAT purposes is made under the Contract by the Supplier to the Customer, the Customer shall, on receipt of a valid VAT invoice from the Supplier, pay to the Supplier such additional amounts in respect of VAT as are chargeable on the supply of the Services at the same time as payment is due for the supply of the Services.

Clause 6.5:

If the Customer fails to pay any amount properly due and payable by it under the Contract, the Supplier shall have the right to charge interest on the overdue amount at the rate of [PERCENTAGE] per cent per annum above the base rate for the time being of [NAME OF BANK] accruing on a daily basis from the due date up to the date of actual payment, whether before or after judgement. This clause shall not apply to payments that the Customer disputes in good faith.

Clause 6.6:

The Supplier shall maintain complete and accurate records of the time spent and materials used by the Supplier in providing the Services, and shall allow the Customer to inspect such records at all reasonable times on request.

Clause 6.7:

The Customer may, without limiting its other rights or remedies, set off any amount owed to it by the Supplier [under the Contract] against any amount payable by the Customer to the Supplier under the Contract.

2.8 Clause 7: Intellectual Property Rights

Intellectual Property Rights is a broad field, The detail provided is for the best position for the Customer. However, it should be noted that Intellectual Property clauses are drafted very much in favour of the Customer and the Customer should expect significant push-back from the Supplier if there is a possibility that valuable Intellectual Property may be created in the performance of the services.

In circumstances where the customer will rely on a manual as setting out the position they need to reach on Intellectual Property Terms, then difficulties may arise for the customer who meets push back from a supplier arguing for a more reasonable approach to Intellectual Property rights.

Within the detail outlined below, reference is made to assignment or licensing of Intellectual Property rights. As a general rule, the Supplier would look at the possibility of valuable Intellectual Property being created and whether the charges for the services provided are intended to or are adequate to cover a vesting of those rights in the customer.

As a general rule:

- Background Intellectual Property (i.e. that created/acquired prior to the commencement or independently of the agreement) should always remain vested in the original Customer / Supplier owner. A licence should be granted in this Intellectual Property to the extent that it is necessary for the customer to receive the services or for the Supplier to provide the services, as relevant. A solicitor may seek to have the licence as perpetual and irrevocable but this can be seen to be unreasonable from the Supplier's point of view. In most circumstances, such a licence should last for the duration of the contract only. This is the fairest position. It should also be noted that from a supplier's point of view, the customer should reasonably indemnify the supplier against its use of this Intellectual Property outside the terms of the agreement (particularly in the instance where Intellectual Property is just licensed to the supplier, it will have given a similar indemnity to the ultimate owner).

- Project Specific Intellectual Property (i.e. that created under the agreement or as a result of the provision of the services): ownership of this will be subject to negotiation based on the principle set out above on value of the Intellectual Property and charges intended to compensate the supplier transferring this Intellectual Property to the customer.

What Is It?

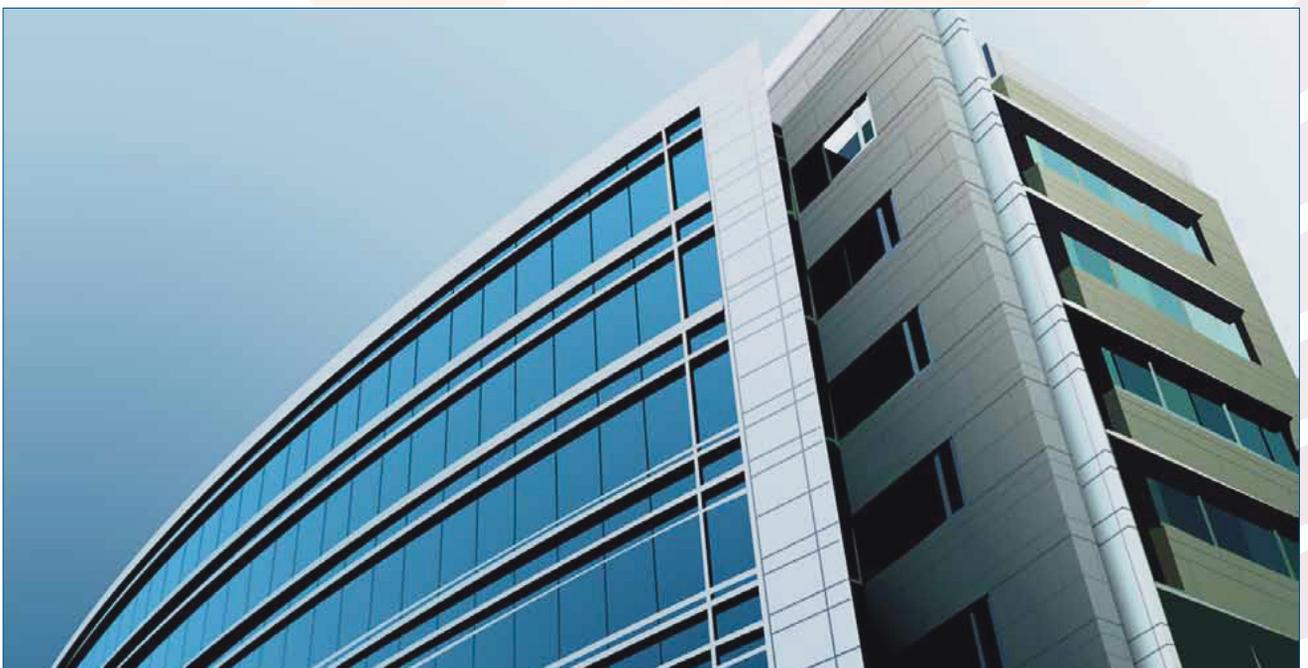
In this example, under Clause 7.2, the Supplier assigns all intellectual property rights in the products of the services (such as the deliverables) to the Customer. This is a default position, and you should consider whether it is appropriate depending on the nature of the contract, it may not always be relevant as in the case of services which are labour only and do not give rise to any intellectual property rights.

It is also likely to receive push-back from the Supplier, particularly in the case of purchasing or licensing of “out of the box” products such as standard software. You should consider whether it is more appropriate to seek a licence rather than ownership.

Intellectual Property Rights: Sample Clause

Clause 7.1:

In respect of any goods that are transferred to the Customer under this Contract, including without prejudice to the generality of the foregoing, the Deliverables or any part of them, the Supplier hereby represents warrants that they have full, clear and unencumbered title to all such items, and as at the date of delivery of such items to the Customer, it will have full and unrestricted rights to transfer and/or assign all such items to the Customer.



Clause 7.2:**Intellectual Property**

The Supplier, hereby acknowledges, agrees and confirms that all title and interest (including all Intellectual Property) in the products of any Services including all Deliverables shall vest in the Customer absolutely, and the Supplier, as legal and beneficial owner, hereby irrevocably assigns to the Customer, its successors and assigns, all rights, titles and interest (including all Intellectual Property) in the products of any Services provided under this Contract, which for the avoidance of doubt includes all and any Deliverables. To the extent that any of the Supplier's agents, contractors, licensees and employees are deemed to own any rights in the Deliverables, the Supplier will procure that such personnel assign all Intellectual Property rights in such Deliverables to the Customer.

Clause 7.3:

The Supplier will, or will not procure that any of the Suppliers agents, contractors, licensees and employees will waive all moral rights in the products of any Services provided under this Contract, including any Deliverables, to the extent permitted under applicable law. If applicable law prevents waiver of any moral rights, the Supplier will, or procure that such personnel will confirm that such moral rights are not asserted and if requested by the Customer, the Supplier will, or procure that such personnel will assign any documents necessary to give effect to this provision.

Clause 7.4:

- a. If the Supplier incorporates any Pre Existing Intellectual Property into any Deliverables or any products of the Services provided under this Contract, the Supplier shall grant the Customer a non-exclusive, perpetual, irrevocable, royalty-free worldwide licence to use, copy reproduce, alter, modify and adapt, display, publish, make available, sub-licence and distribute the Pre Existing Intellectual Property to the extent necessary for the Customer to have full use and enjoyment of the Service and the Deliverables,
- b. The Customer shall grant to the Supplier, a royalty-free, non-exclusive licence to use the Customer's Pre Existing Intellectual Property to the extent necessary to enable the Supplier to fulfil its obligations under this Contract.
- c. Save as expressly provided in this Contract, all Pre Existing Intellectual Property shall remain the sole property of the party who owned, acquired or develop such intellectual property.

Clause 7.5:

The Supplier shall indemnify the Customer and keep the Customer fully and effectually indemnified against all costs, expenses and liabilities of whatsoever nature arising directly out of or in connection with any claim, demand or action arising from or incurred by reason of any infringement or any alleged infringement of any Intellectual Property of a third party, by the use of or provision of the Services or any Deliverables (or any part of them) provided always that the Supplier shall not be liable for any use by the Customer of any Intellectual Property which has been altered or modified by any party other than the Supplier, or for any unauthorised use or modification of the Intellectual Property.

Clause 7.6:

Upon the expiration or sooner determination of the term of this Contract, the Supplier shall immediately deliver up to the Customer all Deliverables prepared up to the date of termination.

2.9 Clause 8: Indemnity & Insurance

What Is It?

An indemnity is an express obligation to compensate, by making a money payment, for some defined loss or damage. The purpose of Clause 8 in this example is to enable the customer to claim for all the losses suffered, no matter how remote, provided it can be proved that they arose in the specified circumstances. It is important to be clear about the extent of the loss which can be recovered because of the legal meaning of the term “indemnity” is not as all embracing as one might expect.

The Supplier shall indemnify and keep indemnified the Customer, its officers, employees and agents from and against any claim, action, demand, costs, liabilities, damages or expenses arising out of or in connection with:

1. any infringement or alleged infringement of the Intellectual Property Rights of any third party arising out of the supply or use of the Services or the Deliverables [the Supplier Materials] [the Bespoke Materials], and:
2. any claim made against the customer in respect of any liability, loss, damage, injury, cost or expense sustained by the Customer or its agents or by any customer or third party to the extent that such liability, cost or expense was caused by, related to or arises from the provision of the Services, as a consequence of a breach or negligent performance or failure or delay in performance of this Agreement by the Supplier.

NOTE: Part 2 of this indemnity relates to performance of the Services more generally, it should be considered whether this indemnity should be included in a different section of the contract as it relates to more than Intellectual Property Rights.

The indemnity will not apply where any such claim arises from:

- items or materials based upon designs or any other IP materials supplied by the customer, or the use of data or any other IP materials supplied by or on behalf of the Customer; or
- unauthorised use or modification of the IP rights by the customer any of its agents, sub-contractors or employees other than in accordance with the contract;
- use by the customer or any of its agents, sub-contractors or employees of any IP rights following reasonable notification from the Supplier that the use thereof may or does infringe the Intellectual Property Rights of a third party.

In the example below, Clause 8 also includes an indemnity from the Supplier to protect against any claim that the intellectual property rights in services infringe those of a third party. A Customer cannot be expected to know whether the services infringe a third party’s intellectual property rights, and as such this risk should be allocated to the Supplier.

It is important that a supplier have adequate resources to meet any liabilities or claims, and included is an obligation on the supplier to obtain and maintain insurance and to supply details on demand.

Indemnity: Sample Clause

Clause 8.1:

The Supplier shall keep the Customer indemnified in full against all costs, expenses, damages and losses (whether direct or indirect), including any interest, fines, legal and other professional fees and expenses awarded against or incurred or paid by the Customer as a result of or in connection with:

- a. any claim made against the Customer by a third party arising out of, or in connection with, the supply of Services, to the extent that such claim arises out of the breach, negligent performance of failure or delay in performance of the Contract by the Supplier, its employees, agents or subcontractors; AND
- b. any claim brought against the Customer for actual or alleged infringement of a third party's Intellectual Property Rights arising out of, or in connection with, the receipt, use or supply of the Services.

Clause 8.2:

For the duration of the Contract, [and for a period of [PERIOD] thereafter], the Supplier shall maintain in force, with a reputable insurance company, professional indemnity insurance and public liability insurance to cover the liabilities that may arise under or in connection with the Contract and shall, on the Customer's request, produce both the insurance certificate giving details of cover and the receipt of the current year's premium in respect of each insurance.

Clause 8.3:

This clause shall survive the termination of the Contract.

2.10 Clause 9: Confidentiality

What Is It?

The Confidentiality Clause sets out minimum confidentiality obligations on each party to respect the confidentiality of information supplied to it by the other. Also to create and enforce equivalent confidentiality provisions against its employees, consultants, agents or subcontractors.

This is a reasonably balanced approach to the matter. A supplier is unlikely to accept a one-sided obligation that only protects the customer's confidential information, particularly if the supplier is providing any proprietary information as part of the services.

Confidentiality: Sample Clause

Clause 9:

A party (**Receiving Party**) shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to, or otherwise obtained by, the Receiving Party by the other party (Disclosing Party), its employees, agents or subcontractors, and any other confidential information concerning the Disclosing Party's business or its products or its services which the Receiving Party may obtain. The Receiving Party shall restrict disclosure of such confidential information to such of its employees, agents or subcontractors as need to know it for the purpose of discharging the Receiving Party's obligations under the Contract, and shall ensure that such employees, agents or subcontractors are subject to obligations of confidentiality corresponding to those which bind the Receiving Party. The clause 9 shall survive termination of the Contract.

2.11 Clause 10: Termination

What Is It?

In this example, Clause 10.1 sets out events that will trigger the customers right to terminate immediately by giving written notice to the supplier. The customer will need to consider:

- How long a supplier should have to remedy a material or persistent breach under clause 10.1(a) [and if the customer wants to specify certain clauses at this stage which, if breached, will be deemed a material breach];
- Whether breach and termination of other contracts between customer and the supplier should be a triggering event; and
- Whether a change of control of the supplier should be a triggering event.

Under Clause 10.2, the customer has the right to terminate the contract, without cause, on written notice. A customer should retain the right to exit any arrangement. The customer will need to decide what the notice period should be [such as one month or three months].

Termination: Sample Clause

Clause 10.1:

Without limiting its other rights or remedies, the Customer may terminate the Contract with immediate effect by giving written notice to the Supplier if:

- a. the Supplier commits a material or persistent breach of the Contract and (if such a breach is remediable) fails to remedy that breach within [<NUMBER>] days of receipt of notice in writing of the breach;
- b. the Supplier suspends, or threatens to suspend, payment of its debts, or are unable to pay its debts as they fall due or admit inability to pay debts or (being a company) is deemed unable to pay its debts within the meaning of Section 123 of the Insolvency Act 1986;

- c. the Supplier is struck off the Register of Companies in the jurisdiction where it was incorporated or an order is made or a resolution passed for winding up the other party (unless such order or resolution is part of a voluntary scheme for the reconstruction or amalgamation of the party as a solvent corporation and the resulting corporation, if a different legal person, undertakes to be bound by this Agreement) or if anything analogous to the foregoing occurs in any applicable jurisdiction;
- d. the Supplier commences negotiations with all or any class of its creditors with a view to rescheduling any of its debts, or makes a proposal for or enter into any compromise or arrangement with its creditors [other than (where a company) for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier];
- e. a petition is filed, a notice is given, a resolution is passed, or an order is made, for or in connection with the winding up of the Supplier (being a company) other than for the sole purpose of a scheme for a solvent amalgamation of the Supplier with one or more other companies or the solvent reconstruction of the Supplier
- f. the Supplier (being an individual) is the subject of a bankruptcy petition order;
- g. a creditor or encumbrancer of the Supplier attaches or takes possession of, or a distress, execution, sequestration or other such process is levied or enforced on or sued against, the whole or any part of its assets and such attachment or process is not discharged within [14] days;
- h. an application is made to court, or an order is made, for the appointment of an examiner or if a notice of intention to appoint an examiner is given or if an administrator is appointed over the Supplier (being a company);
- i. a floating charge holder over the assets of the Supplier (being a company) has become entitled to appoint or has appointed a receiver;
- j. a person becomes entitled to appoint a receiver over the assets of the Supplier or a receiver is appointed over the assets of the Supplier;
- k. any event occurs, or proceeding is taken, with respect to the Supplier in any jurisdiction to which it is subject that has an effect equivalent or similar to any of the events mentioned in clause 10.1(e);
- l. the supplier (being an individual) dies or, by reason of illness or incapacity (whether mental or physical), is incapable of managing his/her own affairs or becomes a patient under any mental health legislation.

Clause 10.2:

Without limiting its other rights or remedies, the Customer may terminate the Contract by giving the Supplier [**<NUMBER>**] [**<MONTHS>**] written notice

This is a very important clause within a contract and needs to be adapted to your specific requirements. Here we provide a working example of a “Termination Clause”.

Subject to clauses 10.2 and 10.3 below, this Agreement will come into effect on the Effective Date and will remain in force until all Goods, Services and Deliverables have been provided under the Purchase Orders or cancelled under **clause 2.3**.

- 10.2 Notwithstanding the above, [CUSTOMER COMPANY NAME] in its sole discretion, may terminate this Agreement, in whole or partially, immediately on giving written notice at any time prior to the delivery of the Goods and/or Services requested under a Purchase Order and [CUSTOMER COMPANY NAME]'S sole liability will be to pay the Supplier the charges relating to any Goods or Services provided up to and including the date of termination;
- 10.3 Without prejudice to any other rights or remedies [CUSTOMER COMPANY NAME] may have, [CUSTOMER COMPANY NAME] may terminate this Agreement with immediate effect and without liability, upon written notice to the Supplier in the event that;
- 10.3.1 the Supplier commits a breach of any of the terms or conditions of this Agreement, and in the event of a breach capable of being remedied, fails to remedy the breach within fourteen (14) days of the date of notice;
- 10.3.2 the Supplier is deemed bankrupt or enters into liquidation, whether compulsory or voluntary, other than for the purposes of amalgamation or reconstruction, is the subject of a winding up petition or compounds with its creditors generally or has a receiver or manager appointed over all or any of its assets or anything analogous to any of the above;
- 10.3.3 suspends or ceases or threatens to suspend or cease to carry on all or a substantial part of its business; and [CUSTOMER COMPANY NAME] may, without prejudice to any provisions of this Agreement which are to have effect on termination or expiry, suspend payment to and retain any amount due to the Supplier under this Agreement or otherwise from [CUSTOMER COMPANY NAME], retake possession of any assets or property of [CUSTOMER COMPANY NAME] held or occupied by the Supplier, and exercise a lien over any of the equipment, materials or other goods belonging to the Supplier and upon [CUSTOMER COMPANY NAME]'S premises at the date of such termination for any amount due under this Agreement or otherwise from the Supplier to [CUSTOMER COMPANY NAME]; and the Supplier shall immediately upon such termination become liable to pay to [CUSTOMER COMPANY NAME] the amount of any loss or damage suffered by [CUSTOMER COMPANY NAME] as a result of the termination;

- 10.4 [CUSTOMER COMPANY NAME] shall not be liable to the Supplier for any loss of profit, contracts, goodwill, business opportunity or anticipated saving arising out of or in connection with the termination of this Agreement for any reason or any consequential loss or damage that may arise out of termination of this Agreement;
- 10.5 Termination of this Agreement for any reason shall not affect the rights of either party existing at the date of termination;
- 10.6 Notwithstanding termination of this Agreement those clauses of this Agreement which expressly or by implication survive termination will continue in full force and effect;
- 10.7 On termination of this Agreement the Supplier must immediately return to [CUSTOMER COMPANY NAME] all documentation or materials containing confidential information, information relating to [CUSTOMER COMPANY NAME]'S intellectual property and any property belonging to [CUSTOMER COMPANY NAME].



2.12 Clause 11: Consequences of Termination

What Is It?

This clause is usually put in place when there is an aspect of the termination clause included in a contract, It means there is a consequence for taking the action to terminate a contract.

For example:

- where the supplier has material belonging to the customer then the “Consequences of Termination” might be that the supplier must return the material to the customer by a set time line;
- where an investment has been made as part of the longer term contract arrangement. In this instance, a sliding scale on monies owed back would be included in the “Consequences of Termination” clause.

Consequences of Termination: Sample Clause

Clause 11:

On termination of the Contract for any reason:

- a. the Supplier shall immediately deliver to the Customer all Deliverables whether or not then complete, and return all Customer Materials. If the Supplier fails to do so, then the Customer may enter the Supplier’s premises and take possession of them. Until they have been returned or delivered, the Supplier shall be solely responsible for their safe keeping and will not use them for any purpose not connected with this Contract;
- b. the accrued rights, remedies, obligations and liabilities of the parties as at termination shall not be affected, including the right to claim damages in respect of any breach of the Contract which existed at or before the date of termination;
- c. and clauses which expressly or by implication have effect after termination shall continue in full force and effect.



2.13 Clause 12: General

12.1 Force Majeure

A Force Majeure clause excludes liability for breach of contract where delay or failure to perform is as a result of an event outside the control of the party who is in default. Clause 12.1 is drafted so that it applies to both parties, although it is more likely in practice to impact on a supplier as it is the principal performing party. As a result, it is drafted narrowly, requiring that the event in question could not have been foreseen by the affected party (most likely, the supplier).

The clause includes a right for the customer to terminate. The customer will need to decide how long the Force Majeure event should continue before your right to terminate arises.

Force Majeure: Sample Clause

Clause 12.1:

Neither party shall be liable to the other as a result of any delay or failure to perform its obligations under the Contract if and to the extent such delay or failure is caused by an event or circumstance which is beyond the reasonable control of that party which by its nature could not have been foreseen by such a party or if it could have been foreseen was unavoidable. If such event or circumstances prevent the Supplier from providing any of the Services for more than [NUMBER] weeks, the Customer shall have the right without limiting its other rights or remedies, to terminate this contact with immediate effect by giving written notice to the Supplier.

12.2 Assignment

Under Clause 12.2, the Supplier is not entitled to assign or subcontract its rights or obligations under the contract without consent, but the customer may do so without the Supplier's consent

Assignment: Sample Clause

Clause 12.2:

The Supplier shall not assign, transfer, charge, subcontract, or deal in any other manner with all or any of its rights or obligations under the Contract without the prior written consent of the Customer.

The Customer may at any time assign, transfer, charge, subcontract or deal in any other manner with all or any of its rights under the Contract and may subcontract or delegate in any manner any or all of its obligations under the Contract to any third party or agent.

12.3 Notices

Clause 12.3 governs the manner in which any notice under the contract must be given, and the time at which the notice is deemed to be received.

Notices: Sample Clause

Clause 12.3:

- a. Any notice or other communication required to be given to a party under or in connection with this Contract shall be in writing and shall be delivered to the other party personally or sent by registered post, recorded delivery or by commercial courier, at its registered office (if a company) or (in any other case) its principal place of business, or sent by fax to the other party's main fax number;
- b. Any notice or communication shall be deemed to have been duly received if delivered personally, when left at the address referred to above or, if sent by registered post or recorded delivery, at [09.00 am] on the [second] Business Day after posting, or if delivered by commercial courier, on the date and at the time that the courier's delivery receipt is signed, or if sent by fax, on the next Business Day after transmission;
- c. This clause shall not apply to the service of any proceedings or other documents in any legal action. For the purpose of this clause, "writing" shall not include e-mails and for the avoidance of doubt notice given under this Contract shall not be validly served if sent by e-mail.

12.4 Waiver

Either party may fail to enforce its rights under the contract, whether as a result of oversight or because of the commercial realities of the situation. Clause 12.4 provides that a waiver of a breach of the contract on one occasion will not affect the rights of that party if there is a further breach, or if that party subsequently requires compliance with the relevant terms. That said, the effectiveness of this type of clause is in some doubt, so the customer should not rely on it completely. The customer should always put the supplier on notice of any recurring breach and either require rectification or consider a formal variation of the contract.

Waiver: Sample Clause

Clause 12.4:

A waiver of any right under the Contract is only effective if it is in writing and shall not be deemed to be a waiver of any subsequent breach or default. No failure or delay by a party in exercising any right or remedy, nor preclude or restrict its further exercise. No single or partial exercise of such right or remedy should preclude or restrict the further exercise of that or any other right or remedy;

Unless specifically provided otherwise, rights arising under the Contract are cumulative and do not exclude rights provided by law.

12.5 Severance

Clause 12.5 is designed to save the rest of the contract if any part of it is found to be void or unenforceable. It also provides direction to the courts to allow enforcement of provisions to the extent that a line can be drawn through those parts of them which would otherwise be found to be void or unenforceable – sometimes called a “blue pencil test”.

Severance: Sample Clause

Clause 12.5:

If a court or any other competent authority finds that any provision (or party of any provision) of the Contract is invalid, illegal or unenforceable, that provision or part-provision shall, to the extent required, be deemed deleted, and the validity and enforceability of the other provisions of the Contract shall not be affected;

If any invalid, unenforceable or illegal provision of the Contract would be valid, enforceable and legal if some part of it were deleted, the provision shall apply with the minimum modification necessary to make it legal, valid and enforceable.

12.6 No Partnership or Agency

The principal object of clause 12.6 is to reduce the risk that the acts (or omissions) of one party to the contract are treated, in favour or third parties, as binding on the other party. This clause may not, however, be effective against third parties who have no notice of the terms of the contract.

No Partnership or Agency: Sample Clause

Clause 12.6:

Nothing in the Contract is intended to, or shall be deemed to, constitute a partnership or joint venture of any kind between any of the parties, nor constitute any party the agent of another party for any purpose. No party shall have authority to act as agent for, or to bind, the other party in any way.

12.7 Variation

Clause 12.7 deals with variations to the contract. It requires that any variation, including any additional terms and conditions, must be in writing and signed by the Customer. However, it is possible to vary a contract orally or by actions, despite the inclusion of this clause. For this reason, it is important to keep a track of any changes and to ensure that they are properly recorded and agreed by all. As drafted, the clause does not specify who can sign on behalf of the customer. If it is desirable, this function could specifically be delegated to a manager.

Variation: Sample Clause

Clause 12.7:

Any variation, including any additional terms and conditions, to the Contract shall only be binding when agreed in writing and signed by the Customer.

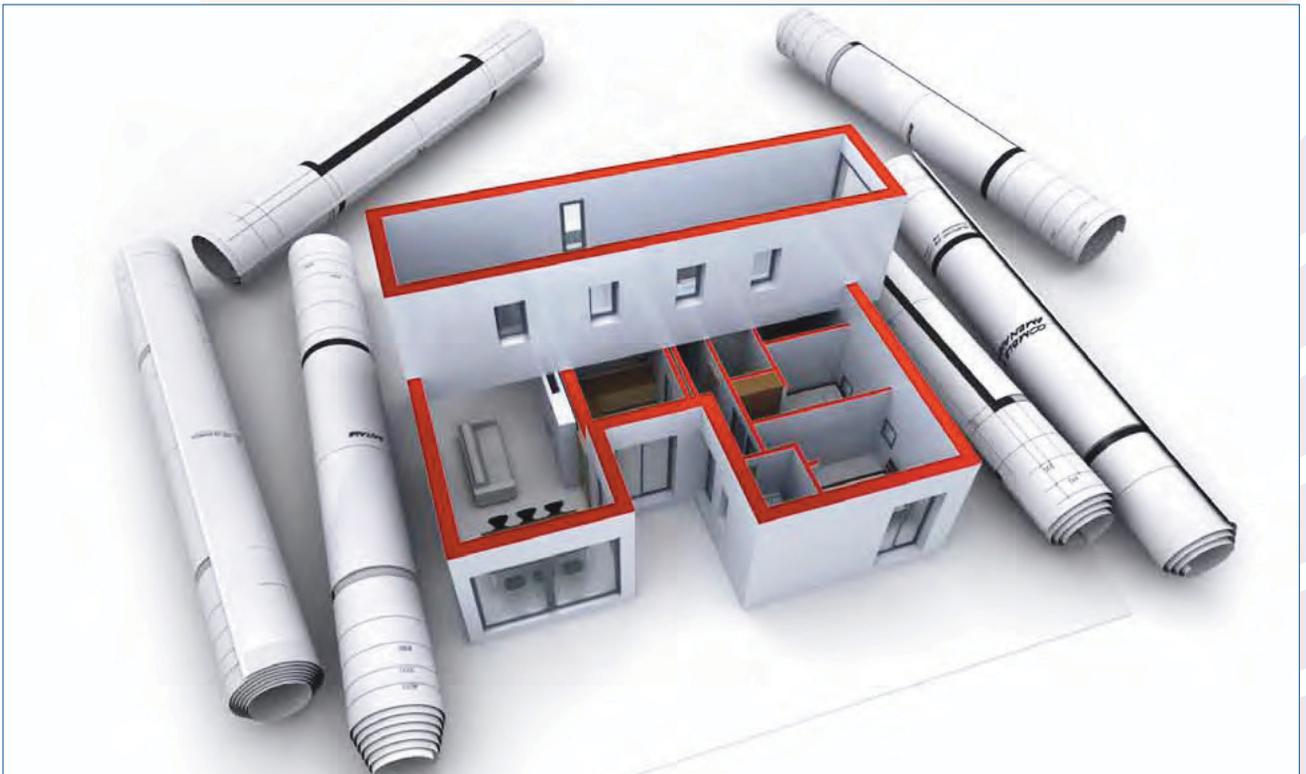
12.8 Governing Law & Jurisdiction

Under Clause 12.8, the parties agree that any disputes shall be heard exclusively in the Irish Courts and that Irish Law will apply.

Governing Law & Jurisdiction: Sample Clause

Clause 12.8:

The Contract, and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims), shall be governed by, and construed in accordance with, Irish Law, and the parties irrevocably submit to the exclusive jurisdiction of the Courts of Ireland. In preparing your contract with legal advisers, you may wish to consider the option of arbitration etc which should be discussed with your legal team when finalising the wording.



2.14 Clause 13: Notable Omissions

What is it?

No limitation of liability. The draft terms and conditions contain no limitation of liability clause, which means that each party's liability under the contract is unlimited.

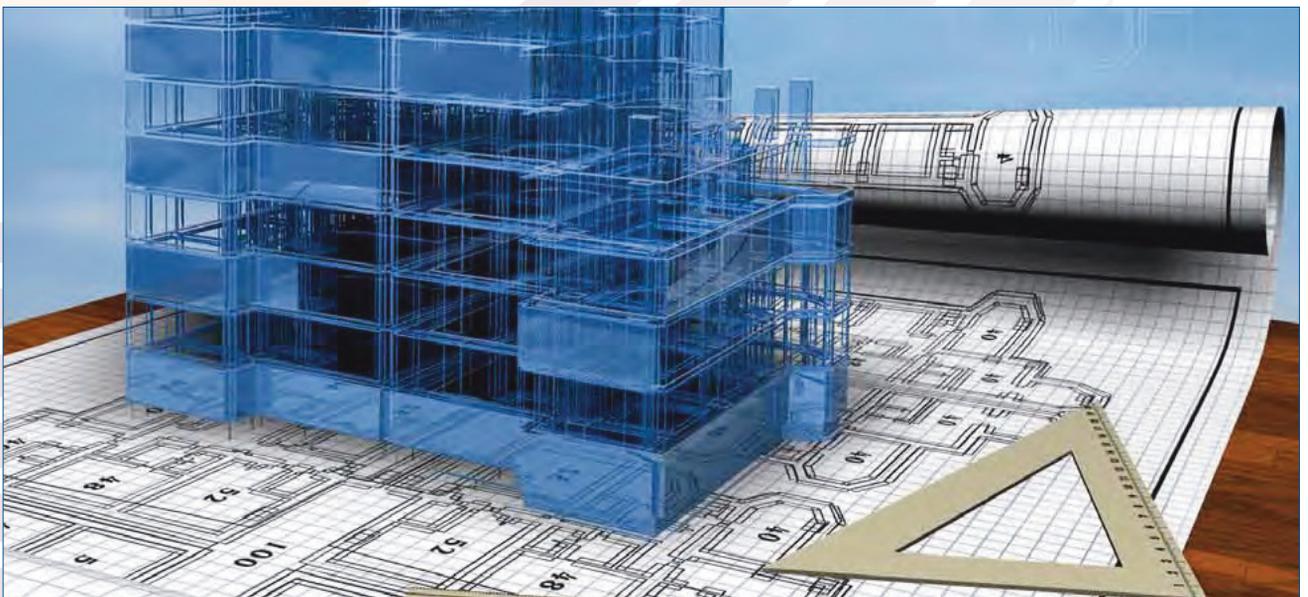
A supplier may be concerned about this omission. It may try to push its own terms and conditions, or raise the point in discussions before entering into the contract. The customer may wish to have a fall-back limitation of liability clause (limiting the supplier's liability, and customer's own). This can be offered to the supplier if he requires one, as a condition to provide the services, rather than wait until the supplier produces its own version of a limitation clause.

As a customer, the principal obligation is to pay the charges, so generally, customers are prepared to accept the risk of unlimited liability however, each customer must consider this in the light of the risks associated with each individual transaction.

Notable Omissions: Sample Clause

Clause 13:

No entire agreement. The draft terms and conditions contain a no entire agreement clause. Because the supplier is performing the services, and is more likely to make pre-contractual statements that the customer may rely upon in entering the contract, the omission of an entire agreement clause poses more risk to the supplier. However, it is important that customers operational staff are aware that if they make any pre-contractual statements themselves that the supplier relies upon, such statements will not be excluded.





Section 3

Putting the Pieces Together

3.1 Introduction

The information provided in this document is an aid to help you understand contracts and also to help you prepare your own. As with all contractual matters it is best to seek legal advice.

This section helps you to understand what a contract will look like when it has been pulled together. We have taken the example of “Manned Guarding Contract”.

You will observe that the terminology in the contracts is not always the same and is modified with legal assistance to meet the needs of the contractee and contractor.

You will also note from the example that the contract is quite extensive and has been built in line with the scope and scale of the service requirements. Again it is important to note that you must with the support of your legal team, build a contract to reflect the scale of service requirements. It is also worth noting that your firm may already have an “inhouse” contract that may or may not allow for some minor modifications.

This sample document also specifically addresses the issue of redundancy and termination.



Sample “Acceptance of Proposal Letter”

Dear “x”

I refer to our correspondence in relation to providing “y” services at [ENTER CLIENT NAME AND ADDRESS](#), in particular as set out in your proposal dated [ENTER DATE](#).

We confirm acceptance of your proposed services, subject to the attached Terms & Conditions.

Please acknowledge acceptance of the terms and conditions of this contract by signing and dating the acceptance at the bottom of the contract and returning it us .

Yours sincerely

Joe Bloggs

3.3 “Sample Security Contract”

This Agreement is made the **DATE** between (1) **THE SERVICE PROVIDER** and (2) **THE CLIENT**.

1. TERMS USED

- 1.1: The “**Service Provider**” is **NAME OF SERVICE PROVIDER COMPANY**
- 1.2: The “**Guarding Service**” means the service described in this Agreement and being such service as is more particularly described in the Specification.
- 1.3: The “**Client**” is **NAME OF CLIENT**
- 1.4: The “**Group**” means in relation to any company that company and any other company, which at the relevant time, is its Holding Company and “Member” of a Group has a corresponding meaning.
- 1.6: “**Holding Company**” and “**Subsidiary Company**” shall have the meaning set out in S.736 of the Companies Act 1985.
- 1.7: The “Initial Term” is from **CONTRACT START DATE** until **CONTRACT END DATE**.
- 1.8: The “Premises” are the whole Client site **CLIENT ADDRESS**.

2. APPOINTMENT OF THE SERVICE PROVIDER

- 2.1: The Client appoints the Service Provider to provide the Guarding Service at the Premises during the Term unless and until this Agreement is terminated by three months’ written notice given by either party at any time or as otherwise provided by **Clause 9**.
- 2.2: The Service Provider agrees to act as a principal and not as an agent in respect of all dealings with suppliers and generally pursuant to this Agreement.
- 2.3: It is a fundamental condition that all budget figures in respect of any additional work outside of the Specification must have the prior written agreement of the Client and all costs and expenditure outside the budget, which are incurred by the Service Provider and which are to be passed to the Client for payment in connection with this Agreement must have the prior written approval of the Client.
- 2.4: Without prejudice to the generality of any of the other terms of this Agreement the Service Provider warrants that:
- 2.4.1: the Guarding Service will be supplied in accordance with the terms of this Agreement including the Service Level Agreement annexed as **Schedule 3**;

- 2.4.2: it is an experienced expert in providing Guarding Services and that the Guarding Service will be provided in all respects in accordance with the Specification and all the skill, care and diligence to be expected of an experienced and *expert provider of guarding services;

*NOTE: Expert provider may be too much of a liability, the term “contract” may suffice.

- 2.4.3: All work will be supplied in a good and workmanlike manner and will comply with all statutory and other requirements that relate to the supply of the Guarding Service at the Premises and in particular, but without limitation, that the Service Provider fulfils all the requirements of the Securities Industry Act 2006 placed upon it.

Provided always in the event that the Client considers the work or any of it carried out by the Service Provider not to be in accordance with the Specification or otherwise not in compliance with the terms of this Agreement, then without prejudice to any other rights available to the Client the Client may reduce any monies due to the Service Provider in respect of any part of the Guarding Service as permitted by **Clause 6.1.2**.

3. DUTIES OF THE SERVICE PROVIDER

The Service Provider, acting as principal, will:

- 3.1: Perform the Guarding Service in accordance with the standards and other requirements detailed in the Specification which may be amended in writing by agreement between the parties from time to time and the Service Provider confirms that anything supplied in connection with this Agreement that relates to the supply of the Guarding Service at the Premises shall be fit for its purpose.
- 3.2: Provide such other Guarding Services to such standards, in such amounts, at such times and at such tariffs as provided in this Agreement and as otherwise may be agreed with the Client from time to time.
- 3.3: In order that the Client can review the suitability or otherwise of the personnel used in the provision of the services the Service Provider will notify the Client of all personnel to be used in connection with the provision of the Guarding Service and will (on the written request of the Client) make records of the personnel available to the Client and the Service Provider shall only use such personnel following agreement with the Client. Any changes must be agreed before any person commences work in providing the Guarding Service and followed up with written agreement from both parties.
- 3.4: Provide suitably trained staff to operate the Guarding Service and administer and pay their wages and associated costs. All employees of the Service Provider engaged in providing the Guarding Service must be fully trained in all relevant security procedures,

be reasonably considered by the Service Provider to be efficient, sober and honest, must be appropriately PSA licensed, able to communicate effectively in English and be of a hygienic and smart appearance. For the avoidance of doubt the Client's review under **Clause 3.3** shall not release the Service Provider from its obligations under this clause or any liabilities arising from or in connection with any failure to comply with these obligations.

NOTE: "Be careful what you wish for – you may get what you wished for – in this instance you have to ensure you do not make an exemption that could establish precedence for a waiver!"

- 3.5: The Service Provider shall be responsible for the acts and omissions of its employees and shall ensure that such employees comply with all site conditions applicable to the Premises.
- 3.6: Prepare and agree with the Client annual budgets in respect of the Guarding Service.
- 3.7: Ensure that it conforms to all legislation, rules, regulations, statutory requirements and generally accepted good practice for a service provider providing guarding services and will indemnify the Client against any failure to carry out this obligation. The service provider must inform the Client immediately if there is a change to their NSAI accreditation level.
- 3.8: Keep separate and full and accurate accounts and records of the hours the Service Provider's personnel are engaged in providing the Guarding Service and of purchases made pursuant to this Agreement including full details of the persons from whom each supply is purchased, on each occasion and on reasonable prior notice to permit the Client or its duly appointed representatives to inspect those accounts and records and to take copies. Such inspections to take place at such time as the Client may require either during the existence of this Agreement and for a period of one year following the termination or expiry of this Agreement.
- 3.9: Not at any time after the date hereof to divulge any information in relation to the Client's affairs or business or method of carrying on business, and this clause shall continue to have effect notwithstanding the expiration or termination of this Agreement from any cause. The Service Provider undertakes to ensure that its staff concerned with the provision of the Guarding Service and carrying out of this Agreement, are aware of and observe the provisions of this clause, both during the subsistence of this Agreement and thereafter.
- 3.10: Perform this Agreement in a manner which maintains and enhances and is not in any way prejudicial to the image of the Client;
- 3.11: Keep the Client fully informed about the operation of the Guarding Service and in particular provide the Client with regular up-to-date, and full administrative information.

- 3.12: At the Service Provider's own cost to maintain in force:
- 3.12.1: Employer's Liability insurance for a minimum of [INSERT MINIMUM LEVEL E.G. €10,000,000] in any one event.
- 3.12.2: A policy of insurance including an indemnity to principal clause to cover inter alia (among other things) the liability of the Service Provider and the Client in respect of any matter for which the Service Provider may become liable to the Client under this Agreement. The cover to be for not less than [INSERT MINIMUM LEVEL E.G. €5,000,000.] per claim or such other sum as shall be agreed between the parties from time to time.
- Satisfactory evidence of such cover and payment of current insurance premiums shall be provided to the Client at or before the commencement of the Term of this Agreement.
- 3.12.3: Comply with any reasonable request made by the Client for a change of any of the Service Provider's personnel employed in connection with the operation of this Agreement without any cost to the Client and in doing so to keep the Client fully indemnified as a result of the cessation of employment of any such replaced staff.
- 3.12.4: Allow the Client to have access to all parts of the Premises at any time.
- 3.12.5: At all times maintain compliance with the Specification and high standards of service provision and ensure compliance with all statutory requirements affecting the Guarding Services to be provided under this Agreement.
- 3.12.6: Comply with the security arrangements detailed in [INSERT SCHEDULE E.G. Schedule 1](#).

4. INDEMNITY

The Service Provider shall indemnify the Client against all and any liability, damage, loss, expense, fine, penalty, claim or proceedings whatsoever (whether criminal or civil) arising out of or in connection with the Service Provider's wilful or wrongful acts or omissions, negligence or failure to fulfil its obligations pursuant to this Agreement including but not limited to any wilful or wrongful act, neglect, theft, damage to property or persons or other default by employees of the Service Provider and the Service Provider shall hold harmless the Client from any and all such liability.

5. DUTIES OF THE CLIENT

- 5.1: The Client will at its own cost provide heat, light, power, fuel, water, waste disposal for use by the Service Provider, together with office facilities including at least one external *telephone line for the use of the service provider's management staff.

***NOTE: In this instance, a mobile phone may be considered as another option.**

- 5.2: The Client shall not (without the Service Provider's prior written consent), during this Agreement solicit the employment of any person to work for the Client at the Premises who has during the twelve months preceding such solicitation been in the employment of the Service Provider in connection with this Agreement. Provided always that this obligation shall only apply in the event that the Service Provider shall have informed its staff of this obligation and provided further that the general advertising of any vacancies at the Premises shall not be a breach of this provision.

6. INVOICING AND PAYMENT

- 6.1: In consideration of the Guarding Services to be undertaken by the Service Provider in carrying out the work set out in the Specification and complying with the terms of this Agreement the Client agrees to pay to the Service Provider a fee calculated against the hours worked (covering one month), following receipt of a valid VAT invoice detailing the site, hours worked, charge rate, and any additional hours or charges (agreed on the terms of **Clause 2.3**), or any reductions owing to reduced cover, as may be reviewed from time to time, by the parties in accordance with this Agreement.

Payment to be made in accordance with **INSERT CLIENT COMPANY NAME** standard payment terms at [the end of the month following the month of the date of the invoice], unless:

- 6.1.1: The Specification is changed by the Client and a change in the price is agreed in accordance with **Clause 5.3.4**;
- 6.2: The Service Provider will bear the cost of normal changes incurred in the routine conduct of its business.
- 6.3: Notwithstanding any other provision of this Agreement, which may be to the contrary, it is agreed that total fixed costs payable by the Client to the Service Provider in respect of each **INSERT CLIENT COMPANY NAME** shall not, in any circumstances, exceed the budgeted figures.
- 6.3.1: If the average annual number of full time employees of the Client at the Client's premises changes by more than 10%, or if the turnover of the Client reduces by a degree, that, in the reasonable opinion of the Client shall be material, then the parties will agree a revised budget.

NOTE: This may change depending on the environment in which the contract applies. For example, in the case of a shopping centre the working might read as follows: "The parties acknowledge that managing a shopping centre is a dynamic business and is subject to constant changes. The contractor agrees that duty, hours and operation specifications shall change accordingly".

- 6.3.2: In the event that the Specification is changed, then the Service Provider and the Client each agree to use their respective reasonable endeavours to agree a reasonable variation to the total price where such variation is to be based on the implications of:
- 6.3.2.1: The Client's amended requirements to the Specification as compared with the original Specification; and
- 6.3.2.2: The changes to the Service Provider's programme necessary to reflect the changes to the Specification.
- 6.4: All sums payable under this agreement unless otherwise stated are exclusive of Value Added Tax and any Value Added Tax payable in respect of such sums shall be payable in addition to such sums.
- 6.5: Notwithstanding any other provision of this agreement, the Client reserves the right not to pay for:
- 6.5.1: any part of the Guarding Service in the event that such Service is supplied in a manner which is, in the reasonable opinion of the Client, not in accordance with the terms of this Agreement and/or within the Specification; and
- 6.5.2: the Service Provider has failed to remedy the part of the Guarding Service in question as soon as reasonably practicable after receiving notification that it is unacceptable.

7. CREDIT BALANCES

If any of the Service Provider's invoices gives rise to a credit in favour of the Client, the Service Provider will immediately repay the amount of that credit to the Client within one month of the **INSERT CLIENT COMPANY NAME** in which the credit arises.

8. GENERAL

- 8.1: The following documents and the terms thereof shall be deemed to be incorporated into this Agreement and shall be in addition to the terms of this Agreement as if such documents were set out in full in this Agreement.
- 8.1.1: **INSERT CLIENT COMPANY NAME** Site Conditions for Outside Contractors on a **INSERT CLIENT COMPANY NAME** Site, In each case as such, documents shall be amended from time to time by the Client, a copy of which shall be forwarded to the service provider as soon as reasonably practicable after publication of such revised documents.
- 8.2: It is agreed that the Service Provider is operating and will continue to operate for its own account and nothing in this Agreement is intended or shall be construed to authorise the Service Provider without the prior written approval of the Client, to create or assume any liability or indebtedness of any kind in the name of or on behalf of the Client, or to give any warranty or make any representation in the name of or on behalf

of the Client, or to act for the Client in any manner other than as specifically provided for in this Agreement.

- 8.3: This Agreement is personal to the Service Provider and the Service Provider shall not assign, sub-contract or otherwise transfer the benefit of this Agreement in whole or in part without the prior written approval of the Client.
- 8.4: The waiver by the Client of any right under this Agreement shall not prevent the subsequent enforcement of that right and shall not be deemed a waiver of any subsequent right.
- 8.5: This Agreement, its Schedules and annexes embodies the entire understanding of the parties and overrides and supersedes any prior promises, representations, understanding or implications.
- 8.6: The text of any press release or other communication to be published by or in the media concerning the subject matter of this Agreement shall require the prior written approval of each of the parties.
- 8.7: Any notice or other document to be given under this Agreement shall be in writing and shall be deemed to have been duly given if left at or sent by hand or by registered post or by telex, facsimile or other electronic means to a party at the address, telex or facsimile number set out below for such party or such other address as one party may from time to time designate by written notice to the other.
- 8.8: Any such notice or other document shall be deemed to have been received by the addressee two working days following the date of despatch if the notice or other document is sent by registered post, or simultaneously with the delivery or transmission if sent by hand or if given by telex, facsimile or other electronic means.
- 8.9: The Client's address for service is:
INSERT CLIENT COMPANY NAME & ADDRESS
- 8.10: No variation or amendment of this Agreement will be effective unless it is in writing and signed by a duly authorised representative of each party.

9. TERMINATION

Without prejudice to the provisions of **Clause 2.1**:

- 9.1: The Client may terminate this Agreement upon the following events:
- 9.1.1: Upon the Client's discovery that the Service Provider has committed a fraudulent act or acts in the nature of fraud upon the Client.

- 9.1.2: Upon the Client's discovery that the Service Provider has been guilty of a material misrepresentation in its dealings with the Client.
- 9.1.3: Upon the commencement of the liquidation or any associated step towards liquidation of the Service Provider.
- 9.1.4: Upon the breach by the Service Provider of any of the terms and conditions of this Agreement,
- 9.1.5: Upon the failure of the parties to agree a budget for the Guarding Services or a revised budget as a result of a change to the Specification.
- 9.1.6: If the Service Provider becomes subject to the effective control (by reason directly or indirectly of a majority holding of voting equity capital) of any company not previously approved by the Client in writing (such approval not to be unreasonably withheld).
- 9.2: The Service Provider shall be entitled to determine this Agreement upon reasonable notice in the following events:
 - 9.2.1: Upon the Service Provider's discovery that the Client has committed a fraudulent act or acts in the nature of fraud upon the Service Provider.
 - 9.2.2: Upon the Service Provider's discovery that the Client has been guilty of a material misrepresentation in its dealings with the Service Provider.
 - 9.2.3: Upon the commencement of the liquidation of the Client.
 - 9.2.4: Upon the breach by the Client of any of the terms and conditions of this Agreement.
 - 9.2.5: Upon the failure of the parties to agree a budget for the Guarding Services or a revised budget as a result of a change to the Specification.
- 9.3: The expiration or termination of this Agreement for any reason shall be without prejudice to the rights and obligations of the parties accrued up to and including the date of such termination, but the Service Provider shall have no right to any compensation for the cessation of its appointment on the expiration or the termination of this Agreement.
- 9.4: Upon the expiration or termination of this Agreement from any cause the Service Provider shall:
 - 9.4.1: promptly return to the Client all samples, catalogues, advertising or other promotional material and other papers whatsoever relating to the business of the Client (other than correspondence between the parties) which may be in the possession of the Service Provider; and

- 9.4.2: co-operate in transferring all reservations, contracts and agreements with third parties as may be required.

NOTE: It is important to strengthen this clause where a handover is required

10. CONSEQUENCES OF TERMINATION

- 10.1: The expiration or termination of this Agreement for any reason shall be without prejudice to the rights and obligations of the parties accrued up to and including the date of such termination, but the Service Provider shall have no right to any compensation on the expiration or the termination of this Agreement.

NOTE: Consideration should be given to whether or not the supplier will be due payment up to date of termination.

- 10.2: The Client and the Service Provider agree that the European Communities (Protection of Employees on Transfer of Undertakings) Regulations SI 131/2003 (TUPE) apply to the transfer to the Service Provider of responsibility for the provision of the Guarding Service in accordance with this Agreement. It is the intention of the parties that the contracts of employment made between the Client and the Employee will have effect after the Initial Term commences as if originally made between the Service Provider and the Employee, subject to any right of any Employee to object to their transfer to the Service Provider pursuant to Regulation of the Regulations and:-

- 10.2.1: All wages and salary of any Employee shall be discharged by the Client in respect of the period to the commencement of the Term.
- 10.2.2: The Service Provider shall be responsible for all emoluments and outgoings in respect of an Employee (including without limitation all wages, bonuses, commissions, PAYE, PRSI contributions and pension contributions) in respect of the period after the commencement of the Term and shall indemnify the Client against any costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) in respect of the same.
- 10.2.3: The Service Provider will assume the outstanding obligations of the Client in respect of accrued holiday entitlements and accrued holiday remuneration of any Employees to the commencement of the Initial Term and in respect of any other accrued entitlements and accrued remuneration relating to all emoluments and outgoings in respect of any Employees to the commencement of the Initial Term.
- 10.2.4: The Service Provider shall indemnify the Client against all liabilities, costs, claims and expenses (including legal expenses on an indemnity basis) in connection with or as a result of any claim or demand by any Employee in respect of redundancy, unfair dismissal or any other claim within the jurisdiction

of an Employment Tribunal, any claim for wrongful dismissal or breach of contract, any claim in tort or any other claim whatsoever whether arising at common law under statute or otherwise (and in all cases whether arising under Irish or European law) arising directly or indirectly from any act, fault or omission (or any alleged act, fault or omission) of the Service Provider in respect of any Employee, whether arising before on or after the commencement of the Term.

- 10.2.5: The Service Provider shall indemnify the Client against all costs, claims, liabilities or expenses (including legal expenses on an indemnity basis) resulting from any failure by the Service Provider to comply with its obligations under the Regulations.
- 10.2.6: The Service Provider shall indemnify the Client against all liabilities, costs, claims and expenses (including legal expenses on an indemnity basis) in connection with or as a result of any claim by any Employee (whether or not such Employee transfers to the Service Provider or otherwise) that the identity of the Service Provider is to that Employee's detriment or that the terms and conditions of employment or working conditions to be provided by the Service Provider are to that Employee's detriment whether such claim arises before on or after the commencement of the Initial Term.
- 10.2.7: The Service Provider will indemnify the Client against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) in connection with or as a result of any claim by an Employee that his or her rights or those of any person (including but not limited to a surviving spouse or dependent child) claiming through such an Employee:
- 10.2.7.1: to any pension, lump sum or retirement on death or any other relevant benefit;
- or**
- 10.2.7.2: in connection with any personal pension scheme which has been lost, harmed, damaged, reduced or adversely affected in any way as a result of the Employee having ceased to be employed by the Service Provider or his or her membership of the Service Provider's pension scheme having ceased or having changed on or following such cessation of employment, and which for the avoidance of doubt shall include any liabilities and expenses in connection with or as a result of any claim by an Employee arising from any statements and/or representations made by the Service Provider whether before, on or after the commencement of the Initial Term in relation to those matters referred to at **10.2.7.1** and **10.2.7.2.**]
- 10.2.8: If any contract of employment of any Employee is found or alleged not to have effect after the commencement of the Term as if originally made with the

Service Provider, other than by virtue of the Regulations, the Service Provider, in consultation with the Client, will within 14 days of being so requested by the Client make to that Employee an offer in writing to employ him/her under a new contract of employment, to take effect upon the termination referred to below, on terms and conditions which shall not differ from the corresponding provisions of the Employees contract of employment immediately before the commencement of the Term, which offer will remain open for acceptance for a period of not less than 14 days from the date of the offer. Once that offer has been made and the period for acceptance expired (or after the expiry of 14 days after it has been requested) the Client may terminate the employment of the Employee concerned and the Service Provider will indemnify the Client against the cost of the Employee's employment from the commencement of the Term and against any liabilities whatsoever arising from the termination of that employment.

10.2.9: The Client shall indemnify the Service Provider against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) incurred in connection with or as a result of:

10.2.9.1: any claims or demand by any Employee in respect of redundancy, unfair dismissal or any other claim within the jurisdiction of the Employment Tribunal, any claim for wrongful dismissal or breach of contract, any claim in tort or any other claim whatsoever whether arising at common law, under statute or otherwise (in all cases whether arising under Irish law or European Law) arising directly or indirectly from any act fault or omission of the Client in relation to any Employee prior to the commencement of the Initial Term;

10.2.9.2: any claim by any trade union, staff association or by any other employee representatives within the meaning the Regulations, arising from or connected with any failure by the Client to comply with any legal obligation to such trade union, staff association or employee representatives whether under the Regulations or otherwise.

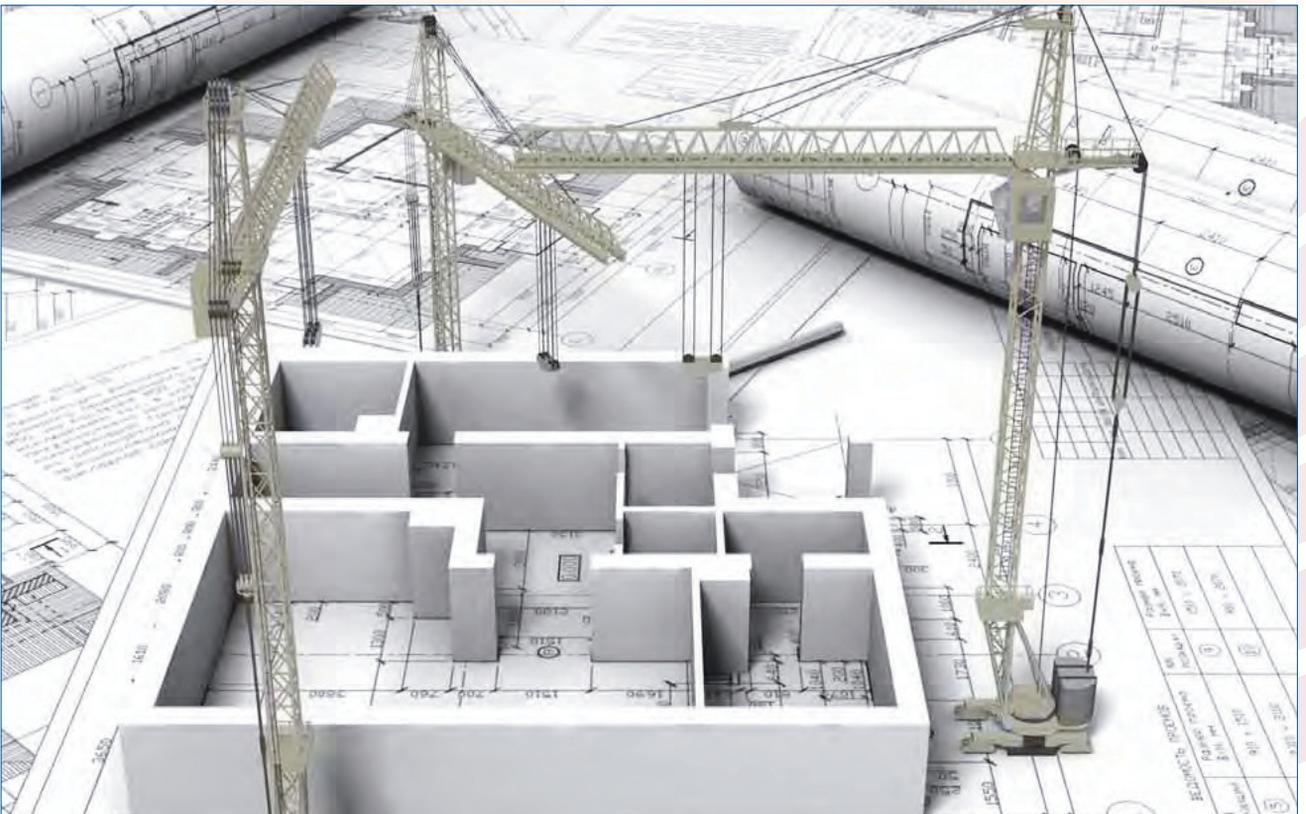
10.3: It is the intention of the parties that where the Service Provider is replaced as the provider of the Services whether by the Client or by an alternative contractor providing the Services (or similar services) ("the Substitute Service Provider") such replacement will constitute a transfer within the meaning of the Regulations and it is the intention of the parties that the contracts of employment between the Service Provider and the employees engaged wholly or mainly in the provision of the Services immediately before the transfer date ("the Returning Employees") will with effect from the transfer date (transfer date to be defined as the date upon which the Client/Substitute Service Provider commence provision of the Guarding Services) as if originally made between the Client or the Substitute Service Provider and the Returning Employees.

- 10.3.1: The Service Provider shall be responsible for all emoluments and outgoings in respect of the Returning Employees (including without limitation or wages, bonuses commissions, PAYE, PRSI contributions and pension contributions) in respect of the period up to and including the transfer date and shall indemnify the Client and/or the Substitute Service Provider against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) in respect of the same.
- 10.3.2: The Service Provider shall indemnify the Client and/or the Substitute Service Provider against all liabilities, costs, claims and expenses (including legal expenses on an indemnity basis) in connection with or as a result of any claim or demand by any Returning Employee in respect of redundancy, unfair dismissal or any other claim within the jurisdiction of an Employment Tribunal, any claim for wrongful dismissal or breach of contract, any claim in tort or any other claim whatsoever whether arising at common law under statute or otherwise (in all cases whether arising under Irish law or European law) arising directly or indirectly from any act fault or omission (or any alleged act fault or omission) of the Service Provider in respect of any of the Returning Employees.
- 10.3.3: The Service Provider shall indemnify the Client and/or the Substitute Service Provider against all liabilities, costs, claims and expenses (including legal expenses on an indemnity basis) in connection with or as a result of any claim (including any individual entitlement of any Returning Employee under or consequent on such claim) by any trade union or staff association (whether or not recognised by the Service Provider in respect of all or any of the Returning Employees) or by any other employee representative arising from or connected with any failure by the Service Provider to comply with any obligations to such trade union, staff association or employee representative (whether under the Regulations or otherwise) whether any such claim arises before on or after the transfer date.
- 10.3.4: If any contract of employment of any past or present employee of the Service Provider (other than a Returning Employee) has effect after the transfer date as if originally made between the Client and/or the Substitute Service Provider and the employee concerned as a result of the Regulations the Client and/or the Substitute Service Provider may, upon becoming aware of any such contract, terminate it forthwith and the Service Provider shall indemnify the Client and/or the Substitute Service Provider against all costs, claims, liabilities and expenses (including legal expenses on an indemnity basis) arising out of any such termination and against any sums payable to or on behalf of such employee in respect of his employment whether arising before on or after the transfer date.
- 10.3.5: The Service Provider shall indemnify the Client and/or the Substitute Service Provider against all costs, claims liabilities and expenses (including legal expenses on an indemnity basis) incurred in connection with or as a result of

any claim or demand by an employee or former employee of the Service Provider howsoever arising and whether arising prior to, on or after the transfer date.

- 10.3.6: The Service Provider shall not, where notice terminating this Agreement has been given pursuant to **Clause 8**, at any time after the service of such notice, without the prior written agreement of the Client:-
- 10.3.6.1: change or amend any terms and conditions of employment (including but not limited to remuneration) or any working conditions of any of the employees engaged in the provision of the Guarding Services;
- 10.3.6.2: replace or transfer any of the employees engaged in the provision of the Guarding Services or increase the number of employees providing the Guarding Services;
- 10.3.6.3: terminate the employment of any of the employees engaged in the provision of the Guarding Services.
- 10.3.7: The Service Provider agrees to give to the Client and/or any Replacement Service Provider free and unrestricted access to the Returning Employees in the period prior to the transfer date to inform and consult in relation to any proposed transfer of the Guarding Services (whether orally and/or in writing) with any trade union, staff association (whether recognised by the Service Provider or not) or any other employee representatives within the meaning of the Regulations.
- 10.3.8: During the period of 3 months preceding expiry of the term of this Agreement or at any other time as directed by the Client, and within 10 business days of being so requested in writing by the Client, the Service Provider shall fully and accurately disclose to the Client, at its own expense, information in writing in relation to the Returning Employees including but not restricted to the following:
- 10.3.8.1: the total number of employees employed by the Service Provider in providing the Guarding Service;
- 10.3.8.2: **INSERT SERVICE PROVIDER NAME** will not provide any agency workers, agents or independent contractors engaged by the Service Provider in providing the Guarding Service;
- 10.3.8.3: the total payroll bill (including any employers contributions to pension schemes) of the personnel at **10.3.8.1** and **10.3.8.2**.
- 10.3.8.4: the total annual payments made or due to any agents or independent contractors engaged by the Service Provider in providing the Guarding Service;

- 10.3.8.5: the total termination or redundancy liability to the employees referred to at **10.3.8.1** above;
- 10.3.8.6: in respect of the employees engaged by the Service Provider in providing the Guarding Service their general terms and conditions of employment, their age, salary, date continuous employment commencement and any other factors effecting their redundancy entitlement and any outstanding or expected claims arising from their employment and the Service Provider shall allow the Client to use and disclose this information for informing the tenderers for the Guarding Service (or similar service).
- 10.3.9: In the event that following the transfer date the Client and/or any Substitute Service Provider make any of the Returning Employees redundant, whether or not any such Returning Employees are following the transfer date engaged in the provision of the Catering or Vending Services or otherwise, the Service Provider shall indemnify and keep indemnified the Client and/or the Substitute Service Provider against all redundancy costs incurred by the Client and/or the Substitute Service Provider in making such Returning Employees redundant, to the extent that such redundancy costs are for part of the Returning Employees continuous service which relates to any period of employment of such Returning Employees during which they were engaged by the Client, and for the purposes of this clause redundancy costs shall mean statutory redundancy payments pursuant to the [Act] and any enhanced redundancy payment to which employees may be entitled pursuant to their terms and conditions of employment and/or pursuant to any pension arrangements.



- 10.4: For the purposes of clauses **10.2** and **10.3**:
- 10.4.1: “**Employee**” means any employee of the Client who are wholly or substantially engaged in the provision of the Catering and Vending Service immediately before the Initial Term commences.
- 10.4.2: “**Employee**” means any person who is engaged by the Service Provider and/or who works (whether or not exclusively) in connection with the supply of the Guarding Service;
- 10.4.3: “**Regulations**” means the Transfer of Undertakings (Protection of Employment) Regulations 2006; and
- 10.4.4: “**Termination Date**” means the date on which this Agreement is terminated or expires.

11. CONFIDENTIALITY

The Service Provider shall treat any information of any sort concerning the business, operations or production of the Client learned or disclosed to it by whatever means during the Term of this Agreement as strictly confidential and shall not disclose or permit the disclosure of any such information to any third party either during or after the termination of this Agreement and shall only use such information which shall already be in the public domain or shall enter the public domain (otherwise than by wrongful disclosure by the Service Provider or any of its staff).

SCHEDULE 1 SPECIFICATION

SCOPE OF SERVICE

1. Company are to provide 24 hour security cover 7 days a week. All personnel are to be trained in the following courses, before being allowed to work on any of the [INSERT CLIENT COMPANY NAME](#) sites.

2. GENERAL REQUIREMENTS

The following form the general requirements for the service to be provided to at [INSERT CLIENT COMPANY NAME & ADDRESS](#)

DAILY DUTIES

As outlined in the assignment instruction issued in March 08

WEEKLY DUTIES

Provide weekly agreed reports

MONTHLY DUTIES

Attend meeting with the client.

QUARTERLY / INFREQUENT DUTIES

Assist in the completion of fire drills and available for emergency response.

SUPPLIERS PERSONNEL

Supplier's personnel must conform to the following criteria:

Must have a valid, current and appropriate PSA licence.

Undertake all training indicated above before attending any [INSERT CLIENT COMPANY NAME](#) site.

Maintain a smart appearance.

NOTE: When preparing specification, consideration should be made for the inclusion of number of S/Qs required, shift etc, Consideration should also be given to the provision of a copy of Provider's Training Programme for the year.

SCHEDULE 2 & SCHEDULE 3 Service Level Agreement

The following document will for the basis of supplier assessment be reviewed at the regular designated review meetings.

Scoring Mechanism Score Guide

- Outstanding performance = 5*
- Exceeds standard of contractual agreement = 4*
- Meets standards and expectations = 3*
- Below standard – Requires improvement = 2*
- Unacceptable – Immediate improvement required = 1*

Operating issues	Comments	Score
Detection of Crime		
Response in the Event of an Emergency		
Complaints resolved within 24 hours (Mon/Fri).		
Report Writing – Accuracy and on time		
Customer care – phone & reception		
Patrols in line with assignment instructions		
Customer liaison		
Alarm activations reported		
Identification and reporting of faults		
Weekly Reporting		
Staff Related Issues		
Staff Training (all records updated).		
Staff turnover since last review.		
Reliability of staff/Punctuality.		
Contract fully recruited.		
Permanent Cover fully recruited		
Welfare Management		
Staff uniform – appearance of guards		
Management Support		
Site visits completed in line with agreed frequency		
Response of Profile to problem solving.		
Consistent Delivery of Service.		
CI kept informed of all incidents.		
Correct manning levels to all sites.		
Accuracy of invoices		

OVERALL PERFORMANCE SCORE

Signed by: _____
 Duly authorised for and on behalf of
 INSERT CLIENT COMPANY NAME
 Name: _____
 Designation: _____
 Date: _____

Signed by: _____
 Duly authorised for and on behalf of
 INSERT SERVICE PROVIDER COMPANY NAME
 Name: _____
 Designation: _____
 Date: _____

DISCLAIMER

The SCSl has made all reasonable efforts to ensure that the contents of this paper are correct. However, we cannot accept any liability for any error or omission. You should not rely on this paper in deciding whether to take a particular course of action or not. In that event, you should take the appropriate professional advice.

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Members' services are diverse and can include offering strategic advice on the economics, valuation, law, technology, finance and management in all aspects of the construction, land and property industry.

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www.scsi.ie

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