

# COMPILATION OF PPP TERMS AND CONDITIONS OF CONTRACT

## PUBLIC SECTOR VERSION

### CLAUSE 14: LIAISON PROCEDURES

#### DBFOM CONTRACT

#### **DBOM CONTRACT**

## INTRODUCTION

A PPP Contract will usually run for a lengthy period, perhaps 20-30 years, and it is important that the Authority and the Contractor communicate with one another during that time in order to ensure a smooth operation. The liaison procedures will provide a structure for undertaking those communications.

## CORE CONTRACT DRAFTING

### 14. LIAISON PROCEDURES

#### 14.1 Liaison

- (a) On or before to the Commencement Date the PPP Co shall deliver draft Liaison Procedures prepared in accordance with the provisions of [Clause 14 - Schedule] (Liaison Procedures). To the extent that the Authority comments on the draft, the PPP Co shall take into consideration and apply those reasonable comments of the Authority where possible. Upon the parties agreeing the contents of the draft it will constitute the Liaison Procedures.
- (b) Whenever the PPP Co is required by this Agreement to take any action which requires liaison or communication with the Authority, the Relevant Authorities, [the Relevant Parties or the Interested Parties]<sup>1</sup>, it shall take such action in accordance with the procedures set out in or agreed in accordance with the provisions of [Clause 14 – Schedule] (Liaison Procedures) or Part [•] of Schedule [•] (Third Parties) as the case may be.
- (c) Notwithstanding any other provision of this Agreement, the PPP Co shall be entitled to take (at its own cost) such steps as may be necessary in an Emergency for the protection of the public and/or the Users, but subject to the provisions of Part 1 of [Clause 14 - Schedule] (Liaison Procedures).
- (d) As part of the Liaison Procedures, the PPP Co shall establish with the Authority's Representative a procedure for the communication of the matters referred to in Clause 29.4 (Applications, Appeals, Directions and Objections).

<sup>1</sup>

*To be deleted if there are none.*

## 14.2 Gardaí

The PPP Co shall comply at all times with all lawful instructions of the Gardaí in respect of the Project Facility and all parts of the Site [and Off-Site Areas.]

## 14.3 [Shared Facilities]<sup>2</sup>

- (a) PPP Co shall, in accordance with the provisions of Part 2 of [Clause 5 –Schedule B] (Representatives), submit its proposals for the Shared Facilities. The PPP Co shall be fully responsible, at its own expense, for the operation and maintenance of any Shared Facilities and Common Use Areas. The PPP Co may agree such cost sharing arrangements as it deems appropriate with any person using the Shared Facilities, provided always that in no circumstances shall such agreement adversely affect the Authority.

If the Authority reasonably believes that any third party use or shared use of the Shared Facilities is not compatible with the use of the [Project Facility] as contemplated by the Authority or with the [Project Facility] Objective, it may forbid such use of the [Project Facility] on any occasion.

- (b) Circumstances which are compatible with the [Project Facility] Objective (subject always to any Eligible Planning Approval) shall be:
- (i) [●];
  - (ii) [●];
- (c) If the PPP Co reasonably believes that the circumstances which are compatible with the [Project Facility] Objective pursuant to Clause 14.3(b) require revision and updating to reflect best practice the PPP Co may once every [●] ([●]) years during the Operational Period, submit a proposal to update such circumstances for the Authority's Approval.
- (d) For the avoidance of doubt the provisions of this Clause 14.3 shall apply to any change of use of the Shared Facilities.

## 14.4 Third Parties

- (a) The PPP Co shall be responsible for consulting and liaising with the Interested Parties in accordance with [Clause 14 - Schedule] (Liaison Procedures) and shall, where reasonable, take such steps as the PPP Co may, acting reasonably, consider necessary to accommodate the lawful requirements of such Interested Parties relating to the Project.
- (b) The PPP Co shall be responsible for consulting and liaising with Relevant Persons and Relevant Authorities in accordance with Schedule [●] (Third Parties) and [Clause 14 - Schedule] (Liaison Procedures).

2

*Details to be inserted.*

3

*PPP Co to insert details at date of Agreement.*

4

*Authority to insert details at date of Agreement.*

**[CLAUSE 14 - SCHEDULE]**

**LIAISON PROCEDURES**

**PART 1**

**Liaison Procedures**

**1 GENERAL**

- 1.1 Without prejudice to the provisions elsewhere within the Agreement, Liaison Procedures shall be developed to manage any liaison that may be required with any party, including Relevant Authorities, Relevant Persons and Interested Parties as identified in Schedule [●] (Third Parties) of the Agreement.
- 1.2 These procedures shall be developed in accordance with the following principles:-
- 1.2.1 There should be full consultation and co-operation between the parties so far as possible.
  - 1.2.2 Matters should be prepared on a joint basis so far as possible.
  - 1.2.3 Each party should be given a reasonable opportunity to consider matters, and where information is supplied it should include, or be accompanied by, sufficient explanatory or other material to enable the information to be properly considered.
  - 1.2.4 So far as is practical, points arising shall be discussed immediately between those concerned so that where in any Liaison Procedure there is reference to any material being sent for comment, this will be a reference to the final form of material, the substance of which has previously been discussed between those concerned.
  - 1.2.5 While Liaison Procedures are guidelines of the best current assessment of sensible work practice, they may require amendment in the light of practical experience and, if so, they shall be amended as set out below.
- 1.3 Where any party is dissatisfied with the operations of any Liaison Procedures and/or considers that they shall be amended in any way, the following provisions shall apply:
- 1.3.1 The matter must immediately be brought to the attention of the persons referred to in Part 2 of this Schedule, the "principals", who shall, as soon as possible, discuss matters with a view to resolving the disagreement and reaching agreement on what action should be taken, including any possible amendment to the Liaison Procedures.
  - 1.3.2 Should the principals be unable to agree in accordance with Paragraph 1.3.1 above, the matter will be referred to Counsel for the Authority and Counsel for the PPP Co who will be asked to produce joint advice and, if possible, joint recommendations to the Parties.
  - 1.3.3 The advice/recommendations will be referred again to the principals.
  - 1.3.4 Should the principals fail to agree, then the matter shall be referred to the Disputes Resolution Procedure and the provisions of [Clause 56 – Schedule] (Disputes Resolution Procedure) of the Agreement shall apply.

## 2 PUBLICITY

- 2.1 Without prejudice to the provisions of the general provisions of this Schedule, the Liaison Procedures shall be developed to address matters associated with publicity in accordance with the following principles:-
- 2.1.1 [●]
  - 2.1.2 Matters raised may relate to the Project and any other matter affecting the same.
- 2.2 The procedures and strategies to be developed dealing with key media issues relating to the Project shall include, without limitation:
- 2.2.1 issues which are likely to be controversial;
  - 2.2.2 issues which are likely to attract international, national or regional interest;
  - 2.2.3 issues which are likely to affect the local community;
  - 2.2.4 issues relating to the Re-financing.
- 2.3 The parties shall each from time to time nominate a representative, the "**Nominated Liaison Representative**", who shall be responsible for any publicity relating to the Project and any other matter affecting the same. These Nominated Liaison Representatives are as detailed in Part 2 of this Schedule.
- 2.4 The parties shall invite the relevant local representatives including TDs and local councillors and community leaders to any event, exhibition or public meeting as appropriate.

## 3 PUBLIC RELATIONS DURING THE DESIGN AND CONSTRUCT PERIOD

- 3.1 The PPP Co shall be responsible for the preparation and implementation of a public relations plan for the Design and Construct Period.
- 3.2 The PPP Co shall, after consultation with the Authority's Representative and not later than [●] Months prior to the commencement of any Works on the Site, submit to the Authority's Representative for his consent a detailed public relations plan to include without limitation:
- 3.2.1 the PPP Co's public relations policy;
  - 3.2.2 the personnel nominated to manage public relations;
  - 3.2.3 methodology for processing observations, queries and complaints from the general public, Relevant Authorities, Relevant Persons, Interested Parties, the media, emergency services and the like;
  - 3.2.4 the strategy for project wide liaison with all relevant parties;
  - 3.2.5 the method and form of how information will be relayed to relevant parties on construction activities;
  - 3.2.6 information on mitigation measures to be implemented;
  - 3.2.7 contingency plans for addressing adverse publicity plus contingency plans for addressing emergency situations relating to construction activities;

- 3.2.8 the mechanism by which all relevant parties can notify or request information about any aspect of construction activities;
  - 3.2.9 relevant general information on construction operations which will be of public interest;
  - 3.2.10 information on anticipated effects/disruption in the immediate future;
  - 3.2.11 Authority/PPP Co meetings, public meetings, organised visits, interaction and co-operation with the local communities and others;
  - 3.2.12 resources;
  - 3.2.13 procedures for dealing with communications and relations between all relevant parties and for monitoring relations between the parties; and
  - 3.2.14 a database of resident's associations, Relevant Persons, landowners, Statutory Undertakers' and other authorities, utilities, Gardai, emergency services, Relevant Authorities' personnel, and other relevant contacts.
- 3.3 The PPP Co's Nominated Liaison Representative shall arrange meetings with the Authority, Local Authority, Gardai, landowners, residents groups and other contractors with regard to traffic control, construction and other public relations matters. The PPP Co's Nominated Liaison Representative will be required to manage all the public relations issues relating to Construction.
- 3.4 Public relations, information issues, press related matters, liaison with Relevant Authorities, Relevant Persons, Interested Parties, the public, the press and the media regarding the PPP Co's operations will be carried out by the PPP Co's Nominated Liaison Representative advising the Authority's Nominated Liaison Representative appropriately in all cases.
- 3.5 The PPP Co shall be responsible for arranging meetings involving the representatives of Relevant Authorities, Relevant Persons, Interested Parties, public transport operators, resident associations, public representatives and the like. The PPP Co shall also be responsible for arranging the venue and providing all necessary presentation equipment. These meetings shall be held at regular time intervals, as dictated by the timing and nature of Construction activities or as otherwise required by the Authority's Representative.
- 3.6 The PPP Co's Nominated Liaison Representative and public relations officer shall chair the meetings and keep all relevant parties informed about Construction matters likely to affect them, including brief descriptions of planned works, contact names and telephone numbers, progress and environmental issues.
- 3.7 The PPP Co shall issue notice of public meetings a minimum of two weeks in advance, to be published in national and local media publications. The PPP Co shall provide five Working Days minimum notice to permit the Authority's Nominated Liaison Representative to attend all public relations meetings and consultations. The PPP Co shall issue an invitation/notification of meetings to all appropriate persons on the contact persons database at least five Working Days prior to the meeting.
- 3.8 The PPP Co shall be responsible for maintaining a dedicated 24-hour telephone 'hotline' to deal with queries or complaints from the public. The PPP Co will exhibit this telephone number on all construction site notice boards and on any other information or correspondence, which may be distributed from time to time.
- 3.9 The PPP Co shall submit a section of the Monthly Construction Period Report dedicated to all public relations issues. Any matters of concern shall be reported immediately and brought to

the attention of the Authority's Nominated Liaison Representative.

- 3.10 The PPP Co shall be responsible for maintaining a system of recording all queries and complaints. The PPP Co shall record all enquiries and complaints using an appropriate format. These will be collated in a timely manner on site by the PPP Co's Nominated Liaison Representative. Copies of all completed enquiry forms shall be submitted to the Authority's Representative as and when they arise.
- 3.11 Any complaint received from the Relevant Authorities, (Relevant Persons if required), Interested Parties, Gardai, emergency services, or other Authorities shall be dealt with by the PPP Co following prior consultation with the Authority's Representative. The PPP Co shall be responsible for taking appropriate action.
- 3.12 The PPP Co shall prepare and distribute an information newsletter every three months regarding progress and future programme and also shall address any major contentious matters that have arisen. This newsletter shall be [●] size, [●] page, full colour to print good quality standard. The PPP Co shall arrange for door to door distribution to all properties that are or will be affected in a material way by the Works. All persons on the contact persons database shall be forwarded each newsletter. In addition to the quarterly newsletter, special newsletters may be required for upcoming construction events, which would have significant impact on the public. The printing and distribution of these special newsletters shall be as for the quarterly newsletter.
- 3.13 The PPP Co shall facilitate at all times the Authority's Representative in responding to queries from the public and in fulfilling his duties of reporting to the Authority.

#### **4 PUBLIC RELATIONS DURING THE OPERATIONAL PERIOD**

- 4.1 All queries and complaints received which concern the [Project Facility] shall be promptly dealt with in accordance with the provisions of Schedule [●] (O&M Requirements) of the Agreement.
- 4.2 The PPP Co shall respond directly to correspondence, enquiries and complaints received from any source. Where the PPP Co considers that policy is involved or a precedent may be established, or in cases of doubt, the matter shall be referred to the Authority's Representative. The originator shall receive a response within [●] Working Days of receipt. Where it is anticipated that a reply will not be possible within that period an acknowledgement shall be sent indicating the likely timescale for a full response.
- 4.3 The PPP Co shall provide to the Authority on request draft responses and briefing material to correspondence. The normal response period shall be within [●] Working Days of receipt by the PPP Co. All such information shall be submitted, in the first instance, by fax or e-mail.
- 4.4 Where verbal communication is involved the originator shall be treated with due courtesy and consideration.
- 4.5 All communications, whether written or verbal, shall be logged in a register recording full details and including actions required and taken with a copy made available within 3 Working Days of the end of each calendar month during the Operational Period to the Authority. The PPP Co shall provide a customer contact telephone number, which shall be manned by an operator competent in dealing with members of the public in a courteous and helpful manner. The telephone shall be manned in accordance with Annex [●] of Schedule [●] (O&M Requirements) of the Agreement.

#### **5 PUBLICITY REQUIRED FOR THE WORKS DURING THE OPERATIONAL PERIOD**

- 5.1 Advance publicity and the provision of up to date information to the local and national radio,

other media and motoring organisations as appropriate shall be used to communicate to Users and the public details of the works and possible disruption to services. A recorded telephone message service, providing up to date information, shall be made available for major disruptions or closures (such as for holidays).

## PART 2

### Nominated Liaison Representatives

#### THE NOMINATED LIAISON REPRESENTATIVES ARE:

The PPP Co: [●]<sup>3</sup>

Name:

Telephone No:

Fax No:

E-mail address:

The Authority: [●]<sup>4</sup>

Name:

Telephone No:

Fax No:

E-mail address:

Without prejudice to Clause 57 (Confidentiality), neither party shall make any public statement or public announcement in relation to the project or any matters affecting the same without prior written approval, such approval not to be unreasonably withheld or delayed, by the nominated liaison representative of the other party of the content of such statement or announcement unless, in the case of the authority, such statement or announcement is for parliamentary, governmental, statutory or judicial purposes.

## ACCOMODATION CONTRACT DRAFTING

**Comment: The Accommodation Contract drafting contains the concept of forming a "Liaison Committee" to consider issues that arise on a regular basis. This is a more commonly used way to deal with the concept of liaison during the Term of the Contract.**

#### [●]. LIAISON PROCEDURE

[●].1 The Operator and the Minister hereby agree to liaise with each other during the Term in accordance with this Clause [●] to facilitate communication between the Parties and to achieve, inter alia, a more efficient delivery of the Facility and the Services in accordance with this Agreement. Prior to the Final Certification Date a liaison committee consisting of the persons referred to in Clause [●].3 [below] shall be established and the provisions of this

Clause [•] shall apply in full. After the Final Certification Date a liaison committee shall be established and the provisions of this Clause [•] shall apply in full. After the Final Certification Date a liaison committee shall be established and the provisions of Clause [•] [*Liaison Procedure*] shall apply in full.

- [•].2 The Liaison Procedure set out in this Clause [•] shall be applied by the Operator and the Minister in relation to all matters arising under this Agreement other than Disputes.
- [•].3 Within [•] ([•]) months of the date hereof a liaison committee (the **Liaison Committee**), shall be established and shall consist of the following persons:
  - [•].3.1 the Minister's Contract Manager;
  - [•].3.2 [•] ([•]) other persons nominated by the Minister; and
  - [•].3.3 [•] ([•]) persons nominated by the Operator.
- [•].4 The Operator and the Minister shall each be entitled to change any of its nominated contract managers by giving written notice of such change to the Operator and the Minister, (as applicable), as soon as reasonably practicable and prior to any meeting of the Liaison Committee.
- [•].5 The Minister and the Operator shall use their reasonable endeavours to ensure that:
  - [•].5.1 persons suitably qualified to consider the matters on any agenda circulated pursuant to Clause [•].5.3 [*below*] attend the relevant Liaison Committee meetings;
  - [•].5.2 meetings of the Liaison Committee are called at least every [•] ([•]) months and additional meetings of the Liaison Committee are called at the request of either Party;
  - [•].5.3 an agenda of any proposed Liaison Committee meeting is prepared by the Operator in consultation with the Minister and circulated in sufficient time prior to any meeting to enable all Liaison Committee members to attend the meeting well prepared;
  - [•].5.4 minutes are taken of Liaison Committee meetings by the Operator and a report, (based on the minutes), is prepared (**Liaison Committee Report**), setting out in detail all matters discussed by the Liaison Committee at any Liaison Committee meeting and, in particular, indicating any matters which have been discussed and agreed and/or disagreed. Should any matter be disagreed, the Liaison Committee Report should indicate what steps the Liaison Committee propose to take to settle the relevant matter, including whether the recommendation of the Liaison Committee is that the matter should be referred to the Dispute Resolution Procedure; and
  - [•].5.5 Liaison Committee Reports are circulated within [•] ([•]) Working Days of any Liaison Committee meeting to the Liaison Committee members and to such additional persons as may be proposed by the Minister and/or the Operator.
- [•].6 Without prejudice to the generality of Clause [•].2 [*above*] the following matters shall be subject to the Liaison Procedure:
  - 41.6.1 compliance with [•] policies and procedure (including Guidance);
  - 41.6.2 the minimisation of any disruption to [the Facility] as a result of the act or omission of the Operator and/or Sub-Contractors;

- 41.6.3 reviewing implementation of this Agreement;
- 41.6.4 reviewing arrangements for the delivery of the Services;
- 41.6.5 all transitional arrangements including liaison with unions and workforce, planning and timing of staff transfers;
- 41.6.6 matters relating to Third Party Use;
- 41.6.7 Change; and
- 41.6.8 matters to be referred to the Dispute Resolution Procedure.

## **CROSS REFERENCES**

This clause is referred to in the following clause of the Compendium:

- Clause 3 (Effectiveness of this Agreement)

There are no references to this clause in the Risk Matrix.