



2nd December 2020

TO: The Chairman & Each Member of Kilkenny County Council

RE: Extension of Section 85 Agreement between Kilkenny County Council and Carlow County Council

As you are aware the Section 85 Agreement between Kilkenny County Council and Carlow County Council for Kilkenny County Council to carry out all Statutory Food Safety Functions as contracted by the FSAI expired on 31st March 2020. An extension to the FSAI Contract has recently been signed from 1st December 2020 to 31st December 2021. Food Safety functions of Carlow County Council have been carried out in County Carlow by Kilkenny County Council since 1st January 2013 and Carlow County Council is of the opinion that this should continue for a further period.

It is recommended that a new Section 85 Agreement be entered into with Carlow County Council, to become effective from 1st January 2021 to 31st December 2021.

A number of Section 86 Agreements have been arranged to cover the period from 1st April 2020 to 31st December 2020.

Mise, le meas

Sean McKeown
Director of Services



AN AGREEMENT made the day of , 2021

BETWEEN:-

KILKENNY COUNTY COUNCIL of the First Part and CARLOW COUNTY COUNCIL of the Second Part.

1. **PRELIMINARY AND GENERAL**

1.1 **DEFINITIONS**

Except where expressly provided to the contrary in this Agreement:

- (a) ***"The County Councils"*** shall mean Kilkenny County Council and Carlow County Council.
- (b) ***"The 1998 Act"*** shall mean the Food Safety Authority of Ireland Act 1998.
- (c) ***"The 2001 Act"*** shall mean the Local Government Act 2001.
- (d) ***"Section 85 Agreement"*** shall mean an agreement entered into under Section 85 of the 2001 Act.
- (e) ***"The Authority"*** shall mean the Food Safety Authority of Ireland established under Section 9 of the 1998 Act.
- (f) ***"The County Council Contract"*** shall mean the service contract entered into by each County Council and the Authority pursuant to Section 48 of the 1998 Act.
- (g) ***"Food Legislation"*** shall mean the 1998 Act together with the legislation mentioned in the First Schedule of the said Act and shall also mean the European Communities (Food and Feed Hygiene) Regulations 2009 (S.I. No. 432 of 2009).

- (h) **“Functions”** includes powers and duties and a reference to the performance of functions includes, with respect to powers and duties, a reference to the exercise of the powers and the carrying out of the duties as provided in the interpretation section of the 2001 Act.

- 1.2 Any reference to a statute or statutes (whether particularly specified or not) or to any schedules, sections or sub-sections therein shall include any amendments or re-enactments thereof for the time being in force and all statutory instruments, orders, notices, regulations, consents and directions for the time being made or issued thereunder or deriving validity therefrom.

2. RECITALS

WHEREAS:

- (a) The Contracts between the Food Safety Authority of Ireland and the two relevant Local Authorities: Kilkenny County Council’s contract commenced on 1st July 2016 and will continue for a period from said commencement date to 31st December 2021 and Carlow County Council’s contract, commenced on 1st August, 2017 and will continue for a period from said commencement date to 31st December 2021. The Contracts provide for the carrying out of certain functions by the relevant Local Authorities as agent for and on behalf of the Food Safety Authority of Ireland.
- (b) Food Safety functions of Carlow County Council have been carried out in County Carlow by Kilkenny County Council since 1st January, 2013 and Carlow County Council is of the opinion that this should continue for a further period.
- (c) Kilkenny County Council at its meeting on 21st December 2020 passed the following resolution:
- “That Kilkenny County Council enters an agreement under Section 85 of the Local Government Act, 2001 with Carlow County Council to carry out statutory Food Safety Functions required under the First Schedule of the Food Safety Authority of Ireland Act 1998 and the European Communities (Food Hygiene) Regulations 2009 on behalf of Carlow County Council from December 1st 2020 to December 31st 2021”

- (d) Carlow County Council at its meeting on 14th December 2020 passed the following resolution:

“That Carlow County Council enters an agreement under Section 85 of the Local Government Act, 2001 with Kilkenny County Council to carry out statutory Food Safety Functions required under the First Schedule of the Food Safety Authority of Ireland Act 1998 and the European Communities (Food Hygiene) Regulations 2009 on behalf of Carlow County Council from December 1st 2020 to December 31st 2021”

NOW THIS AGREEMENT WITNESSETH AS FOLLOWS:-

- (a) The parties hereto have agreed to enter into this Agreement under the provisions of Section 85 of the 2001 Act, for the duration of the service contract between the FSAI and Kilkenny County Council, from 1st January 2021 until 31st December 2021 for the purposes of enabling Kilkenny County Council to perform the functions of Carlow county Council within its functional area.
- (b) Kilkenny County Council undertakes all the responsibility vested in Carlow county Council within its functional area under the provisions of the food legislation and will perform Carlo county Council's functions.
- (c) Notwithstanding what is contained in this Agreement, Carlow County Council agrees that in the event of anything being required by Kilkenny County Council in performing the functions conferred on it by this Agreement, it will cooperate with Kilkenny County Council in whatever manner is necessary.
- (d) Notwithstanding what is contained in this Agreement, Carlow County Council agrees that Kilkenny County Council shall not be liable for any claims that may arise as a result of Carlow County Council's contracts with the FSAI prior to the entering into effect of this Agreement and previous Section 85 Agreements between the County Councils, in performing the functions conferred on it by those Agreements, it will cooperate with Kilkenny County Council in whatever manner is necessary.

- (e) It is agreed between the parties hereto that the performance of the food safety functions in this agreement by Kilkenny County Council shall not involve any financial expenditure by Carlow County Council.

- (f) It is agreed that the performance of this agreement by Kilkenny County Council shall involve no financial loss to Kilkenny County Council with costs associated with the performance of the contract covered by FSAI.

- (g)
 - (i) Any dispute or difference arising out of or in connection with this agreement shall, in the first instance, be referred to a Mediator to be appointed by agreement between the parties and, in the absence of agreement within 5 working days, of the receipt by one party of a written notice to concur in the appointment of a Mediator, by the Chairman of the Chartered Institute of Arbitrators, Irish Branch.

 - (ii) In the event that the dispute or difference is not resolved within 10 working days of the appointment of the Mediator, the dispute or difference shall be referred to an Arbitrator to be agreed between the parties and, in default of agreement within 5 working days of the receipt by one party of a written notice to concur in the appointment of an Arbitrator, by the Chairman of the Chartered Institute of Arbitrators, Irish Branch, such arbitration to be governed by the Arbitration Act 2010 as amended or replaced. The Arbitrator shall have no connection with the Mediator or the mediation proceedings unless both parties have otherwise consented in writing.

IN WITNESS whereof the parties hereto have hereunto set their seals the day and year first herein written.

THE SEAL OF KILKENNY COUNTY COUNCIL was affixed hereto by:

NOMINATED MEMBER OF COUNCIL

CHIEF EXECUTIVE

SENIOR EXECUTIVE OFFICER

THE SEAL OF CARLOW COUNTY COUNCIL was affixed hereto by:

NOMINATED MEMBER OF COUNCIL

CHIEF EXECUTIVE

SENIOR EXECUTIVE OFFICER

Dated this the day of 2020

KILKENNY COUNTY COUNCIL

First Part

AND

CARLOW COUNTY COUNCIL

Second Part

AGREEMENT
