

**Department of Agriculture Food and the Marine**

**Request for Tender to acquire a Leasehold  
Interest in Site 2, Killybegs Fishery Harbour  
Centre, Co. Donegal**

**January 2016**

## **TENDER DOCUMENT**

**Subject Property:** Site 2, Killybegs Fishery Harbour Centre, County Donegal

**Lessor:** The Minister for Agriculture, Food and the Marine

**Property Officer:** Ms. Maria Holohan  
Property Unit  
Sea Fisheries Administration Division  
Department of Agriculture, Food and the Marine  
National Seafood Centre  
Clonakilty, Co. Cork

**Lessor's Solicitor:** Eileen Creedon  
Chief State Solicitor  
Osmond House  
Little Ship Street  
Dublin 8  
(Attention: Mr. Patrick Gaffney)

**E-mail address:** [fhcpropertyunit@agriculture.gov.ie](mailto:fhcpropertyunit@agriculture.gov.ie)

### **The Tender Document consists of 6 parts as follows:**

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## **PART 1: TENDER PROVISIONS**

1. Any applicant desirous of making an offer by way of tender ('a Tender') to acquire a leasehold interest in the Subject Property shall send the Form of Tender contained in Part 3 herein in triplicate duly completed and executed, by hand or by registered post to:

**Ms. Maria Holohan**  
**Property Unit**  
**Sea Fisheries Administration Division**  
**Department of Agriculture, Food and the Marine**  
**National Seafood Centre**  
**Clonakilty, Co. Cork**

To arrive no later than noon on 11<sup>th</sup> March 2016

in a sealed envelope marked on the front with the words, "Tender- Site 1, Killybegs Fishery Harbour Centre", and showing a return address together with a bank draft representing the amount the applicant is willing to pay in addition to the annual commercial rent for the Subject Property contained in the Form of Lease ('the Premium'). The bank draft should be drawn on a branch office of one of the Irish licensed banks in favour of the Department of Agriculture, Food and the Marine ('the Department'). Applications received after the deadline will not be accepted and will be returned unopened.

2. A Tender will be deemed to have been accepted when a Notice of Acceptance has been delivered by the Lessor in accordance with clause 31 below.
3. The successful tenderer, i.e. the tenderer upon whom a Notice of Acceptance is served ('the Tenderer') will be offered a lease in the form of the lease which is attached hereto ('the Lease').
4. The Lease must be executed by the Tenderer and returned in duplicate together with a bank draft for Initial Rent for the rent for the first half year to the Lessor within 30 working days of the date when the Notice of Acceptance by the Minister is deemed to have been received by the Tenderer in accordance with the provisions of clause 31. In the event that the Lease is not executed and returned in duplicate together with a draft for the Initial Rent for the first half year within this period the offer of the Lease may be withdrawn by the Lessor.
5. Replies to a standard set of Law Society pre-lease enquiries are attached hereto and no further objection, requisition or enquiry will be raised by the Tenderer or replied to by the Lessor.
6. Also attached hereto are evidence of title being Statutory instrument number 210 of 1969 and planning documentation consisting of Notification of Final Grant of planning permission dated 16<sup>th</sup> July 2001 planning register ref 01/64. No objection, requisition or enquiry regarding these matters will be raised by the Tenderer or replied to by the Lessor.

7. Tenders should contain detailed proposals relating to fishery and marine related purposes/uses only (including light industrial usage). However the Lessor may consider any proposal that he considers advantageous and appropriate in respect of the operation or development of the Fishery Harbour Centre. Any tender that involves a proposed project that the Lessor considers inappropriate, will not be considered.
8. Copies of this Tender Document are available if required at the Harbour Office at Killybegs Fishery Harbour Centre between the hours of 9.00am and 5.00pm on each working day between 29<sup>th</sup> January and 11<sup>th</sup> March 2016. The enclosed documentation can also be viewed or downloaded from the Department's website:  
  
<http://www.agriculture.gov.ie/fisheries/fisheryharbours/fisheryharbourtenders>
9. The Subject Property can be inspected by prior arrangement with the Harbour Master, Mr. Martin Connell. His contact details are:  
  
Tel.: 074 9732298 and 074 9741797  
E-mail: martins.connell@agriculture.gov.ie
10. Prior to submitting a Tender, tenderers should ensure that their proposals are in compliance with the relevant Local Authority Development Plan and any other local scheme or strategy that may apply and that the proposed use of the Subject Property is permitted according to the relevant planning legislation.
11. The Lessor shall hold all bank drafts received by them uncashed until the acceptance of a tender.
12. In the case of any Tender not accepted or any Tender withdrawn in accordance with clause 29 below the bank draft applicable thereto shall be returned (at the risk of the Tenderer) to the Tenderer by post to the address given in the Form of Tender or to the person or firm nominated in the Form of Tender uncashed and endorsed sans recours by the Department in favour of the Tenderer only.
13. Any Tender which is not accompanied by the appropriate bank draft will not be considered and will be returned as soon as practicable.
14. The annual rent payable under the Lease has been determined in accordance with commercial rates, has been independently valued and is non-negotiable. The annual rent for this property is €6,240 (Six Thousand Two Hundred and Forty Euros) per annum.
15. The Lessor does not undertake and is not bound to accept the highest or any Tender for the Subject Property however preference will be given to the tenderer who:
  - submits a proposal that complies with the terms of this invitation and;
  - offers to pay the highest Premium.

16. Tenders will not be accepted from tenderers who are not in good standing with the Department including existing customers, clients and lessees who are in debt to the Department or not compliant with the terms of a payment plan agreed with the Department or who are in breach of the covenants or conditions of an existing lease agreement with the Department.
17. An original general tax clearance certificate or electronic tax clearance details must be submitted with each Tender.
18. The Lessor reserves the right to seek supplementary and final bids in the event of equal bids being received.
19. Upon commencement of the Lease the Tenderer must obtain the written consent of the Lessor to apply for planning permission to the Local Authority in respect of the Subject Property. In the event that the Lessor grants his prior written consent for an application for planning permission, then the Lease will be conditional on the Tenderer making an application for planning permission within twelve months from the Term Commencement Date of the Lease (as defined therein) and thereafter obtaining planning permission to develop the Subject Property in accordance with the plans and specifications submitted to the Lessor and the Local Planning Authority within eighteen months from the date of application for such permission. If after the expiration of twelve months from the Term Commencement Date, the planning permission shall not have been applied for by the Tenderer or if after eighteen months from the date of the application for planning permission, the planning permission shall not have been granted to the Tenderer, or if after the expiration of 36 months from the Term Commencement Date the Lessee shall not have developed the Leasehold Area in accordance with the Plans and specifications submitted to the Lessor and the Local Planning Authority and in accordance with the planning permission granted, then the Lessor shall be entitled to determine the Lease and to retain 25% of the Premium paid by the Tenderer.
20. In the case of tenders that propose development works, the tenderer may be asked to provide a more detailed submission including, but not limited to:
  - (a) Detailed designs;
  - (b) Environmental Impact Statement.
21. The Lessor undertakes to use his best endeavours to hold confidential any information provided by tenderers subject to the Lessor's obligations under law including the Freedom of Information Act, 2014. Should tenderers wish that any information supplied in a tender not be disclosed because of its sensitivity then tenderers should, when providing the information, identify same and specify reasons for its sensitivity. The Lessor will consult with tenderers about such sensitive information before making any decision on any freedom of information request received. In the event that the Lessor decides to release particular information relating to a tenderer, said tenderer/Tenderer will have the option of appealing the Lessor's decision to the Information

Commissioner. In the event that no information is identified as sensitive, with supporting reasons, then it is likely to be released in response to a request under the Freedom of Information Act.

22. The Lessor shall be entitled to require any tenderer to furnish bank/trade references and audited accounts.
23. Where the Tenderer is a body corporate, the Lessor requires that the Tenderer furnish copies of its Certificate of Incorporation and Memorandum and Articles of Association (or its Constitution).
24. Details of all shareholders or participants in any proposal submitted must be provided.
25. Every Tender by a body corporate shall be executed by having the body's seal affixed to the Form of Tender at Part 3 hereof in accordance with its Articles of Association (if relevant) and any Tender by a partnership shall be signed by one of the partners for and on behalf of the partnership and shall state the names of all partners and any Tender by an individual shall be signed by that individual and all forms of execution shall be witnessed.
26. No tender expressed to be made "in trust" or "as agent" without disclosing the principal will be considered.
27. Every tenderer shall include in the Form of Tender an address in Ireland to which a Notice of Acceptance, a refund of his Premium or notices pursuant to the Tender Provisions (as the case may be) may be forwarded.
28. Each Tender is to remain open for acceptance until such time as it has been withdrawn.
29. A Tender may be withdrawn at any time prior to the Notice of Acceptance being delivered in accordance with clause 31 by notification in writing to the Lessor.
30. Notice of Acceptance will be sent on or before 12.00 hours (noon) on 27<sup>th</sup> April 2016 to the Tenderer which notice shall be sent to the address given in the Tenderer's Form of Tender or to the person or firm nominated in the Form of Tender for receipt of delivery of the said Notice of Acceptance.
31. Notice of Acceptance may be delivered by ordinary prepaid post or by registered post or by courier or by hand or by facsimile or other means of visible electronic reproduction or by any combination of the foregoing.

Any such Notice will be deemed to have been made or delivered:-

- 31.1 when delivered by hand or by courier or by facsimile or other means of visible electronic reproduction at the time such document or communication has been dispatched;

- 31.2 in the case of delivery by post at the time and on the date that the envelope containing the notice was put in the post.
32. The acceptance of a Tender in the manner stated in clause 2 shall create a valid and binding Agreement on the Tenderer and on the Lessor and the Tenderer shall be bound to complete the Lease in accordance with the Tender Provisions.
33. The Lessor may disregard any Tender marked “Subject to Agreement/ Subject to Lease” or otherwise.
34. Upon the successful Tender being accepted as aforesaid, the bank draft for the Premium shall be cashed and held by the Department.
35. The Lessor shall not be obliged to consider any Tender which directly or indirectly is related to or dependent upon the Tender of any other party.
36. Any alterations made to the Tender Provisions shall at the option of the Lessor render such Tender invalid.
37. These Tender Provisions together with the Form of Tender, the Notice of Acceptance, the Principal Lease Provisions the Replies to Pre-Lease Enquiries and the Form of Lease shall be read and construed as one document.
38. Save where the context otherwise requires or implies or the text hereof expresses to the contrary, the definitions and provisions as to interpretation set forth in any one part of this document shall be applied for the purposes of all other parts of this document.
39. The party described as ‘the Tenderer’ in the Tender Document and ‘the Lessee’ in the Lease are one and the same and the property described as ‘the Subject Property’ in the Tender Document and ‘the Leasehold Property’ in the Lease are one and the same.
40. This Agreement shall in all respects be governed by and interpreted in accordance with the laws of Ireland;
41. For the benefit of the Lessor, the Tenderer, hereby irrevocably agrees that the Courts of Ireland are to have jurisdiction to settle any disputes which may arise out of or in connection with this document and that accordingly any suit, action or proceedings (together in this clause referred to as ‘proceedings’) arising out of or in connection with this document may be brought in such courts.
42. The Tenderer irrevocably waives any objection which it may now or hereafter have to the taking of any proceedings in any such court as is referred to in these Tender Provisions and any claim that any such proceedings have been brought in an inconvenient forum and further irrevocably agrees that a judgment in any proceedings brought in the Courts of Ireland shall be

conclusive and binding upon it and may be enforced in the courts of any other jurisdiction.

43. Nothing contained in these Tender Provisions shall limit the right of the Lessor to take proceedings against the Tenderer or any other party in any other court of competent jurisdiction nor the taking of proceedings in one or more jurisdictions, whether concurrently or not.



## **PART 2: PRINCIPAL LEASE PROVISIONS\***

The Form of Lease to be executed is attached hereto and the following are the principal provisions of the Lease offered for the Subject Property.

<b>Lessor:</b>	Minister for Agriculture, Food and the Marine
<b>Leasehold Property</b>	The property consists of the greenfield site extending to approximately 0.6345 hectares (1.56 acres) known as Site 2 Killybegs FHC as outlined on the map attached to the Lease (referred to as 'the Subject Property' in the Tender Provisions)
<b>Term:</b>	35 years
<b>Rent p.a:</b>	€6,240
<b>Rent reviews:</b>	To be carried out every 5 years, based on Schedule 7 of the Lease.
<b>Maintenance/ Repair:</b>	Responsibility of Lessee
<b>User clause:</b>	The use of the property is restricted to use for fishery and marine related purposes/uses only (including light industrial usage) and also for any other purpose that the Lessor considers advantageous and appropriate in respect of the operation or development of the Fishery Harbour Centre.
<b>Rates:</b>	Responsibility of the Lessee
<b>Insurance:</b>	Responsibility of the Lessee
<b>Statutory or Local Authority Bye Laws:</b>	Compliance with local authority byelaws, planning legislation and other statutory obligations will be the responsibility of the Lessee.
<b>Services/utilities:</b>	Services such as water, foul sewers, surface run-off, electricity and telecoms are available adjacent to the site. The successful tenderer will be responsible for ensuring the adequacy of these services and connection thereto.
<b>Planning Permission</b>	The Lessee will not be permitted to apply for permission for change of use or to carry out works to the Leasehold Property without obtaining the prior written consent of the Lessor.
<b>Alienation</b>	The Lessee will not be permitted to assign any interest in the Leasehold Property to any third party without obtaining the prior written consent of the Lessor.

\*this section contains a summary of the principal lease provisions only and tenderers should examine all of the clauses in the attached Form of Lease and seek legal advice in relation to same before submitting their tender

**PART 3: FORM OF TENDER**

**PROPERTY: SITE 2, KILLYBEGS FISHERY HARBOUR CENTRE,  
COUNTY DONEGAL**

(This forms part of the tender document but should be detached and returned with the other documents on the checklist below). Please complete in block capitals

Name: \_\_\_\_\_

Company Name: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Tel.: \_\_\_\_\_

Mobile: \_\_\_\_\_

E-mail: \_\_\_\_\_

Solicitors contact details: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Proposed Use of Property (attach further information if necessary):

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

1. I/We \_\_\_\_\_ of \_\_\_\_\_, having examined the documentation available including the Tender Provisions, the Form of Lease and replies to pre-lease enquiries, do hereby agree that in the event of us being offered the Lease, to enter into the Lease with the Lessor in respect of the above-named property at Killybegs Fishery Harbour Centre.
2. I/We hereby nominate \_\_\_\_\_ of \_\_\_\_\_ (whose telephone number is \_\_\_\_\_) as the person or firm in Ireland to whom the Notice of Acceptance of this Tender may be delivered or the bank draft returned in the event that this Tender is not accepted or is withdrawn.
3. **IT IS HEREBY AGREED** that this offer remains open for acceptance by the Lessor until 12.00 hours (noon) on the 27<sup>th</sup> April 2016.
4. I/We understand that the Lessor is not bound to accept my/our (or any) application for the Subject Property.
5. I/We understand that in the event of us being offered the Lease, there is a time limit of 30 working days during which the Lease must be executed and returned to the Lessor in duplicate together with a bank draft for the first half year of the Initial Rent as defined in the Lease. In the event that this is not completed within the 30 day period, the offer of the Lease may be withdrawn by the Lessor.
6. We hereby enclose with this Form of Tender:
  - (a) A bank draft for the full amount of the Premium to be paid to the Department which I/we are willing to pay in addition to the annual commercial rent for the Subject Property as stated in the Lease; ☐
  - (b) Detailed proposals for the Subject Property relating to the fishery and marine related purposes/uses only (including light industrial usage); ☐
  - (c) An original general tax clearance certificate or electronic tax clearance details; ☐
  - (d) Where the Tenderer is a body corporate: copies of its Certificate of Incorporation and Memorandum and Articles of Association (or its Constitution). ☐

**DATED THIS            DAY OF**

**SIGNED** by the said:

**WITNESS**

**ADDRESS**

**OCCUPATION**

**/PRESENT** when the common seal of \_\_\_\_\_ Ltd was affixed hereto:

\_\_\_\_\_  
**Director**

\_\_\_\_\_  
**Director/Secretary**



## **PART 5: REPLIES TO PRE-LEASE ENQUIRIES**

### **PRE-LEASE ENQUIRIES OR CHECK LIST**

**Landlord:** The Minister for Agriculture, Food and the Marine

**Tenant:** [ ]

**Demised Premises:** Site 2, Killybegs Fishery Harbour Centre

**Your Ref:** [ ]

**Our Ref:** [ ]

<i><b>Enquiries</b></i>	<i><b>Replies</b></i>
<b>Title</b>	
1. Furnish prima facie evidence of Landlord's title to grant the lease as follows:-	Statutory Instrument No 210 of 1969 and Folio DL 36728F
<b>Unregistered:</b>	
1.1 Certified Copy Deed of Conveyance /Assignment to Landlord	Not applicable.
1.2 If Landlord's title is leasehold/fee farm grant, certified copy Head Lease or Fee Farm Grant	Not applicable.
1.3 Up-to-date Receipt for Rent under Head Lease/Fee Farm Grant	Not applicable
1.4 If required, head Landlord's Consent to grant of Sub-lease	Not applicable
<b>Registered</b>	
1.5 Certified copy Land Registry Folio showing landlord as registered owner with file plan attached	Herewith: Folio 36728F
1.6 If leasehold folio, certified copy Head Lease/Fee Farm Grant	Not applicable
1.7. Up-to-date Receipt for Rent under Head Lease/Fee Farm Grant	Not applicable
1.8. If required, head Landlord's consent to	Not applicable

	grant of Sub-Lease	
1.9	Section 72 Declaration	Agreed
1.10	Consent to registration of Lease as burden on Folio (may be contained in Lease)	See clause 9.10 of the Lease
1.11	Has Land Certificate issued? If so, please undertake to lodge in the Land Registry and give letter consenting to use of Land Certificate for the purpose of registering Lease.	No
<b>Landlord Company</b>		
1.12	Furnish Memorandum and Articles of Association and copy Certificate of Incorporation of the Landlord Company evidencing powers to hold, lease and dispose of the premises together with a note of sealing requirements.	Not applicable. (Power to lease contained in section 5 of the Fishery Harbour Centres Act 1968 as amended by section 6 of the Fisheries and Foreshore (Amendment) Act 1998)
<b>Services</b>		
2.1	Is the property serviced with: Drainage Water Electricity Telephone Gas?	Drainage, Water, Electricity and telephone are available on or adjacent to the site.
2.2	If applicable, furnish letter consenting to the transfer of the telephone to the Tenant.	
2.3	Have the services (including roads, footpaths, sewers, drains) abutting or servicing the demised premises (or the estate or centre of which the demised premises form part) been taken over by the Local Authority and have all charges on account thereof been paid?	Not Applicable.  Services are maintained by the Department of Agriculture, Food and the Marine.
2.4	Furnish letter from the Local Authority or Solicitor's Certificate based on the Local Authority Records or personal knowledge confirming the position.	Not Applicable
2.5	If the services are not in charge, furnish an Indemnity under seal unless Landlord covenants to maintain same in Lease.	

**Easements and Rights**

- |     |  |   |
|-----|--|---|
| 3.1 | Are there any pipes, drains, sewers, wires, cables or septic tank on, passing through or over property not included in the demised premises which serve or are in any way connected to or belong to the demised premises? If there are any, rights over same must be granted in the Lease and evidence of the Landlord's title to grant such easements and rights must be furnished. | Declined                                |
| 3.2 | Is the demised premises or any part of it subject to any right-of-way, water, light, air or drainage or to any other easements, reservation, covenant or restriction or to any public right of way or other public right or covenant or agreement restrictive of its user or other right of any kind.  | None other than as set out in the lease |
| 3.3 | If any road, path, drain, wire, cable, pipe, party wall or other facility (which is not in charge of the Local Authority) is used by the occupier of the demised premises in common with the owner or occupier of any other property, please confirm that all rights to do so are contained in the Lease and furnish evidence of the Landlord's title to grant such rights.          | None other than described in the Lease. |
| 3.4 | If so, please also state what (if any) are the obligations attaching to such rights.   | None save as set out in the Lease.      |

**Notices**

- |     |   |                                    |
|-----|---|------------------------------------|
| 4.1 | Has any notice, certificate or order been served upon or received by the landlord or a previous tenant of the Landlord or has the Landlord notice of any intention to serve any notice relating to the demised premises or any part of it under any Act or any statutory rule, order or statutory instrument or any amendment or extension of same? | None save as set out in the Lease. |
| 4.2 | If so, furnish now a copy of any such notice, certificate or order so served or received.   | No                                 |
| 4.3 | Has the same been complied with?  |                                    |

### Litigation

- 5.1 Is there any litigation pending or threatened in relation to the demised premises or any part of it or has any adverse claim thereto been made by any person?
- 5.2 If the Landlord is an individual, confirm that no orders affecting the demised premises have been made pursuant to the provisions of the Judicial Separation and Family Law Reform Act 1981?

Not applicable

Not applicable

No

### Mortgage

- 6.1 Is the Landlord's interest in the demised premises or any part of it subject to any mortgage or charge? If so, please give full particulars and, if necessary, join the mortgagee in the Lease in order to grant and confirm same or if it is a floating charge furnish letter confirming non crystallisation.
- 6.2 If applicable furnish Certificate of Company Secretary that the Landlord Company has not executed any charges of any description which are not shown as registered in the Companies Registration Office.
- 6.3 If applicable, furnish Certificate of Company Secretary that no resolution to wind up the Landlord Company has been passed and that no Notice of a meeting at which it is proposed to wind up the Company has been issued or been published and that no petition has been presented or is pending to wind up the Company or to place the Company in Receivership or to have a Receiver appointed.

Not applicable

No

Not applicable

Not applicable

### Searches

7. The Tenant shall search against the Landlord in:
- 7.1 If unregistered title, Registry of Deeds from date of Deed to Landlord.
- 7.2 If registered, in the Land Registry.



7.3	If Landlord's interest is leasehold, in the Sheriff's Office.	Noted
7.4	If the Landlord is a Company, in the Companies Office.	Not applicable
7.5	If the Landlord is an individual, in the Bankruptcy Office.	Not applicable
7.6	In the Judgements Office.	Not applicable
7.7	The Landlord shall explain and discharge all adverse acts appearing on such Searches.	Not applicable
<b>Local Government (Planning and Development) Acts 1963 to 2002 and the Planning and Development Acts, 2000 – 2010 ('the Acts')</b>		Not applicable
8.1	Has there been in relation to the demised premises any development (including change of use or exempted development) within the meaning of the Acts on or after the 1st October, 1964?	Not applicable Agreed
8.2	In respect of any such development furnish (where applicable):	
	a) Grant of Planning Permission, or	Yes. Reclamation of foreshore. See grant of planning permission dated 16 <sup>th</sup> July 2001 by Donegal Co Co Planning Ref 01/64.
	b) Outline Planning Permission and Grant of Approval, or	
	c) Building Bye-Law Approval (if applicable).	
8.3	In respect of development completed after the 1 November, 1976 furnish evidence by way of statutory declaration of competent person that each development was completed prior to expiration of the Permission/Approval.	Herewith Not applicable
8.4	Has the demised premises been used for the use proposed under the Lease without material change continuously since the 1st day of October, 1964? If so, please furnish statutory declaration evidencing same.	Not applicable Declined
8.5	If the demised premises has been	

	developed since the 1 October 1964 please furnish Architect's Certificate of Compliance with Planning Permission and (if applicable) Building Bye-Law Approval (Note: If such a certificate is not available then the covenant in the Lease to comply with Planning Acts should be modified).	Site has been vacant since foreshore reclamation works completed in 2004
8.6	(New Unit) The Tenant's Solicitor reserves the right to raise further requisitions in relation to the required Architect" Certificate of Compliance and in relation to Planning and Building Regulation matters when the Unit has been constructed or is nearer completion.	Available if required
<b>Fire Services Act 1981</b>		
9.1	Have any notices been served on the Landlord or any previous tenant under the Fire Services Act 1981? If so please furnish copies of same.	Not applicable
9.2	Are there any proceedings pending under the Fire Services Act 1981?	
9.3	Has the demised premises ever been inspected by the Fire Authority for the functional area within which the demised premises is situate? If so, what were its requirements?	No
9.4	Have the requirements of the Fire Authority been fully complied with in relation to the demised premises and (if applicable) the building of which it forms part?	No
9.5	Furnish Architect's/Engineer's Certificate of Compliance with any such notices or requirements.	No
<b>Rates</b>		
10.1	What is the rateable valuation of the demised premises?	Not Applicable
10.2	Furnish evidence of payment of rates for current year.	
10.3	Confirm that rates will be apportioned as of	Not Applicable

the date the Tenant commences to be liable.		
<b>Insurance</b>		
11.1	If Landlord is insuring, furnish certified copy of Landlord's insurance policy and receipt for latest premiums.	Not applicable. Greenfield Site
11.2	Confirm that the Tenant's interest will be noted on the policy and a letter from the landlord's insurers will be furnished waiving subrogation rights.	Not applicable
11.3	Confirm that the insurance contribution is included in the service charge. If not, advise the amount of the Tenant's contribution to the premium.	Not applicable
11.4	Confirm that terrorist attack is included as one of the Insured Risks. If it is not, the Tenant will require the insertion of a provisions in the Lease to the effect that if such cover is not available or is refused now or at some time in the future, either the Landlord must be responsible for reinstatement of the demised premises or the Tenant must have the right to determine the lease and not be responsible for repairs necessitated by damage caused by such risk.	Landlord does not insure
		Not applicable
		Not applicable
<b>Multi-storey Building</b>		Not applicable
12.1	Is the demised premises a 'multi-storey building' (or part of such a building) within the meaning of the local Government (Multi-Storey Buildings) Act 1988?	
	Or	
	Does it form part of a development in which there is a multi-storey building and in respect of which the Tenant may be required to make a contribution by way of service charge or otherwise to the cost of repair or compliance with statutory requirements?	
	If so, the Tenant reserves the right to raise specific Requisitions in regard to the Local	No. Greenfield Site

Government (Multi-Storey Buildings) Act 1988.	
<b>Family Home Protection Act 1976 (“the 1976 Act”) / Family Law Act 1995 (“the 1995 Act”) / The Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 (“the 2010 Act”)</b>	
13.1	Is the property or any part thereof the Landlord’s “family home” as defined in either the 1976 Act or the 1995 Act, or a “Shared Home” within the meaning of Section 27 of the 2010 Act?
13.2	If the answer to 13.1 is in the affirmative furnish the prior written consent of the Landlord’s spouse and verify the marriage by statutory declaration exhibiting therein copy civil marriage certificate and furnish draft Declaration and copy Exhibit now for approval.
13.3	If the answer to 13.1 is in the negative state the grounds relied upon and furnish now draft statutory declaration exhibiting therein copy civil marriage certificate and furnish draft Declaration and copy Exhibit now for approval.
13.4	In respect of all “conveyances” (as defined in the 1976 Act and in the 2010 Act) of unregistered property made on or after the 12 <sup>th</sup> of July, 1976 furnish spouses’ prior written consents where appropriate together with verification of marriage by statutory declaration exhibiting therein copy civil marriage certificate or where consent is not necessary furnish evidence verifying same by way of statutory declaration.
13.5.	<div>a. Did/does the property or any part thereof comprise the “family home” or the “shared home” of any person other than the Landlord or previous owner.</div> <div>b. If so give the name of such person and give the nature of the “interest” as defined in the 1976 Act (if any) in the property.</div>
	No
	Not applicable
	Property is a Greenfield Site and Lessor is the Minister for Agriculture, Food and the Marine. Herewith solicitor’s certificate.
	Nonesuch

<p>c. In relation to any such person having an “interest” furnish the prior written consent of that person’s spouse/civil partner to any “conveyance” (as defined as aforesaid) of that person’s interest in the property or any part thereof since 12<sup>th</sup> July 1976 and verify such spouse’s /civil partner’s marriage by statutory declaration exhibiting therein copy civil marriage certificate.</p>	<p>No</p>
<p>d. If such person did not have an “interest” as above in the property or any part of it state the grounds relied upon and furnish now draft statutory declaration for approval verifying those grounds.</p>	<p>Not applicable</p>
<p><b>Family Law Act 1981 (“The 1981 Act”) and The Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 (“the 2010 Act”)</b></p>	<p>Not applicable</p>
<p>13.6 Has there been any disposition of the property to which Sections 3 and 4 of the 1981 Act, or to which the provisions of Part 15 of the 2010 Act would apply?</p>	
<p>13.7 If the answer to 13.6 is in the negative furnish statutory declaration verifying this fact on closing and furnish now draft Declaration for approval.</p>	
<p>13.8 If such a disposition was made then the other party to the engagement and the donor must join in the Deed to release and assure his/her/their respective interests in the property.</p>	<p>Not applicable</p>
<p>13.9 Confirm by way of Statutory Declaration that Section 5 of the 1981 Act (as amended by Section 48 of the 1995 Act) does not affect the property (if such is the case) and furnish now draft Declaration for approval.</p>	
<p><b>Judicial Separation and Family Law Reform Act 1989 (“the 1989 Act”), The Family Law Act 1995 (“the 1995 Act”), The Family Law (Divorce) Act, 1996 (“the 1996 Act”) and The Civil Partnership</b></p>	<p>No</p>

**and Certain Rights and Obligations of Cohabitants Act, 2010 (“the 2010 Act”)**

- 13.10 Confirm by way of Statutory Declaration that no Application or Order has been made under the 1989 Act, the 1995 Act, the 1996 Act, or the 2010 Act.
- 13.11 Confirm that this is not a “disposition” for the purposes of defeating a claim for “relief” (as defined in Section 35 of the 1995 Act, Section 37 of the 1996 Act and Section 137 of the 2010 Act).
- 13.12 If the Landlord acquired the property after 19/9/1989 confirm that he was a bona fide purchaser for value (other than marriage without notice of any intention to defeat a claim for financial relief).
- 13.13 Furnish now draft Declaration for approval.

Herewith solicitor’s certificate

Not applicable

Herewith solicitor’s certificate

**Building Control Acts 1990**

- 14.1 Please state whether or not the premises in sale are affected by the Building Control Act, 1990 or whether they are affected by any Statutory Instrument, Rule, Regulation or Order made under the said Act.
- 14.2 Please state the date on which building operations were commenced on premises, the subject matter of this transaction.
- 14.3 If the premises are affected by the provisions of the Building Control Regulations, 1991, please furnish evidence that a “Commencement Notice” was served on the Building Control Authority, not less than seven days and no more than twenty one days prior to commencement of the works or to the making of material change of use as the case may be.
- 14.4 If appropriate, please furnish a copy of the Commencement Notice served on the Building Control Authority.
- 14.5 Please state whether any inspection was carried out under Section 11 of the Building Control Act, 1990 and if so please furnish (if

Herewith solicitor’s certificate

Confirmed

Landlord did not acquire the property after 19/9/1989

Herewith solicitor’s certificate

Not Affected. Undeveloped site.

	applicable) copies of any notices served by the Authorised person making the inspection, together with evidence of compliance with the said notice.	Not Applicable
14.6	If applicable, furnish Fire Safety Certificate issued by the Building Control Authority under Part 3, Article 8 of the Building Control Regulations of 1991. (S.1.305 of 1991).	Not Applicable
14.7	Please furnish Certificate of Compliance from a competent Architect or Engineer, confirming compliance with the Building Regulations and with all conditions contained in Fire Safety Certificate issued by the Building Control Authority.	
14.8	Is an Appeal pending in respect of any condition contained in any Fire Safety Certificate which has issued or against any refusal to issue a Fire Safety Certificate and if so please furnish full details.	Not Applicable
14.9	Confirm that the Building Control Authority has not rejected any application for a Fire Safety Certificate on the grounds that the application did not comply with Articles 10 Part 3 of the Building Control Regulations 1991.	Not Applicable
14.10	Please confirm that no Enforcement Notice has been served by a Building Control Authority under the provisions of Section 8 of the Building Control Act 1990 or if such Enforcement Notice has been served please furnish copy of same and furnish evidence of compliance therewith in the form of a Certificate from a competent Architect or Engineer certifying complete compliance with provisions of the Enforcement Notice.	Not Applicable
14.11	If any Enforcement Notice has been served under the provisions of Section 8 of the Building Control Act, 1990 please state whether any application has been made to the District Court under Section 9 of the said Act 1990 and if so furnish together with the result of such application.	Not Applicable
14.12	Please confirm that the Building Control	

	Authority has not made application to the High Court under the provisions of Section 12 of the Building Control Act 1990 or if such an application has been made, please confirm that any Order made by the High Court has been fully complied with by furnishing Certificate of full and complete compliance from the competent Architect or Engineer.	Not Applicable
		Not Applicable
14.13	If applicable, please furnish Building Bye Law Approval granted pursuant to the Public Health Acts in respect of any roads and drainage outside the curtilage of the site.	
14.14	Please furnish now Certificate of Opinion of substantial compliance with Building Regulations in relation to all structures and buildings which have been materially altered or undergone a change of use since the 1 <sup>st</sup> day of June 1992.	Not Applicable
14.15	If it is claimed that the construction was commenced after the 1 <sup>st</sup> June 1992 and circumstances where no Building Bye Law approval has been obtained, please furnish Architect's or Engineer's Certificate to confirm.	Not Applicable
<b>Management Structure – New Units</b>		
15.	(Note: To the extent that these requisitions relate to matters which have yet to be implemented or which the Landlord intends to implement, replies should be given as to the Landlord's intentions. The Tenant reserves the right to raise further requisitions in this regard on or before completion of the constructed unit).	Not Applicable
<b>Furnish now for perusal:</b>		
15.1	Site Plan and Floor Plan showing the unit coloured or outlined thereon.	Not Applicable
15.2	Certified copy Lease of the common areas to the Management Company (if applicable).	
15.3	Certified copy Contract for the sale of the	



	reversionary interest to the Management Company.	Not Applicable
15.4	Certified copy of the Block Insurance Policy. Please note that the name of the Tenant and, if requested, the Mortgagee must be noted thereon before completion and evidenced by letter from insurance company confirming that it will not cancel lapse or fail to renew the policy without first giving 15 days notice prior to cancellation to the Tenant/Mortgagee.	
15.5	Certified copy Certificate of Incorporation and Memorandum and Articles of Association of the Management Company.	Not Applicable
<b>Confirm that on the completion of the Development:</b>		
15.6	All the leases either granted or to be granted are or will be in a similar form to the Lease to the Tenant. Certificate to this effect to be furnished on closing.	
15.7	The one Management Company will be responsible for the management of the external and internal common areas of the entire development and all the services relating thereto.	Not Applicable
		Not Applicable
15.8	The service charge will be divided equally among the number of units in the development.	Not Applicable
15.9	The only shareholders/members in the Management Company will be the unit owners.	Not Applicable
15.10	Each of the unit owners will have equal shareholdings or voting rights.	
15.11	Do any persons other than Unit Tenants (in particular, the Developer or its nominees) hold shares or voting rights in the Management Company?	
		Not Applicable
15.12	Is the Developer or the Management Company presently managing the property itself or has a firm of managing agents been engaged?	

**If a firm of managing agents has been engaged  
please state:**

15.13	The name of the firm.	Not Applicable
15.14	The terms of its engagement including (in particular) the amount of its charges.	Not Applicable
15.15	Whether it is employed by the Developer or by the Management Company.	
15.16	Are there Rules of the Management Company other than set out in the Memorandum and Articles of Association? If so please furnish details of these Rules.	Not Applicable
15.17	Is it proposed to establish a sinking or reserve fund or has one already been established? If so, what is the present level of the fund and in whose name is it held?	Not Applicable
15.18	Are the accounts of the Management Company available for the previous financial year? If so, please furnish a copy of same.	Not Applicable
15.19	What is the amount of the service charge currently payable?	Not Applicable
15.20	Is the Landlord aware of any possible claim against the Management Company's Funds?	Not Applicable
15.21	Is the Landlord aware of any proposal by the Management Company to carry out any repair work or incur other expenditure which would substantially affect the charge presently payable?	
<b>Hand over on closing:</b>		Not Applicable
15.22	Certified copy Folio showing the Management Company as registered owner or certified copy Deed of Assurance of the reversionary interest to the Management Company or, in lieu thereof, undertaking to furnish same.	Not Applicable
15.23	Share Certificate in or Certificate of Membership of the Management Company in the name of the Tenant.	Not Applicable

15.24 Certified copy of the Block Insurance Policy with the Tenant's and (if applicable) Mortgagee's name(s) noted thereon together with a certified copy of the receipt for the latest premium.

Not Applicable

#### Identity

Not Applicable

16. Furnish an Architect's Declaration of Identity confirming that the demised premises and any required right of way to the public road and all services and common areas are within the title offered by the Landlord.

Not Applicable

Not Applicable

#### Collateral Warranties

Not Applicable

17. Furnish collateral warranties (with evidence of acceptable insurance cover) in due course, in a form to be approved by Tenant, from the Building Contractor (and all Sub-Contractors) the Architect, the Quantity Surveyor, the Mechanical and Electrical Engineer and the Structural Engineer. If such warranties are not being furnished, the Tenant's liability to repair should exclude liability for latent and structural defects.

Not Applicable

#### Plans and Specifications (New Units)

18. The Plans and Specifications received are subject to approval of the Tenant and such approval will be subject to compliance therewith in the construction of the unit, to the issue of an Architect's Certificate of Compliance in Law Society/RIAI recommended format and to final inspection by Tenant of constructed unit in due course.

Not Applicable

Not Applicable

#### Alienation

19.1 The restraint on alienation should allow the Tenant to mortgage or charge the demised premises without the necessity of obtaining Landlord's consent. Please confirm.

Declined

19.2 In the event of a permitted Assignment or

<p>Transfer (but not a Sub-Lease, Licence or Mortgage) of the whole of the demised premises in accordance with the conditions of the Lease, the Tenant will require to be released from the covenants and conditions contained in the Lease without prejudice to the rights of either party for any antecedent breach of covenants and conditions. Please confirm that such a condition is or will be included in the Lease.</p>	<p>Not Applicable</p>
<p>19.3 In the event that the Lease contains a requirement for a Guarantor, in the case of a permitted Assignment or Transfer (but not a Sub-Lease, Licence or Mortgage) of the whole of the demised premises in accordance with the conditions of the Lease, the Tenant will require that such Guarantor be released on the substitution of an alternate Guarantor or Guarantors acceptable to the Landlord. Please confirm that the Lease does or will contain such a provision.</p>	<p>Not Applicable</p>
<p><b>Building Energy Rating (“BER”) Certificate</b></p> <p>20. Furnish BER Certificate in respect of the Demised Premises</p> <p>The right is reserved by the Tenant to make any further objections or requisitions arising out of the above and the answers thereto, arising out of inspection of title and of the results of Searches.</p> <p><b>Dated this _____ day of _____ 20</b></p> <p><b>Signed _____</b></p> <p><b>(Solicitor for the Tenant)</b></p>	
	<p>Declined. See Lease</p> <p>Declined</p>

Lease does not contain a requirement for a Guarantor

Not Applicable. Undeveloped Site.

Noted

Dated this \_\_\_\_\_ day of \_\_\_\_\_ 20

Signed \_\_\_\_\_

**EILEEN CREEDON  
CHIEF STATE SOLICITOR  
OSMOND HOUSE  
LITTLE SHIP STREET  
DUBLIN 8.  
(Solicitors for the Landlord)**

**THE MINISTER FOR AGRICULTURE, FOOD  
AND THE MARINE**

**Landlord**

**- and -**

**[ \_\_\_\_\_ ]**

**Tenant**

**PRE-LEASE ENQUIRIES**

**EILEEN CREEDON  
CHIEF STATE SOLICITOR  
OSMOND HOUSE  
LITTLE SHIP STREET  
DUBLIN 8.**

**[ \_\_\_\_\_ ]**



**PROPERTY REGISTRATION AUTHORITY**

## COUNTY DONEGAL

**PART FOLIO 36728F**

LEASE dated the       day of                                  20\_\_\_\_\_

## 1. Definitions

The definitions contained in the Ninth Schedule shall apply to this Lease and to the several schedules hereto.

## 2. Interpretation

The interpretation section contained in the Eighth Schedule shall apply to the construction of this Lease and the several schedules hereto.

### 3. Recitals

- 3.1. Killybegs Fishery Harbour Centre, County Donegal was vested in the Minister for Agriculture and Fisheries by virtue of Statutory Instrument number 210 of 1969 as amended.
- 3.2. By divers mesne assurances acts in the law and events and ultimately by the Agriculture, Fisheries and Food (Alteration of Name of Department and Title of Minister) Order 2011 (Statutory Instrument 455 of 2011), the Lessor became the successor in title to the Minister for Agriculture and Fisheries.
- 3.3. The Lessee has applied to the Lessor for a Fishery Harbour Centre Lease to enter into, use and occupy the Leasehold Area for the purpose of



Fishery and Marine related purposes/uses only (including light industrial usage) and all activities ancillary thereto.

- 3.4. The Lessor in exercise of the power conferred on him by section 5 of the Fishery Harbour Centres Act, 1968 as amended by section 6 of the Fisheries and Foreshore (Amendment) Act, 1998, has agreed to grant a Fishery Harbour Centre Lease to the Lessee on the terms and conditions set out in this deed.

#### 4. Operative Part

The Lessor in exercise of the powers vested in him by section 5 of the Fishery Harbour Centres Act 1968, as amended by section 6 of the Fisheries and Foreshore (Amendment) Act 1998, in consideration of the sum of €[ ] being the premium and the sum of €3,120 being the half yearly Initial Rent herein reserved the receipt of which are hereby acknowledged (including the increases or decreases thereof which may arise under the Seventh Schedule hereto) and the covenants on the part of the Lessee hereinafter contained **HEREBY DEMISES** unto the Lessee **ALL THAT AND THOSE** the Leasehold Area **TOGETHER WITH** the easements, rights and privileges specified in the Second Schedule **EXCEPTING AND RESERVING** unto the Lessor the rights and easements specified in the Third Schedule **TO HOLD** the Leasehold Area with the appurtenances unto the Lessee from and including the Term Commencement Date for the Term **SUBJECT TO** all rights, easements, privileges, covenants, restrictions and stipulations of whatsoever nature affecting the Leasehold Area and also **SUBJECT TO** the provisos set out in the Sixth Schedule hereto **YIELDING AND PAYING** unto the Lessor during the Term:

- 4.1 Yearly and proportionately for any fraction of a year the Initial Rent and, from and including each Rent Review Date (as defined in the Seventh Schedule), such yearly rent as becomes payable under the Seventh Schedule, and in every case the same is to be paid in the manner notified from time to time by the Lessor without any deduction by equal half yearly payments in advance on the Half Yearly Gale Days;

- 4.2 Any other sum recoverable by the Lessor as costs or expenses under this Lease, the same to be paid on demand.

The Lessee hereby **COVENANTS** with the Lessor to perform and observe the covenants, conditions and stipulations set out in the Fourth Schedule hereto to the intent that the burden of the covenants shall run with and bind the Leasehold Area and every part thereof and that the benefit thereof may be annexed to the Adjoining Property and every part thereof.

The Lessor hereby **COVENANTS** with the Lessee to perform and observe the covenants, conditions and stipulations set out in the Fifth Schedule hereto to the intent that the burden of those covenants shall run with and bind the Leasehold Area and every part thereof and that the benefit thereof may be annexed to the Adjoining Property and every part thereof.

The address of the Lessee in the State for service of notices and its description is:

[ ]

**IT IS HEREBY CERTIFIED** that the Family Home Protection Act 1976, the Family Law Act 1981, the Judicial Separation and Family Law Reform Act 1989, the Family Law Act, 1995, the Family Law (Divorce) Act, 1996, and the Civil Partnership and Certain Rights and Obligations of Cohabitants Act, 2010 do not affect the Leasehold Area.

## **FIRST SCHEDULE**

### **The Leasehold Area**

**ALL THAT AND THOSE** that part of Killybegs Fishery Harbour Centre comprising 0.6345 hectares, together with any buildings, works or other structures now constructed thereon, situate in the County of Donegal shown outlined in red on drawing number 702/437 Rev A annexed hereto and known as Site 2, Killybegs Fishery Harbour Centre being part of the lands comprised in part folio 36728F, of the register of freeholders County Donegal and including without prejudice to the generality of the foregoing:

1. all the Conduits and Plant in, upon, over or under and exclusively serving the same;
2. all Landlord's fixtures and fittings now or afterwards in or upon the same;
3. all additions, alterations and improvements to them;

but excluding the airspace above and the ground below the Leasehold Area **TOGETHER WITH** the easements, rights and privileges contained in the Second Schedule.

**SECOND SCHEDULE**  
**Easements, Rights and Privileges**

5. The following rights and easements (to the extent only that the Lessor is entitled to make such a grant) to the Lessee to be enjoyed in common with the Lessor and the lessees and occupiers of the Adjoining Property and all other parties or persons authorised by the Lessor or having like rights and easements:-
- 5.1 Subject to temporary interruption for repair, alteration or replacement or interruptions outside the control of the Lessor, the free and uninterrupted passage and running of the Utilities to and from the Leasehold Area through the Conduits which are now, or may at any time be in, under or passing through or over the Adjoining Property.
- 5.2 The right to pass and repass over the road between points A and B shown coloured yellow on the map annexed hereto, with or without vehicles, at all times and for all purposes connected with the use and enjoyment of the Leasehold Area.

## **THIRD SCHEDULE**

### **Exceptions and Reservations**

- 6.** The following rights and easements are excepted and reserved out of the Leasehold Area to the Lessor and all other persons authorised by the Lessor or having the like rights and easements:
- 6.1 The full, free and uninterrupted passage and running of the Utilities through the Conduits which are now, or may at any time be in, on, under, or passing through or over the Leasehold Area;
- 6.2 All mines and minerals on or under the surface of the Leasehold Area together with the right to get and take such mines or minerals;
- 6.3 The right at all reasonable times and upon reasonable prior notice (except in the case of emergency) to enter the Leasehold Area with or without construction workers or equipment if necessary in order to:-
- 6.3.1 view and examine the state and condition of the Leasehold Area and to carry out any necessary works, repairs or installations deemed necessary by the Lessor to any part of the Leasehold Area and/or the Adjoining Property;
- 6.3.2 inspect, cleanse, maintain, repair, connect, remove, lay, renew, relay, re-route, replace, alter or execute any works whatsoever to or in connection with the Conduits and any other services.
- 6.3.3 effect repairs to and maintenance and replacement of the foul sewer system and/or the surface drainage system in or under the Leasehold Area doing as little damage as possible to the Leasehold Area;

- 6.3.4 effect repairs to and maintenance of the walls and buildings erected on the boundaries of the Adjoining Property doing as little damage as possible to the Leasehold Area;
  - 6.3.5 remove, at the cost of the Lessee, and abate all buildings, works or materials which may have become dilapidated or abandoned or which may have been constructed without the consent or approval hereby required or which may, in the opinion of the Lessor, be injurious to navigation, the Adjoining Property or the public interest;
  - 6.3.6 restore the Leasehold Area to the former or proper condition thereof;
  - 6.3.7 erect or construct any buildings or works which in the opinion of the Lessor may be required for the purposes of navigation, the Adjoining Property or the public interest.
- 6.4 The right of the Fishery Harbour Centre Harbour Master and the Sea Fisheries Protection Authority as authorised by the Lessor at all reasonable times and upon reasonable prior notice (except in the case of emergency) to enter the Leasehold Area in order to:-
- 6.4.1 erect, place, access, maintain and operate closed circuit television cameras and all ancillary systems, wires, conduits, antennae and equipment passing externally and internally through, on, in, under or over the Leasehold Area;
  - 6.4.2 to erect, place, access, maintain and operate fibre optic terminals and tide gauges and other equipment as required, and all ancillary systems, wires, conduits, antennae and equipment passing externally and internally through, on, in, under or over the Leasehold Area;

6.5 The air space over and the ground below the Leasehold Area.

## **FOURTH SCHEDULE**

### **Covenants of the Lessee**

7. The Lessee throughout the Term **HEREBY COVENANTS** with the Lessor as follows:-

**7.1 Construction, Alterations, Improvements or Additions to or of the Leasehold Area (Initial Works)**

7.1.1 Not to undertake any works in the Leasehold Area without the prior written consent of the Lessor such consent not to be unreasonably withheld and **PROVIDED ALWAYS** that the Lessor shall not be obliged to grant such consent unless and until the Lessee has obtained and provided to the Lessor copies of all necessary consents, permissions, permits, licences and authorisations in respect of the works;

7.1.2 In the event that the Lessor grants his prior written consent for an application for planning permission in respect of the Leasehold Area, then in those circumstances, the Lessee shall make such application within 12 months of the Term Commencement Date and thereafter upon obtaining planning permission the Lessee shall develop the Leasehold Area in accordance with the Plans and specifications submitted to the Lessor and the Local Planning Authority and in accordance with the planning permission granted within 36 months of the Term Commencement Date.

If after the expiration of 12 months from the Term Commencement Date, the planning permission as aforesaid shall not have been applied for by the Lessee, or if after the expiration of 18 months from the date of the application for planning permission, the planning permission shall not have been granted to the Lessee, or if after the expiration of 36 months from the



Term Commencement Date the Lessee shall not have developed the Leasehold Area in accordance with the Plans and specifications submitted to the Lessor and the Local Planning Authority and in accordance with the planning permission granted, then the Lessor shall be entitled to determine this Lease and retain 25% of the Premium paid by the Lessee, by giving the Lessee notice in writing to that effect whereupon the Lessee shall pay all outstanding rents and outgoings payable on foot of the Lease up to that date, and shall deliver to the Lessor the original of this Lease, together with a duly executed and stamped Deed of Surrender to this Lease and (if applicable) shall procure the cancellation of its registration in the Land Registry.

- 7.1.3 The foregoing is without prejudice to clause 9.1 contained in the Sixth Schedule hereto.
- 7.1.4 Not to apply for a fire safety certificate, Environmental Licences or other relevant consents relating to the change of user or other development relating to the Leasehold Area without first giving notice in writing to the Lessor of the intention to make such applications.
- 7.1.5 To pay the reasonable costs of the Lessor in furnishing any consent under clause 7.1.1;
- 7.1.6 To immediately notify the Lessor if at any stage the Lessee becomes aware that the Development or any other works within the Leasehold Area do not comply with the Plans that were applicable at the date that the Development was constructed or such works were performed (unless the Lessee was first notified by the Lessor);

7.1.7 At all times to maintain appropriate resources to ensure the proper exercise of all rights and the performance of all obligations in connection with this Lease including:

7.1.7.1 ensuring that all necessary competent and qualified persons are engaged to carry out any works, activities, or operations pursuant to this Lease;

7.1.7.2 using suitable machinery and equipment which is in good repair and condition and maintained to proper safety standards;

7.1.8 To comply in all respects with the provisions, as appropriate, of the Planning Acts, the Building Control Acts, the Construction Regulations, the Public Health Acts and Environmental Laws regarding any such works in a good and workmanlike manner to the satisfaction of the Lessor;

7.1.9 To obtain and comply with all grants of planning permission, fire safety certificates and Environmental Licences required for the construction and operation of the Development, at the cost of the Lessee;

7.1.10 Not to implement any grant of planning permission before it and all required fire safety certificates and Environmental Licences have been produced to and approved in writing by the Lessor **PROVIDED THAT** the Lessor may refuse to approve such grants of planning permission, fire safety certificates or Environmental Licences on the grounds that any condition contained in them or anything omitted from them or the period referred to in them, would in the opinion of the Lessor be or be likely to be, prejudicial to the Lessor's interest in the Leasehold Area;

7.1.11 To furnish to the Lessor a certified copy of every grant or refusal of planning permission, fire safety certificate and Environmental Licence required in relation to the Development and opinions of compliance or (as the case may be) exemption regarding the Planning Acts and Building Regulations in the form recommended or published from time to time by the Royal Institute of the Architects of Ireland or the Institute of Engineers in Ireland;

7.1.12 In the event of the Development or the construction thereof not conforming to the grants of planning permission, fire safety certificate or Environmental Licences procured in respect thereof, to carry out such alterations or amendments as shall be necessary to comply therewith. However, in the event of it becoming impossible to comply with the grants of planning permission, fire safety certificate, or Environmental Licences procured, to restore the Leasehold Area to its former condition to the satisfaction of the Lessor;

**PROVIDED ALWAYS** that the Plans may be amended from time to time either by agreement between the Lessor and the Lessee or alternatively, by notice in writing, from the Lessor to the Lessee, if the Lessor reasonably considers it necessary to do so for reasons of public safety and public interest, protection of the Environment or any such works present an obstruction to navigation or fishing, subject in all cases to whatever covenants, conditions and/or undertakings the Lessor may deem necessary to be given on the part of the Lessee.

## **7.2 Abatement**

To permit the Lessor at any time to enter into and remove from the Leasehold Area and abate all buildings, works or materials which may have become dilapidated or abandoned or which may have been constructed without the consent required under this Lease or which may in the opinion of the Lessor be

injurious to navigation, the Adjoining Property or the public interest and to restore the Leasehold Area to its former or proper condition and to erect or construct any building or works which in the opinion of the Lessor may be required for the purposes of navigation, the Adjoining Property or the public interest.

### **7.3 Adjoining Property**

To use so much of the Adjoining Property as is reasonably required by the Lessee from time to time to exercise his rights pursuant to Clause 7.1 provided the prior written consent of the Lessor is obtained by the Lessee.

### **7.4 Rent**

To pay the Initial Rent or revised rent reserved by this Lease in the manner specified in Clause 4.1 without any deduction, set-off or counterclaim whatsoever, whether demanded or not.

### **7.5 Outgoings**

7.5.1 To pay and indemnify the Lessor against all Outgoings.

7.5.2 To perform and observe all present and future regulations and requirements of each of the utility supply authorities in respect of the supply and consumption of Utilities in or on the Leasehold Area.

### **7.6 Utilities**

At the cost of the Lessee, to connect up the Leasehold Area to the Utilities and not to allow the disconnection of same by any act or omission and in the event of such disconnection, to immediately arrange for the reconnection of the Utilities to the Leasehold Area.

### **7.7 Repairs**

- 7.7.1 To repair the Leasehold Area (to include alterations thereto) and to keep same in a good and proper state of repair and condition, to the satisfaction of the Lessor, and to keep the Leasehold Area free from all defects to include but not limited to defects injurious to navigation, the Adjoining Property or the public interest, and as often as may be necessary, to rebuild, reinstate, renew or replace the Leasehold Area to include alterations thereto;
- 7.7.2 To maintain, repair and keep in good working order and condition, and as often as may be necessary, to renew and replace with articles of a similar kind and quality all Plant and Conduits (if any) in, upon, over or under the Leasehold Area and to repair any damage caused to the Leasehold Area by the breakdown, misuse of, or failure to repair such Plant and Conduits and to indemnify the Lessor against any loss or liability resulting therefrom.
- 7.7.3 In the event that the Lessor deems that this repair covenant has not been complied with and the Lessor executes the necessary repairs and works, to repay on demand the expenses of such repairs and works to the Lessor, and in default of such repayment, the said expenses shall be recoverable by the Lessor as a contract debt from the Lessee.

## **7.8 Licence Application**

At the cost of the Lessee, to obtain a licence pursuant to the Local Government (Water Pollution) Act, 1977 as amended by the Local Government (Water Pollution)(Amendment) Act, 1990, for the disposal of sewage and trade effluent and to comply with all conditions attaching to the said licence.

## **7.9 Cleaning and Maintenance**

- 7.9.1 To keep all parts of the Leasehold Area clean and tidy;

- 7.9.2 To keep those parts of the Leasehold Area which have not been built upon properly surfaced and free of weeds.

## **7.10 Yielding Up**

At the expiration or sooner determination of the Term, to quietly yield up the Leasehold Area having:-

- 7.10.1 complied with all the Lessee's covenants contained in the Lease;
- 7.10.2 if so required by the Lessor, but not otherwise, removed all alterations or additions made to the Leasehold Area by the Lessee, together with any Lessee's fixtures, fittings, furniture and effects and restored the Leasehold Area to its original prevailing condition;

## **7.11 Right of Entry**

To permit the Lessor and with all necessary materials and appliances at all reasonable times upon reasonable prior notice (except in cases of emergency where no notice shall be required) to enter and remain upon the Leasehold Area for any of the following purposes:-

- 7.11.1 to view and examine the state and condition of the Leasehold Area and to take schedules or inventories of the Lessor's fixtures and fittings;
- 7.11.2 to exercise any of the rights excepted and reserved by the Lease and to carry out any obligations arising thereunder;
- 7.11.3 to establish whether the covenants and conditions of the Lease have been complied with;

- 7.11.4 for any other purpose connected with the interest of the Lessor in the Leasehold Area and/or Adjoining Property, including but not limited to, valuing or disposing of the interest under the Lease.

## **7.12 Compliance with notices**

Upon written notice being given by the Lessor to the Lessee of any breach of covenant:-

- 7.12.1 to make good and remedy within thirty (30) days of such notice, or sooner if required in the notice, the breach to the reasonable satisfaction of the Lessor;
- 7.12.2 if the Lessee fails within thirty (30) days of such notice, or as soon as reasonably possible in the case of emergency, to commence and then diligently and expeditiously to continue and comply with such notice, to permit the Lessor to enter the Leasehold Area and carry out all or any of the works or other steps necessary for compliance with the notice and in default of payment of the cost of such works, same shall be recoverable by the Lessor as a contract debt from the Lessee.

## **7.13 Operation of Leasehold Area**

- 7.13.1 Not to engage in any activity in or on the Leasehold Area which may result in:-
  - 7.13.1.1 an increase in the risk of contamination, pollution, or overloading in, on or to the Leasehold Area, any part thereof, the Fishery Harbour Centre, Foreshore and/or waters thereof;
  - 7.13.1.2 damage and disturbance to the Environment, fisheries and all other maritime activities;

- 7.13.1.3 the creation of any loss, damage, injury, nuisance, inconvenience, annoyance, danger, disturbance or damage to the Lessor, affecting the enjoyment of the Adjoining Property or the value or character of the Leasehold Area;
  - 7.13.1.4 the obstruction of or interference with the rights of owners or occupiers of the Adjoining Property;
  - 7.13.1.5 the interference with or malfunctioning of any fire and safety equipment or appliances installed in the Leasehold Area;
  - 7.13.1.6 the Lessor incurring liability or expense under any statutory provision relating thereto;
  - 7.13.1.7 injury to or unreasonable interference with fishing, navigation, the Adjoining Property, approved scientific research or the public interest, save where the prior written consent of the Lessor has been obtained;
  - 7.13.1.8 waste at, spoiling of or destruction to the Leasehold Area.
- 7.13.2 The Lessee throughout the Term **HEREBY COVENANTS** with the Lessor:
- 7.13.2.1 not to erect, place or display on the exterior or on the windows of the Leasehold Area any sign or other item whatsoever without obtaining the prior written consent of the Lessor, which consent shall not be unreasonably refused.
  - 7.13.2.2 not to bring any article, machine, apparatus or thing onto the Leasehold Area which is offensive, unduly combustible or inflammable, radioactive or explosive or



which may unduly increase the risk of fire or explosion, save with the Lessor's prior written consent, which consent shall not be unreasonably refused.

- 7.13.2.3 not to allow to pass into the Conduits serving the Leasehold Area any noxious or deleterious effluent or other substance which will cause an obstruction or injure the said Conduits and in the event of such obstruction or injury, to make good as soon as practicable at the cost of the Lessee all damage to the satisfaction of the Lessor.

## **7.14 User**

- 7.14.1 Not without the prior written consent of the Lessor:

- (a) to use the Leasehold Area except for the Permitted User;
- (b) to apply for planning permission to carry out any development on, in, over, or under the Leasehold Area and in any event to supply the Lessor with a copy of the application for planning permission together with such plans or other documents as the Lessor may reasonably require, and
- (c) following the grant of change of user or planning permission, to commence construction works or other development on the Leasehold Area,

**PROVIDED ALWAYS** that it shall be reasonable for the Lessor to refuse his consent to the change of user or an application for planning permission on the grounds that the change of user or planning permission sought would not be in keeping with the overall development of the Fishery Harbour Centre.

- 7.14.2 Not to apply for a fire safety certificate, Environmental Licences or other relevant consents relating to the change of user or other development relating to the Leasehold Area without first giving notice in writing to the Lessor of the intention to make such applications.
- 7.14.3 To pay the reasonable costs of the Lessor in furnishing any consent under Clause 7.14.1;
- 7.14.4 Not to use the Leasehold Area for any public meeting, public exhibition or entertainment nor for any dangerous, noisy or noxious or offensive trade, business or occupation whatsoever or for any illegal or immoral purpose, nor permit any sale by auction nor for sleeping or residential purposes;
- 7.14.5 At all times, to comply with all requirements of the relevant local authority in connection with the user of the Leasehold Area.

## **7.15 Alterations**

- 7.15.1 Not, without the prior written consent of the Lessor, to erect any new building or structure or to engage in works on, or to make any addition or alteration to the Leasehold Area save for those works specified in the Plans (insofar as the Plans relate to the original Development) and agreed in writing between the Lessor and the Lessee **PROVIDED ALWAYS** that the Lessee shall be responsible for all reasonable costs properly incurred by the Lessor in giving such consent which sum shall be payable within fourteen (14) days of demand, by the Lessee to the Lessor;
- 7.15.2 The Lessee hereby agrees and acknowledges that the Lessor may as a condition of giving consent under Clause 7.15.1, require the Lessee to enter into covenants and/or undertakings concerning the carrying out and insurance of the additions and alterations to the Leasehold

Area and to enter into a formal Licence for Alterations relating to such additions or alterations, if requested by the Lessor;

- 7.15.3 Where the prior written consent of the Lessor has been granted for alterations to the Leasehold Area, not to carry out such alterations without the prior written approval by the Lessor of the Plans (insofar as the Plans relate to the alterations);
- 7.15.4. To ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place at all works and structures during construction of the said additions and alterations;
- 7.15.5 To comply in all respects with the provisions, as appropriate, of the Planning Acts, the Building Control Acts, the Construction Regulations and Environmental Laws and to carry out any additions and alterations in a good and workmanlike manner to the satisfaction of the Lessor;
- 7.15.6 To obtain and comply with all grants of planning permission, fire safety certificates and Environmental Licences required for the construction and operation of the additions and alterations, at the cost of the Lessee;
- 7.15.7 Not to implement any grant of planning permission before it and all required fire safety certificates and Environmental Licences have been produced to and approved in writing by the Lessor **PROVIDED THAT** the Lessor may refuse to approve such grants of planning permission, fire safety certificates or Environmental Licences on the grounds that any condition contained in them or anything omitted from them or the period referred to in them, would in the opinion of the Lessor be or be likely to be, prejudicial to the Lessor's interest in the Leasehold Area;

- 7.15.8 To furnish to the Lessor a certified copy of every grant or refusal of planning permission, fire safety certificate and Environmental Licence required in relation to any additions and alterations to the Leasehold Area and opinions of compliance or (as the case may be) exemption regarding the Planning Acts and Building Regulations in the form recommended or published from time to time by the Royal Institute of the Architects of Ireland or the Institute of Engineers of Ireland;
- 7.15.9 On notice in writing by the Lessor, forthwith to pull down and remove any building, erection, alteration or addition erected, placed or made in breach of the foregoing covenants and if any portion of the Leasehold Area has been altered, pulled down or removed in breach of the foregoing covenants upon such request in writing as herein provided, forthwith to amend, restore, replace or rebuild the Leasehold Area in accordance with the Plans applicable at that time.

## **7.16 Alienation**

- 7.16.1 Not under any circumstances to sublet the Leasehold Area in part or in whole.
- 7.16.2 Not under any circumstances to assign, part with or share the possession, use or occupation of or otherwise alienate part only of the Leasehold Area.
- 7.16.3 Not to assign, part with or share possession of or otherwise alienate the entirety of the Leasehold Area without the prior written consent of the Lessor.
- 7.16.4 Not to charge or mortgage the Leasehold Area without the prior written consent of the Lessor.

- 7.16.5 For the purposes of this clause, alienation includes any change in the Control of the Lessee (where the Lessee is a company).
- 7.16.6 The Lessee in seeking consent to any proposed alienation shall apply in writing to the Lessor and shall provide all information concerning the proposed alienation as the Lessor may require.
- 7.16.7 Without prejudice to any other grounds on which the Lessor may be entitled to withhold his consent, it shall be deemed a reasonable ground to withhold the Lessor's consent where:-
- 7.16.7.1 the Lessee is in breach of any of the Lessee's covenants and conditions contained in this Lease, or
  - 7.16.7.2 the proposed assignee or disponent intends to alter the Permitted User or any part thereof in a manner which would be prohibited under the provisions of clause 7.14, or
  - 7.16.7.3 the proposed assignee or disponent does not intend to occupy the Leasehold Area.
- 7.16.8 In considering whether or not to grant consent under Clause 7.16.3 and 7.16.4, the Lessor may:
- 7.16.8.1 take account of the creditworthiness, relevant experience and technical capabilities of the intended assignee and any other relevant matters, having regard to the rights and obligations of the Lessee under this Lease; and
  - 7.16.8.2 require the proposed assignee to enter into a supplemental indenture with the Lessor in a form acceptable to the Lessor; and

- 7.16.8.3 impose such conditions as are necessary in all the circumstances.
- 7.16.9 The Lessee shall pay the reasonable costs of the Lessor in connection with the furnishing of any consent under Clause 7.16.3 and 7.16.4.
- 7.16.10 Within twenty-one (21) days of every alienation, (including lodgement of the relevant document or instrument as security) of the Leasehold Area, to furnish to the Lessor's Solicitors, a certified copy of the document evidencing or effecting such alienation duly stamped and registered (if applicable), and to pay to the Lessor's Solicitors their reasonable costs in connection with same.

## **7.17 Lessor's Costs**

To pay and indemnify the Lessor against all reasonable costs and expenses properly incurred by the Lessor in relation to:

- 7.17.1 the preparation and service of any notice and of any proceedings under the 1860 Act or the 1881 Act;
- 7.17.2 the preparation and service of any notice and schedule relating to disrepair;
- 7.17.3 the recovery or attempted recovery of arrears of rent or other sums payable under this Lease;
- 7.17.4 procuring the remedying of any breach of covenant by the Lessee;
- 7.17.5 any application for consent required under the terms of this Lease

whether such consent is granted or is refused with reasonable cause;

7.17.6 the clearance or repair of the Utilities and Conduits in or serving the Leasehold Area where they have been blocked or damaged by any act, neglect, default or omission of the Lessee;

7.17.7 any other action taken at the request of or caused by the Lessee.

## **7.18 Statutory Requirements**

7.18.1 At the Lessee's own expense, to comply in all respects in relation to the Leasehold Area with:-

7.18.1.1 all obligations and requirements arising from or under the Law and/or Environmental Laws;

7.18.1.2 all orders, bye-laws and regulations made under the Fishery Harbour Centres Acts which relate to the Fishery Harbour Centre;

7.18.1.3 any reasonable demand by the Lessor for production of plans, documents and other evidence which the Lessor may require in order to satisfy himself that the provisions of this Lease have been or will be complied with.

7.18.2. Upon receipt of any notice or order relating to the Leasehold Area or the occupier thereof or of any proposal for the same served or given under the Planning Acts, the Building Control Acts, the Construction Regulations, Environmental Laws, Environmental Matters, the Public Health Acts or any statutory provisions forthwith:-

7.18.2.1 to furnish the Lessor with a true copy thereof and any further particulars required by the Lessor;

7.18.2.2 to take all necessary steps to comply with the notice or order, at the cost of the Lessee;

7.18.2.3 at the written request of the Lessor but at the cost of the Lessee, to make or join with the Lessor in making such objections or representations against or in respect of any such notice, order or proposal as the Lessor may reasonably require.

## **7.19 Encroachments and Easements**

7.19.1 Not to obstruct any rights of way to which the Leasehold Area is subject;

7.19.2 Not to permit any new easement, encroachment, or any other third party rights to be made or enjoyed over or in respect of the Leasehold Area or to acknowledge their existence or to grant any such rights;

7.19.3 As soon as the Lessee is aware of any attempt to claim or exercise such third party rights, forthwith to give written notice thereof to the Lessor and, at the request of the Lessor, to take such steps as may be required by the Lessor to prevent their acquisition or otherwise deal with them.

## **7.20 Indemnity**

To keep the Lessor, the State, and their officers, servants, visitors, agents and employees fully indemnified (as well as after the expiration of the Term by effluxion of time or otherwise as during its continuance) from and against all or any actions, proceedings, claims, demands, losses, costs, fees, expenses, damages, penalties and other liabilities arising directly or indirectly from:

7.20.1 breach by the Lessee of any of the provisions of this Lease;



- 7.20.2 the state of repair or condition of the Leasehold Area;
- 7.20.3 the existence of any additions, articles or alterations in, on or to the Leasehold Area or from the state of repair or condition of any such additions, articles or alterations;
- 7.20.4 the user or enjoyment of the Leasehold Area;
- 7.20.5 any work carried out or in the course of being carried out to the Leasehold Area by the Lessee, his servants, agents or any other person with its actual or implied authority or from anything now or hereafter attached to or projecting from the Leasehold Area;
- 7.20.6 any act, neglect or default of the Lessee or any person on the Leasehold Area with his actual or implied authority or consent;
- 7.20.7 the execution of any works or the provision or maintenance of any arrangements so directed or required by any Law;
- 7.20.8 any contravention of the Planning Acts, the Building Control Acts, Construction Regulations, Environmental Laws and/or the Public Health Acts and from any applications for planning permission, commencement notices, fire safety certificates, Environmental Licences and works and actions taken in pursuance thereof;
- 7.20.9 any contravention of the Local Government (Water Pollution) Act, 1977 as amended by the Local Government (Water Pollution)(Amendment) Act, 1990;
- 7.20.10 any other cause whatsoever arising out of the Development and/or Leasehold Area;

and to make good all loss sustained by the Lessor in consequence of any breach by the Lessee of any covenants or conditions herein.

## **7.21 Stamp Duty and Value Added Tax**

7.21.1 To stamp and register (if applicable) the Lease and counterpart thereof as soon as practicable after the execution thereof and to furnish in due course the counterpart duly stamped and registered together with a copy of the leasehold folio to the Chief State Solicitor's Office within six months of the date of execution of the Lease.

7.21.2 To pay any Value Added Tax arising from the grant of this Lease or termination or surrender of it or on the rents reserved by it or other payments becoming due hereunder (if any).

## **7.22 Insurance**

Without prejudice to the Lessee's liability to indemnify the Lessor (and others as specified in clause 7.20) in accordance with the provisions of Clause 7.20-

7.22.1 to insure and keep insured, in an insurance office licensed to operate in the State or which has received official authorisation to operate in the State in accordance with Article 6 of Directive 73/239/EEC in the joint names of the Lessor and the Lessee in the full reinstatement cost thereof (to be determined from time to time by the Lessor or his surveyor and including an inflationary factor) the Leasehold Area and all buildings thereon and the fixtures and fittings therein (if any) against loss or damage by the Insured Risks, including demolition and site clearance expenses, architects' and other fees and taxes in relation to the reinstatement of the Leasehold Area, such policy to include a non-invalidation clause acceptable to the Lessor.

- 7.22.2 to effect and keep in force a public liability insurance policy of indemnity in the joint names of the Lessor and Lessee in an insurance office licensed to operate in the State with a limit of €6,500,000.00 (six million, five hundred thousand euro) (or such increased amount as the Lessor may from time to time determine) in respect of any one claim for any damage, loss or injury which may occur to any property (not being the property of the Lessor or the Lessee) or to any person by or arising out of the admission of any person to the Leasehold Area, and to extend such policy so that the Lessor is indemnified by the insurers in the same manner as the Lessee.
- 7.22.3 to effect and keep in force an employer's liability insurance policy of indemnity in the joint names of the Lessor and Lessee in an insurance office licensed to operate in the State with a limit of €12,700,000.00 (twelve million, seven hundred thousand euro) for any one claim or series of claims arising out of a single occurrence and to extend such policy so that the Lessor is indemnified by the insurers in the same manner as the Lessee in respect of all actions, costs, proceedings, losses, damages, or claims for personal injuries by employees of the Lessee.
- 7.22.4 in the event that the Leasehold Area or the Development or any part thereof, shall be destroyed or damaged by fire or any of the Insured Risks, then and as often as shall happen, to lay out all monies received in respect of such insurance as aforesaid as soon as practicable in or upon rebuilding, repairing or reinstating the Leasehold Area in a good and substantial manner and in the event that such monies shall be insufficient for the said purpose, to make good the deficiency.
- 7.22.5 whenever required to do so by the Lessor, to produce to the Lessor for inspection the said policy or policies together with the latest receipt of the premium paid for renewal of the said policy or

policies together with evidence of waiver of subrogation rights against the Lessor by the Lessee's insurers, and to comply with all conditions pertaining to any such policy or policies.

7.22.6 such joint policy or policies to contain a non-vitiating clause whereby subject to the terms, conditions, limitations of the policy or policies, any non-disclosure, mistake or misrepresentation of a material fact by the Lessee gives sufficient reason for the insurer to prove the insurance policy to be void, the Lessor will not be denied the protection of the policy;

7.22.7 not to do or omit to do anything which might cause any policy of insurance relating to the Leasehold Area or any Adjoining Property owned by the Lessor to become void or voidable, wholly or in part, nor (unless the Lessee has previously notified the Lessor and the Lessee has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable.

7.22.8 to immediately notify the Lessor in writing of the making of any claim under any policy of insurance and to provide the Lessor with all information in relation to any such claim.

7.22.9 to ensure that any contractors engaged in connection with activities in the Leasehold Area or otherwise in connection with this Lease have appropriate insurance and that all copies of such insurance policies shall be provided to the Lessor as soon as is reasonably practicable.

## **7.23 Payment and Invoicing**

To make all payments by credit/debit card or electronic transfer, delivered on or before the due date for payment, to the Lessor's address for service pursuant to Clause 9.8.2 or such other address notified to the Lessee by the

Lessor in writing, such payments to be made in full, and without deduction or set-off.

## **7.24 Investigations, Inspections and Enquiries**

7.24.1 To use its best endeavours to co-operate fully and provide all reasonable assistance in relation to any investigation, inspection or enquiry conducted by the Lessor in connection with this Lease, such investigation to be at the discretion of the Lessor;

7.24.2 The Lessee acknowledges and agrees that, unless the contrary intention is expressed, any investigation, inspection or enquiry undertaken pursuant to this Lease:

7.24.2.1 is without prejudice to the Lessee's rights and obligations under this Lease or at Law and does not amount to a waiver of any such rights or relieve the Lessee from any such obligations; and

7.24.2.2 does not amount to an acknowledgement by the Lessor, or any officer, servant or agent of the Lessor, that the Lessee has complied with this Lease or Law in relation to any matters to which the investigation, inspection or enquiry relates.

## **7.25 Representation and Warranties**

7.25.1 If the Lessee is a company then the Lessee represents and warrants to the Lessor that:

7.25.1.1 the Lessee is duly incorporated and organised under the laws of its place of incorporation;

7.25.1.2 the Lessee has the corporate capacity and authorisation (internal and external) to enter into and perform the terms of the Lease;

7.25.1.3 the representative executing this Lease on behalf of the Lessee is duly authorised in that behalf.

7.25.2 This Lease expressly excludes any warranty, condition or other undertaking implied at Law or by custom and supersedes all previous agreements and understandings between the parties, other than as expressly provided for in this Lease.

## **7.26 Registration of Company (*if Lessee is a company*)**

To comply with all statutory requirements necessary to ensure that the Lessee remains on the Register of Companies and complies with the provisions of the Companies Act 2014 as amended.

## **7.27 Property Services Regulatory Authority**

7.27.1 To Lodge a return with the Property Services Regulatory Authority in the specified format set out under the Property Services (Regulation) Act 2011 within 30 days of the occurrence of any of the following incidents:

7.27.1.1 on receipt of the stamp duty certificate from the Revenue Commissioners or date of execution of the Lease; and

7.27.1.2 on the determination of each rent review specified under the Lease (if applicable) and

7.27.1.3 on the cessation of the Lessee's interest in the Lease.

**FIFTH SCHEDULE**  
**Covenants of the Lessor**

8. Subject to the Lessee paying the rents reserved by this Lease and performing and observing the covenants on the part of the Lessee herein contained, the Lessor **HEREBY COVENANTS** with the Lessee as follows:-

**8.1 Quiet Enjoyment**

To permit the Lessee, provided it pays the rent and other sums reserved by this Lease and complies with the provisions of this Lease, peaceably to hold and enjoy the Leasehold Area during the Term without any interruption by the Lessor or any person lawfully claiming through, under or in trust for the Lessor.

**8.2 Exercise of Rights**

In exercising any of the Lessor's rights of entry or other rights in relation to the Leasehold Area-

- 8.2.1 to take all reasonable steps to ensure that as little damage is done to the Leasehold Area and as little inconvenience is caused to its occupiers as is reasonably practicable;
- 8.2.2 to make good without delay any damage which may be caused by such exercise but not being responsible for any temporary inconvenience caused.

## **SIXTH SCHEDULE**

### **Provisos**

#### **9. PROVIDED ALWAYS** that it is hereby agreed and declared as follows:-

##### **9.1 Forfeiture**

Without prejudice to any other right, remedy or power herein contained or otherwise available to the Lessor (including clause 7.1.2) if:-

- 9.1.1 the whole or any part of the rent or other sums reserved by this Lease is unpaid for fourteen days after becoming payable (whether formally demanded or not) or;
- 9.1.2 there is a breach or non-observance of any of the Lessee's covenants, applicable Law and/or Environmental Laws; or
- 9.1.3 the Lessee (being a body corporate) has a winding-up petition presented against it or passes a winding up resolution (other than in connection with a member's voluntary winding up for the purposes of amalgamation or reconstruction which has the prior written approval of the Lessor) or resolves to present its own winding up petition or is wound up (whether in Ireland or elsewhere) or a receiver, manager or liquidator (provisional or otherwise) is appointed in respect of the Leasehold Area or any part of it or of the Lessee; or if the Lessee presents a petition for the appointment of an examiner or if the Lessee enters into a scheme of arrangement or composition with or for the benefit of creditors generally or suffers any distress, execution, sequestration, attachment or similar process to be levied on the Leasehold Area, or
- 9.1.4 the Lessee (being an individual or if more than one individual, then any one of them) commits an act of bankruptcy or has a bankruptcy summons or a bankruptcy petition presented against him or is adjudged



bankrupt (whether in Ireland or elsewhere) or suffers any distress, execution, sequestration, attachment or similar process to be levied on the Leasehold Area or enters into a scheme of arrangement or composition with or for the benefit of his creditors or has a receiving order made against him or makes an application to any court for an order under the Bankruptcy Act, 1988 or the Personal Insolvency Act, 2013 or;

9.1.5 the Lessee fails to complete development works to the Leasehold Area within 36 months of the Term Commencement Date;

9.1.6 the Lessee otherwise ceases to exist, or

9.1.7 in respect of the application for this Lease, material information has been wilfully withheld from the Lessor by the Lessee or material information provided to the Lessor by the Lessee is false or misleading in any material particular;

9.1.8 the Lessee, being a company, shall be struck off the register in the Companies Registration Office in the Republic of Ireland, or if the Lessee is incorporated outside the Republic of Ireland, struck off within the jurisdiction in which the Lessee was incorporated, or if the Lessee, being a Co-operative, Society or Union capable of registration on the Register of Friendly Societies and the Lessee shall cease to exist as a duly registered Co-operative, Society or Union;

9.1.9 any of the Representations and Warranties in respect of the Lessee are not true and correct in any material respect, or at any stage during the Term, any of the Representations and Warranties in respect of the Lessee cease to be true and correct in any material respect;

**THEN**, and in any such case, the Lessor may at any time thereafter or any person or persons authorised by the Lessor re-enter the Leasehold Area or any part of it in the name of the whole and thereupon the Term absolutely ceases

and determines without any liability on the part of the Lessor to compensate the Lessee for any monies expended by the Lessee concerning any works already carried out by the Lessee in the Leasehold Area whether in respect of labour costs, materials, professional fees, insurance or otherwise, howsoever incurred by the Lessee arising out of or incidental to the works already carried out by the Lessee, and also without prejudice to any rights or remedies which may then have accrued to the Lessor against the Lessee in respect of any antecedent breach of any of the covenants or conditions contained in this Lease. For the purposes of this provision, the Lessee acknowledges that the Lessor may take such reasonable steps as may be necessary to effect such re-entry so as to minimise such losses as may be incurred by the Lessor.

## **9.2 Public Service Re-Entry Clause**

If the Leasehold Area being the property of the State shall be required to be used for the public service, the Lessee shall when so required on receiving six calendar months prior written notice from the Lessor, yield up the Leasehold Area and shall pay all rent and Outgoings up to the date of surrender.

## **9.3 No Implied Easements**

Nothing in this Lease shall impliedly confer upon or grant to the Lessee any easement, right or privilege other than those expressly granted by it (if any).

## **9.4 Exclusion of Warranty**

Nothing contained in this Lease or in any consent granted or approval given by the Lessor under it implies or warrants that the Leasehold Area may be used under the Planning Acts for the purpose herein authorised or any purpose subsequently authorised and the Lessee hereby acknowledges that the Lessor has not given or made, at any time, any representation or warranty that any such use is or will be or will remain a permitted use under the Planning Acts.

## **9.5 Covenants relating to Adjoining Property**

Nothing contained in or implied by this Lease shall give to the Lessee the benefit of or the right to enforce or to prevent the release or modification of any covenant, agreement or condition, entered into by any lessee of the Lessor in respect of the Adjoining Property.

## **9.6 Effect of Waiver**

Each of the Lessee's covenants shall remain in full force both at law and in equity notwithstanding that the Lessor, his servants or agents may have appeared to have waived or released temporarily such covenant.

## **9.7 No Liability**

The Lessor shall not be responsible to the Lessee, its servants, agents, invitees or visitors for any injury, death, damage, destruction or financial or consequential loss whether to persons or property due to the state and condition of the Leasehold Area or any part thereof, or due to any act or default of any agent, servant, workman or other person authorised by the Lessor to enter on the Leasehold Area.

## **9.8 Notices**

9.8.1 Any demand or notice required to be made, given to, or served on the Lessee under this Lease is duly and validly made, given or served if addressed to the Lessee (or if the Lessee comprises more than one person, then to any of them) and delivered personally, or sent by prepaid registered, recorded delivery, or ordinary mail, or sent by telex or telegraphic facsimile transmission addressed (in the case of a company) to its registered office or (whether a company or individual) to its last known address, or to the Leasehold Area, and

the Lessee covenants to inform the Lessor of any change of its registered office or address within five days of such change.

9.8.2 Any notice required to be given or served on the Lessor is duly and validly given or served if sent by pre-paid registered or recorded delivery mail, addressed to the Lessor at the Legal Services Division, Department of Agriculture, Food and the Marine, Agriculture House, Kildare Street, Dublin 2 or such other address as may from time to time be notified to the Lessee.

9.8.3 Any such written notice shall be deemed to have been given when posted at the expiration of three working days after the envelope properly addressed and containing the notice, was put in the post.

## **9.9 Governing Law**

9.9.1 This Lease shall be governed and construed in accordance with the laws of Ireland.

9.9.2 The Lessor and the Lessee hereby submit irrevocably to the non-exclusive jurisdiction of the courts of Ireland.

## **9.10 Assent to Registration**

The Lessor hereby assents to the registration of this Lease as a burden on the parts of the property described in folio 36728F of the Register of Freeholders County Donegal demised by this Lease.

## SEVENTH SCHEDULE

### Rent Review

#### 10. Definitions

10.1 In this schedule, the following expressions shall have the following meanings:

(a) **“Open Market Rent”** means the yearly open market rent without any deductions whatsoever at which the Leasehold Area might reasonably be expected to be let as a whole on the open market with vacant possession at the Relevant Review Date by a willing lessor to a willing lessee (which expression “willing lessee” shall for the avoidance of doubt include the lessee) and without any premium or any other consideration for the grant of it for a term equal to the length of the Term remaining unexpired at the Relevant Review Date or a period of fifteen years from the Relevant Review Date whichever is the longer and otherwise on the same terms and conditions and subject to the same covenants and provisions contained in this Lease (other than the amount of the rent payable hereunder but including provisions for the review of rent in the same form as this Lease at similar intervals):

(i) assuming:

(A) that the Leasehold Area is at the Relevant Review Date fit, ready and available for immediate occupation by the willing lessee so that they are immediately capable of being used by the willing lessee for all purposes required by the willing lessee that would be permitted under this Lease, and in calculating the Open Market Rent it shall be assumed that the willing lessee has enjoyed whatever rent concessions are being offered in the open market for fitting out purposes and that all Utilities and other facilities necessary for such occupation are connected to and immediately available for use at the Leasehold Area;

- (B) that no work has been carried out to the Leasehold Area by the Lessee or its predecessors in title during the Term, which has diminished the rental value of the Leasehold Area;
  - (C) that if the Leasehold Area or any part it has been destroyed or damaged, it has been fully re-built and reinstated;
  - (D) that the Leasehold Area is in a good state of repair and decorative condition;
  - (E) that all the covenants on the part of the Lessor and the Lessee contained in this Lease have been fully performed and observed;
  - (F) that the Leasehold Area may be used for the Permitted User or any licence granted pursuant to it;
- (ii) but disregarding:
- (A) any effect on rent of the fact that the Lessee or its predecessors in title have been in occupation of the Leasehold Area or any part of it;
  - (B) any goodwill attaching to the Leasehold Area by reason of the business then carried on at the Leasehold Area by the Lessee or its predecessors in title;
  - (C) any effect on the rental value of the Leasehold Area attributable to the existence at the Relevant Review Date of any works executed by and at the expense of the Lessee (or any party lawfully occupying the Leasehold

Area under the Lessee) with the consent of all relevant persons where required in on or to the Leasehold Area ;

- (b) **“the President”** means the President for the time being of the Law Society of Ireland and includes any duly appointed deputy of the President or any person authorised by the President to make appointments on his behalf;
- (c) **“Rent Review Date(s)”** means \_\_\_\_\_ in the year \_\_\_\_\_ and in every fifth year thereafter during the Term and “Relevant Review Date” shall be construed accordingly;
- (d) **“Reviewed Rent”** means the rent agreed or determined in accordance with the provisions of this schedule.
- (e) **“Rent Restrictions”** mean restrictions imposed by any statute in force on a Rent Review Date or on the date on which any increased rent is ascertained in accordance with this schedule which operate to impose any limitation, whether in time or amount, on the collection, review or increase in the rent reserved by clause 4.1 of this Lease; and
- (f) **“the Surveyor”** means an independent chartered surveyor who is experienced in the valuation or leasing of property similar to the Leasehold Area and is acquainted with the market in the area in which the Leasehold Area is located, appointed from time to time to determine the Open Market Rent pursuant to the provisions of this schedule.

**10.2 IT IS HEREBY AGREED** between the Lessor and the Lessee as follows:-

**10.2.1 Agreement or determination of the Reviewed Rent**

The Open Market Rent at any Rent Review Date may be agreed in writing at any time between the Lessor and the Lessee but if, for any reason, they have not so

agreed by the Relevant Review Date then the Lessor may by notice in writing to the Lessee require the Open Market Rent to be determined by the Surveyor.

### **10.2.2 Appointment of Surveyor**

If the Lessor has required the Open Market Rent to be determined by the Surveyor, then in default of agreement between the Lessor and the Lessee on the appointment of the Surveyor, the Surveyor shall be appointed by the President on the written application of the Lessor to the President.

### **10.2.3 Functions of the Surveyor**

The Surveyor shall:

- (a) determine the Open Market Rent in accordance with the terms of this schedule;
- (b) at the option of the Lessor, act either as an arbitrator in accordance with the Arbitration Act 2010 or as an expert, such option to be exercised by the Lessor by giving written notice to the President at the time of the Lessor's written application to the President but if no written notice is given by the Lessor as aforesaid, then the Surveyor shall act as an arbitrator;
- (c) if acting as an expert invite the Lessor and the Lessee to submit to him, within such time limits (not being less than 15 working days) as he shall consider appropriate, a valuation accompanied if desired, by a statement of reasons and such representations as to the amount of the Open Market Rent with such supporting evidence as they may respectively wish;
- (d) be entitled to have access to the Leasehold Area for the purposes of inspecting and examining it as often as he may require; and



- (e) within sixty (60) days of his appointment, or within such extended period as the Lessor and the Lessee shall jointly agree in writing, give to each of them written notice of the amount of the Open Market Rent as determined by him.

#### **10.2.4 Fees of Surveyor**

The fees and expenses of the Surveyor (if acting as an expert) and the party responsible for paying him shall be determined by the Surveyor (but this shall not preclude the Surveyor from notifying both parties of his total fees and expenses notwithstanding the non-publication at that time of his decision) and failing such determination of the party responsible for paying him, such fees and expenses of the Surveyor together with the costs of his nomination shall be payable by the Lessor and the Lessee in equal shares who shall each bear their own costs, fees and expenses. Without prejudice to the foregoing, both the Lessor and the Lessee shall each be entitled to pay the entire fees and expenses due to the Surveyor and thereafter recover as a simple contract debt the amount (if any) due from the party who failed or refused to pay same.

#### **10.2.5 Appointment of new Surveyor**

If the Surveyor fails to give notice of his determination within the time aforesaid, or if he relinquishes his appointment, dies, is unwilling to act, or becomes incapable of acting, or if he is removed from office by court order, or if for any other reason he is unable or unsuited (whether because of bias or otherwise) to act, then either party may request the President to discharge the Surveyor (if necessary) and appoint another surveyor as substitute to act in the same capacity. The procedures set out in this schedule shall apply as though the substitution were an appointment de novo, and such procedures may be repeated as many times as necessary.

#### **10.2.6 Interim payments pending determination**

If by the Relevant Review Date the amount of the Reviewed Rent has not been agreed or determined as aforesaid (the date of agreement or determination being the “**Determination Date**”), then:

(a) in respect of the period (“**the Interim Period**”) beginning with the Relevant Review Date and ending on the day before the Half Yearly Gale Day following the Determination Date, the Lessee shall pay to the Lessor rent at the yearly rate payable immediately before the Relevant Review Date, and

(b) within seven days of the Determination Date:

(i) the Lessee shall pay to the Lessor on demand as arrears of rent the amount (if any) by which the rent reviewed in accordance with this schedule exceeds the rent actually paid during the Interim Period (apportioned on a daily basis) together with:

(A) interest on that amount at the base rate from the Relevant Review Date to the due date for payment of that amount and thereafter, and

(B) interest on that amount at the prescribed rate until the date of actual payment.

(ii) the Lessor shall refund to the Lessee on demand the amount (if any) by which the rent reviewed in accordance with this schedule is less than the rent actually paid during the Interim Period (apportioned on a daily basis) together with:

(A) interest on that amount at the base rate from the Relevant Review Date to the due date for payment of that amount, and

- (B) interest on that amount at the prescribed rate until the date of actual payment.

#### **10.2.7 Rent Restrictions**

On each and every occasion during the Term that Rent Restrictions shall be in force, then and in each and every case:

- (a) the operation of the provisions herein for review of the rent shall be postponed to take effect on the first date or dates thereafter upon which such operation may occur; and
- (b) the collection of any increase or increases in the rent shall be postponed to take effect on the first date or dates thereafter that such increase or increases may be collected and/or retained in whole or in part and on as many occasions as shall be required to ensure the collection of the whole increase;

**AND** until the Rent Restrictions shall be relaxed either partially or wholly the rent reserved by this Lease (which if previously reviewed shall be the rent payable under this Lease immediately prior to the imposition of the Rent Restrictions) shall (subject always to any provision to the contrary appearing in the Rent Restrictions) be the maximum rent from time to time payable hereunder.

#### **10.2.8 Memoranda of Reviewed Rent**

- (a) As soon as the amount of any Reviewed Rent has been agreed or determined a memorandum of such Reviewed Rent shall be prepared by the Lessor or his Solicitors and shall be signed by or on behalf of the Lessor and the Lessee.
- (b) The Lessee shall be responsible for and shall pay to the Lessor the stamp duty (if any) payable on such memoranda and any counterparts, but the

parties shall each bear their own costs in respect of the preparation and execution of such memoranda and any counterparts.

**10.2.9 Time not of the essence**

For the purpose of this schedule, time shall not be of the essence.

## **EIGHTH SCHEDULE**

### **Interpretation**

- 11.** The following shall apply to the construction of this Lease and the several schedules hereto:-
- 11.1 Where two or more persons are included in the expression "the Lessor" or "the Lessee", such expressions include all or either or any of such persons and the covenants which are expressed to be made by the Lessor, or the Lessee shall be deemed to be made by or with such persons jointly and severally.
- 11.2 Unless the context otherwise requires-
- 11.2.1 words importing a person include any firm, corporation sole, unincorporated association or corporate body and vice versa;
- 11.2.2 any reference to the masculine gender includes reference to the feminine and neuter gender and any reference to the neuter gender includes the masculine and feminine genders;
- 11.2.3 any reference to the singular includes reference to the plural.
- 11.3 Any covenant by the Lessee not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and any references to any act, neglect, default or omission of the Lessee shall be deemed to include any act, neglect, default or omission of the Lessee or the servants, agents, licensees or invitees of the Lessee or any person under its or their control.
- 11.4 References to any right of the Lessor to have access to or entry upon the Leasehold Area shall be construed as extending to all persons lawfully authorised by the Lessor including agents, nominees, officials, contractors, workmen, professional advisers, prospective purchasers of any interest of the Lessor in the Leasehold Area or in the Adjoining Property and others,

provided that such persons have given reasonable notice (except in the case of an emergency).

- 11.5 Any reference to a Law (whether specifically named or not) or to any sections or sub-sections in a Law includes any amendments or re-enactments thereof for the time being in force and all statutory instruments, orders, notices, regulations, directions, bye-laws, certificates, permissions and plans for the time being made, issued or given there-under or deriving validity therefrom.
- 11.6 Clause or schedule headings are inserted for convenience only and do not affect the construction or interpretation of this Lease.
- 11.7 Any reference to a clause, sub-clause or schedule means a clause, sub-clause or schedule of this Lease.
- 11.8 If any term or provision in this Lease is held to be illegal, invalid, or unenforceable in whole or in part, such term or provision shall be deemed not to form part of this Lease but the enforceability of the remainder of this Lease is not affected.
- 11.9 References to “month” or “months” mean a calendar month or months.

## **NINTH SCHEDULE**

### **Definitions Section**

**12.** In this Lease, unless the context otherwise requires:-

- 12.1 **“Adjoining Property”** means any Foreshore, land and/or buildings adjoining or neighbouring the Leasehold Area located within the Fishery Harbour Centre;
- 12.2 **“Building Control Acts”** means the Building Control Act, 1990 and the Building Control Act 2007;
- 12.3 **“Conduits”** means all sewers, drains, soakways, pipes, gullies, gutters, ducts, mains, watercourses, channels, subways, wires, cables, shafts, flues and other transmission or conducting media and installations (including all fixings, covers, cowls, louvres and other ancillary apparatus) of whatsoever nature or kind or any of them;
- 12.4 **“Construction Regulations”** means the Safety, Health and Welfare at Work (Construction) Regulations, 1995;
- 12.5 **“Control”** has the same meaning as in Section 432 of the Taxes Consolidation Act, 1997;
- 12.6 **“Development”** means any buildings, works or structures constructed within the Leasehold Area.
- 12.7 **“Environment”** includes any Foreshore, land (including without limitation soil, surface land and subsurface strata, sea bed or river bed and any natural or man made structures), any sea water, inland waters, surface waters, ground waters and water in pipes, drains or other conduits and air (including without limitation air within buildings and other natural or man made structures above or below ground);

- 12.8 **“Environmental Laws”** means all laws (whether criminal, civil or administrative) including common law, statutes, regulations, statutory instruments, directives, bye-laws, orders, codes and judgements having the force of law in Ireland concerning Environmental Matters and protection of the Environment including without limitation the Air Pollution Act, 1987, the Dangerous Substances Act, 1972, the Litter Act, 1982, the Waste Management Act, 1996, the Environmental Protection Agency Acts, 1992 to 2007, the Protection of the Environment Act, 2003 and all regulations, bye-laws, orders and codes made thereunder;
- 12.9 **“Environmental Licences”** means any permit, licence, approval, consent, registration or other authorisation required by or pursuant to any applicable Environmental Laws or relating to Environmental Matters;
- 12.10 **“Environmental Matters”** means any matter arising out of, relating to or resulting from pollution, contamination, protection of the Environment, human health or safety, health and safety of animal and plant life, sanitation and any matters relating to emissions, discharges, releases or threatened releases of hazardous materials into the Environment;
- 12.11 **“Euro”** means the single currency of participating member states of the European Union or equivalent replacement currency thereof;
- 12.12 **“Fishery Harbour Centre”** means Killybegs Fishery Harbour Centre;
- 12.13 **“Fishery Harbour Centre Acts”** means the Fishery Harbour Centres Act, 1968 as amended;
- 12.14 **“Fishery Harbour Centre Lease”** means a lease granted by the Lessor pursuant to section 5 of the Fishery Harbour Centres Act, 1968 as amended by section 6 of the Fisheries and Foreshore (Amendment) Act 1998;
- 12.15 **“Foreshore”** is defined in the same manner as in section 1 of the Foreshore Act;



12.16 “**Foreshore Act**” means the ‘Foreshore Acts 1933 – 2011’;

12.17 “**Half Yearly Gale Day**” means the \_\_\_\_\_ and \_\_\_\_\_ in every year of the Term;

12.18 “**Initial Rent**” means €6,240 (Six Thousand Two Hundred and Forty Euro) per annum;

12.19 “**Insured Risks**” means any or all of the following risks in respect of but not limited to the Leasehold Area:

fire (including subterranean fire), storm, tempest, flood, earthquake, lightning, explosion, impact, riot, civil commotion, aircraft, labour disturbance and malicious damage, bursting or overflowing of water tanks, apparatus or pipes, accidental loss or destruction and such other risks as the Lessor may in his absolute discretion from time to time determine;

12.20 “**Law**” means any Act of the Oireachtas, regulation, Statutory Instrument, European Community obligation, direction of a regulatory or other competent authority, condition of any consent, authorisation, lease or other permission granted by any regulatory or other competent authority and any decision of a Court of competent jurisdiction, but does not include this Lease;

12.21 “**Lease**” means this deed and any schedule to it, as may be amended by supplemental deed from time to time or which is entered into pursuant to or in accordance with the terms hereof;

12.22 “**Leasehold Area**” means that part of the Fishery Harbour Centre more particularly described in the First Schedule of this Lease shown outlined in red on drawing number 702/437 Rev A annexed hereto, together with the Development thereon;

12.23 “**Lessee**” means [ \_\_\_\_\_ ] having its registered office at [ \_\_\_\_\_ ] including its

successors and permitted assigns where the context so requires or admits and also includes the party for the time being entitled to the Lessee's interest created by this Lease;

12.24 **“Lessor”** means the Minister for Agriculture, Food and the Marine including his successors and assigns where the context so requires or admits and also includes the party for the time being entitled to the reversion immediately expectant on the determination of the Term;

12.25 **“Outgoings”** means all rates, taxes, duties, charges, assessments, impositions and costs (including emergency service charges) of any description including the cost of any work which the Lessor may have to do to facilitate the carrying out of the Development or any act or thing hereby authorised by this Lease (whether or not of a capital or non-recurring nature) which may at any time during the Term be payable in respect of the Leasehold Area and the Utilities enjoyed in connection therewith including any insurance excesses or other sums not recoverable by the Lessee (unless due to its own neglect or default);

12.26 **“Permitted User”** means use of the Leasehold Area for the purpose of Fishery and Marine related purposes/uses only (including light industrial usage) and all activities ancillary thereto;

12.27 **“Plans”** mean the plans and drawings in the custody of and approved in writing by the Lessor as may be amended from time to time pursuant to Clause 7.1. For the avoidance of doubt, the Plans shall also include the plans and drawings approved in writing by the Lessor in respect of any alterations, improvements or additions to the Leasehold Area;

12.28 **“Planning Acts”** means the Local Government (Planning and Development) Acts 1963 to 1999 and the Planning and Development Act 2000 to 2011, the Building Control Acts 1990 to 2014 and all regulations, orders or instruments made under those Acts and Building Bye Laws;

- 12.29 **“Plant”** means any lifts, lift machinery, central heating and air conditioning systems, sprinkler systems, boilers, and other electrical and mechanical machinery, equipment, and apparatus of whatsoever nature or kind and wherever installed in the Leasehold Area (if any) by the Lessee;
- 12.30 **“Public Health Acts”** means the Local Government (Sanitary Services) Act, 1878 to 2001;
- 12.31 **“Representations and Warranties”** mean the representations and warranties given by the Lessee to the Lessor pursuant to Clause 7.25;
- 12.32 **“Term”** means thirty five (35) years;
- 12.33 **“Term Commencement Date”** means the                      day of                      20                      ;
- 12.34 **“Utilities”** means water, soil, steam, air, gas, electricity, sewage disposal systems, radio, television, telegraphic, telephonic, electronic and other communications, and other services of whatsoever nature;
- 12.35 **“V.A.T.”** means value added tax as applied under the Value Added Tax Act 1972, as amended, or any similar tax substituted for it;
- 12.36 **“the 1860 Act”** and **“the 1881 Act”** mean respectively the Landlord and Tenant Law Amendment Act, Ireland, 1860 and the Conveyancing Act, 1881.

**IN WITNESS** whereof a person so authorised by the Lessor under section 15(1) of the Ministers and Secretaries Act, 1924 has hereunto subscribed his name and [the seal of the Lessee has been hereunto affixed /the Lessee has hereunto subscribed his name] the day and year first herein **WRITTEN**.

**PRESENT** when the Official  
Seal of **THE MINISTER FOR**  
**AGRICULTURE FOOD AND THE**  
**MARINE** was affixed hereto and  
was authenticated by the  
signature of:-

\_\_\_\_\_

)  
)  
)  
)  
)  
)  
)  
)

\_\_\_\_\_  
) A person authorised by Section 15(1) of  
) the Ministers and Secretaries Act, 1924  
) to authenticate the Seal of the said  
Minister.

**WITNESS NAME:** \_\_\_\_\_ )

)

**WITNESS  
SIGNATURE:** \_\_\_\_\_ )

**ADDRESS:** \_\_\_\_\_ )

\_\_\_\_\_ )

\_\_\_\_\_ )

)

**OCCUPATION:** \_\_\_\_\_ )

)

**[PRESENT]** when the **COMMON SEAL** )

of \_\_\_\_\_ was )

affixed hereto in accordance with its )

Memorandum and Articles of Association )

)

)

)

)

)

\_\_\_\_\_

\_\_\_\_\_

**Or**

**SIGNED and DELIVERED** by the **LESSEE** )

in the presence of: )

\_\_\_\_\_

)

Signature of Witness:

Name of Witness:

Address of Witness:

Occupation of Witness:]

**DATED THE                      DAY OF                      20**

**THE MINISTER FOR AGRICULTURE, FOOD AND THE MARINE**

One part

**-AND-**

Other part

**FISHERY HARBOUR CENTRE LEASE**

**PROPERTY: SITE 2, KILLYBEGS FISHERY HARBOUR CENTRE, COUNTY  
DONEGAL**

**Eileen Creedon  
Chief State Solicitor  
Osmond House  
Little Ship Street  
Dublin 8  
PG/2015/02464**