

LICENCE AGREEMENT made the 21<sup>st</sup> day of March 2014

**BETWEEN THE MINISTER FOR ENVIRONMENT, COMMUNITY AND LOCAL GOVERNMENT**, The Custom House in the City of Dublin (hereinafter called "the Minister" which expression shall include his Successors or Assigns where the context so requires or admits), of the One Part; and **BIOATLANTIS AQUAMARINE LIMITED** having its registered office at Kerry Technology Park, Tralee in the County of Kerry (hereinafter called "the Licensee") of the Other Part.

#### **INTRODUCTION**

- A. The Licensee has applied to the Minister for a Foreshore Licence to enter onto, use and occupy the Licensed Area for the provision of entering into and the mechanical harvesting of kelp species, *Laminaria digitata* and *Laminaria hyperborean* in County Cork (hereinafter referred to as "the Facilities") as referred to in Drawing Reference 1363-001 REV C.
- B. The Minister in exercise of the power conferred on him by section 3(1) of the Foreshore Act, 1933 as amended has agreed to grant a Foreshore Licence to the Licensee on the terms and conditions set out in this Deed.

#### **IT IS HEREBY AGREED AS FOLLOWS:**

##### **1 DEFINITIONS AND INTERPRETATION**

In this Licence the following words and expressions have the following meaning:

- (i) "Business Day" means a day that is not a Saturday, Sunday or a bank or public holiday in a place where an act is to be performed or a payment is to be made;

- (ii) "Change in Control" means any change in the control of the Licensee, occurring other than as a result of a transfer of a legal or beneficial ownership of any shares that are listed on a stock exchange;
- (iii) "Commencement Date" has the meaning in clause 4.1;
- (iv) "Control" has the same meaning as in Section 432 of the *Taxes Consolidation Act 1997*;
- (v) "Cure Notice" has the meaning set out in clause 11.1;
- (vi) "Dispute" means a difference or dispute of whatsoever nature arising between all or any of the parties under or in connection with this Licence;
- (vii) "Dispute Notice" has the meaning set out in clause 20.2;
- (viii) "Dispute Resolution Procedure" means the procedure outlined in clause 20;
- (ix) "Euro" means the single currency of participating member states of the European Union;
- (x) "Facilities" means the purpose of the development of entering onto and the mechanical harvesting of kelp species, *Laminaria digitata* and *Laminaria hyperborean* in County Cork;
- (xi) "Force Majeure" means an event or circumstance or a combination of events and/or circumstances not within the reasonable control of a party which has the effect of delaying or preventing that party from complying with its obligations under this Licence including:
  - (a) acts of terrorists or protestors;
  - (b) war declared or undeclared, blockade, revolution, riot, insurrection, civil commotion, invasion or armed conflict;
  - (c) sabotage, acts of vandalism, criminal damage or the threat of such acts;
  - (d) extreme weather or environmental conditions including lightning, fire, landslide, accumulation of snow or ice, meteorites or volcanic eruption or other natural disasters, measured by reference to local meteorological records published by Met Eireann over the previous ten years;

- (e) the occurrence of radioactive or chemical contamination or ionizing radiation, explosion including nuclear explosion, pressure waves caused by aircraft or other aerial devices travelling at supersonic speeds and impact by aircraft of other vehicles;
- (f) any strike or other industrial action which is part of a labour dispute of a national or industry wide character occurring in Ireland;
- (g) the act or omission of any contractor or supplier of a party, provided that the act or omission was due to an event which would have been an event of Force Majeure had the contractor or supplier been a party to this Licence;
- (h) the unavailability of essential infrastructure or services required to comply with obligations pursuant to this Licence, other than due to an act or omission of all or any of the Licensees;
- (i) mechanical or electrical breakdown or failure of machinery, plant or other Facilities owned, installed or utilized by any party, which breakdown or failure was outside the control of the party acting in accordance with the Law;

provided that Force Majeure shall not include:

- (a) lack of funds and/or the inability of a party to pay;
  - (b) mechanical or electrical breakdown or failure of machinery, plant or other Facilities owned, installed or utilized by any party other than as a result of the circumstances identified in clauses 1(xii)(a) to 1(xii)(i), above; or
  - (c) any strike or industrial action not falling within clause 1(xii)(f) above;
- (xii) "Foreshore" has the same meaning as in section 1 of the Foreshore Act;
  - (xiii) "Foreshore Act" means the Foreshore Act 1933 as amended;
  - (xiv) "Foreshore Licence" means a licence granted by the Minister pursuant to section 3(1) of the Foreshore Act;
  - (xv) "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, authorization, licence 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 Licence;

(xvi) "Licensee" means the party or parties named as the Licensee at the commencement of this Licence ;

(xvii) "License Rent" means €10,500 (Ten Thousand Five Hundred Euro) pursuant to Clause 5 and as set out in the Third Schedule;

(xix) "Licensed Area" means that part of the Foreshore more accurately described in the First Schedule

"Outgoings" means all rates taxes and charges (including emergency service charges) of any description (whether or not of a capital or non-recurring nature) which may at any time during the Term be payable in respect of the Licensed Area and the Utilities enjoyed in connection therewith including any insurance excesses or other sums not recoverable by the Licensee (unless due to its own neglect or default);

(xx) "Representations and Warranties" means the representations and warranties given by the Licensee to the Minister pursuant to clause 15.1;

(xxi) "Specific Conditions" means the specifications set out in Schedule 2, as may be amended from time to time pursuant to clause 8.2;

(xxii) "Term" has the meaning set out in clause 4;

(xxiii) "Utilities" means water soil steam air gas electricity radio television telegraphic telephonic electronic and other communications, and other services of whatsoever nature.

## **2 INTERPRETATION**

2.1 Where two or more persons are included in the expression "the Minister" or "the Licensee" , such expressions include all or either or any of such persons and the covenants which are expressed to be made by the Minister, or the Licensee shall be deemed to be made by or with such persons jointly and severally.

2.2 Unless the context otherwise requires:

2.2.1 words importing a person include any unincorporated association or corporate body and vice versa;

2.2.2 any reference to the masculine gender includes reference to the feminine gender and any reference to the neuter gender includes the masculine and feminine genders;

2.2.3 any reference to the singular includes reference to the plural.

2.3 Any covenant in the Licence by the Licensee not to do any act or thing includes an obligation not to permit or suffer such act or thing to be done and to use best endeavours to prevent such act or thing being done by another person.

- 2.4 References to any right of the Licensee to have access to or entry upon the Licensed Area shall be construed as extending to all persons lawfully authorised by the Minister including agents, professional advisers, prospective purchasers of any interest of the Minister in the Licensed Area or in the Adjoining Property, contractors, workmen and others provided that such persons have given reasonable notice (except in the case of an emergency) and have sufficient reason to require access.
- 2.5 Any reference to a statute (whether specifically named or not) or to any sections or sub-sections therein 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 there from.
- 2.6 Headings are inserted for convenience only and do not affect the construction or interpretation of this Licence.
- 2.7 Any reference to a clause, sub-clause or schedule means a clause, sub-clause or schedule of this Licence.
- 2.8 If any term or provision in this Licence is held to be illegal or unenforceable in whole or in part, such term shall be deemed not to form part of this Licence but the enforceability of the remainder of this Licence is not affected.
- 2.9 References in this Licence to any rights granted to the Licensee shall be construed as being granted to the Licensee and all persons authorised by the Licensee to exercise such rights.
- 2.10 Rights excepted to the Minister or reserved to any indemnities to the Minister are to benefit also any other Minister and if necessary and appropriate the occupiers of the remainder of the Licensed Area, any occupier or adjoining or neighbouring property and any other person authorised by the Minister or having similar rights.
- 2.11 Where under the terms of this Licence the consent or approval of the Minister is required for any matter or thing then the reference thereto shall be deemed to include the consent or approval of any other Minister where such consent or approval is required and in each case the consent or approval of the Minister shall not be unreasonably withheld or delayed and the Minister shall use all reasonable endeavours to ensure that the consent or approval of any other Minister is not unreasonably withheld or delayed.
- 2.12 Any right or privilege conferred on the Minister under this Licence shall be deemed to be exercisable by the Minister during the Term.
- 2.13 References to "month" or "months" mean a calendar month or months.
- 2.14 The Term shall extend to and include the term set out herein and if properly determined prior to the expiry of the Term, the Term shall mean the Term up to the date of such determination and expression such as the last year of the Term shall be construed accordingly.

### **3 GRANT OF LICENCE**

**3.1** The Minister in exercise of the powers vested in him by section 3(1) of the Foreshore Act 1933, hereby grants to the Licensee(s) a licence to enter onto, use and occupy the Licensed Area, on the terms and conditions set out in this Licence, for the purposes of:

- (1) Permitting, using and maintaining the Facilities;
- (2) The mechanical harvesting of kelp species, *Laminaria digitata* and *Laminaria hyperborean*
- (3) carrying out works which are necessary or incidental to the activities described in clauses (1) and (2).

**3.2** Unless otherwise permitted by Law and with the written consent of the Minister, the Licensee(s) shall not use the Licensed Area for any other purposes other than the purposes described in clause 3.1.

**3.3** For the avoidance of all doubt, this Licence does not include the right to get and take any minerals within the meaning of section 2(7) of the Foreshore Act.

### **4 TERM**

**4.1** This Licence shall commence on 1<sup>st</sup> January 2014

**4.2** Subject to clause 12, this Licence shall remain in force for a period of 10 years from the Commencement Date.

### **5 LICENCE RENT**

**5.1** In consideration of the grant of this Licence, the Licensee(s) shall pay to the Minister the licence rent in the sum of [REDACTED] during the

first five years of said term and thereafter during each of the successive periods of five years of which the first shall begin on the 1<sup>st</sup> January 2019 equal to:

- (i) The rent payable hereunder during the preceding period; or-
- (ii) Such revised rent as may from time to time be ascertained in accordance with the provision in that behalf contained in the Third Schedule.

## **6 COMMENCEMENT OF OPERATIONS**

- 6.1 The Licensee(s) shall not commence any works associated with the construction or installation of Facilities in the Licensed Area, without the prior written consent of the Minister.
- 6.2 The Minister is not obliged to grant consent pursuant to clause 6.1 unless and until the Licensee(s) have obtained and provided to the Minister in respect of the relevant works, activities or operations copies of all the necessary consents, permissions, permits, licenses and authorizations.

## **7 COMPLIANCE WITH APPLICABLE LAWS**

- 7.1 The Licensee(s) shall at all times comply with all applicable Laws.
- 7.2 Without prejudice to the generality of clause 7.1, the Licensee(s) shall at all times hold all necessary licenses, consents, permissions or authorisations associated with any activities of the Licensee(s) in connection with the Licensed Area.

## **8 SPECIFIC CONDITIONS**

- 8.1 Unless the prior written approval of the Minister is obtained, which approval may be granted subject to conditions, the Licensee(s) shall ensure that:

- (1) all Facilities are constructed and/or installed in accordance with the Specific Conditions and such Facilities at all times comply with the Specific Conditions which are applicable at the date that such Facilities were constructed and /or installed; and
- (2) no development, work, construction or installation is undertaken in the Licensed Area that does not comply with the Specific Conditions.

**8.2** The Specific Conditions may be amended from time to time:

8.2.1 by agreement between the parties;

8.2.2 by the Minister by notice in writing to the Licensee(s) if the Minister reasonably considers it necessary to do so for reasons of public safety or protection of the environment.

**8.3** If at any stage the Licensee(s) become aware that any Facilities or works do not comply with the Specific Conditions that were applicable at the date that such Facilities were constructed and/or installed or such works were performed (whether as a result of notification by the Minister or other competent authority or otherwise), the Licensee(s) shall immediately:

- (1) notify the Minister, unless the Licensee(s) were notified by the Minister;
- (2) unless the Minister otherwise agrees in writing, take all reasonable steps to ensure that:
  - (a) such Facilities or works comply with the Specific Conditions that were applicable at the date that such Facilities were constructed and/or installed or such works were performed, as the case may be; and



- (b) any adverse consequence arising out of the fact that Facilities were not constructed and/or installed in accordance with the Specific Conditions or works were not performed in accordance with the Specific Conditions, as the case may be, are rectified to the satisfaction of the Minister as soon as is reasonably practicable.

## **9 OPERATIONS IN CONNECTION WITH THIS LICENCE**

- 9.1 The Licensee may, from time to time, with the prior consent of the Minister occupy and use such area adjacent to the Licensed Area as is reasonably required by the Licensee(s) to exercise their rights pursuant to clause 3.1.
- 9.2 Without prejudice to any other rights and obligations under this Licence or at Law, in exercising any of the rights or performing any obligations in connection with this Licence, the Licensees shall:
  - (1) comply with the Specific Conditions described in the Second Schedule at all times;
  - (2) ensure that all Facilities or other works or structures in the Licensed Area are at all times maintained in a good and proper state of repair and condition, to the satisfaction of the Minister, which ensures that they do not constitute a public health hazard or danger to persons, animals, marine life or the environment; not be injurious to navigation, the adjacent lands or the public interest;
  - (3) not Encumber this Licence or any Facility without the written consent of the Minister such consent not to be unreasonably withheld or delayed ;

- (4) at all times maintain appropriate resources to ensure the proper exercise of all rights and the performance of all obligations in connection with this Licence including:
- (a) ensuring that all necessary competent persons are engaged to carry out any works activities, or operations pursuant to this Licence;
  - (b) using suitable machinery and equipment which is in good repair and condition and maintained to proper safety standards;
- (5) use all reasonable endeavours to minimize damage and disturbance to the sea bed, fisheries and all other maritime activities and restore any damage which does occur to the satisfaction of the Minister;
- (6) not commit or suffer any waste, spoil or destruction on the Foreshore, other than waste, spoil or destruction:
- (a) which is reasonably necessary as a consequence of the exercise of rights and performance of obligations pursuant to this Licence; and
  - (b) in respect of which the Licensee(s) hold all necessary consents, licenses or permissions required by Law;
- (7) carry out an analysis and monitoring of the Licensed Area and the waters within the immediate vicinity and to pay to the Minister all expenses incurred by the Minister or a person duly authorised by him, to carry out such analysis and monitoring;
- (8) unless otherwise permitted by Law, not undertake any works, activities or operations, other than navigation, outside the Licensed Area without the prior written consent of the Minister and, where appropriate, any occupiers of such sea bed;

(9) not, without the prior written consent of the Minister, carry out any works, activities or operations which, in the reasonable opinion of the Minister, are injurious to or interfere unreasonably with fishing, navigation, adjacent lands, approved scientific research or the public interest;

(10) ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place at all works and structures during construction and, where necessary, for the duration of this Licence;

(11) permit the Minister and any person(s) duly authorised by him at any time to remove from the Licensed 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 Licence or which may in the opinion of the Minister be injurious to navigation, the adjacent land or the public interest and to restore the Licensed Area to its former or proper condition and to erect or construct any building or works which in the opinion of the Minister may be required for the purposes of navigation, the adjacent land or the public interest. The Licensee shall compensate the Minister for all costs associated with the aforesaid removal or abatement.

9.3 Without prejudice to any other remedy under this Licence or at Law, if the Minister is of the view that the Licensee(s) are in breach of any obligation pursuant to clause 9.2, the Minister may, by notice in writing, require that the Licensee(s) rectify such breach, within such reasonable time period as is specified by the Minister.

9.4 The Licensee(s) shall comply with any direction of the Minister under clause 9.4 within the time specified in the notice.

## **10 INVESTIGATIONS, INSPECTIONS AND ENQUIRIES**

- 10.1** The Minister may conduct or cause to be conducted such investigations, inspections and enquiries in connection with this Licence as he sees fit.
- 10.2** The Licensee(s) shall use all reasonable endeavours to co-operate fully and provide all reasonable assistance in relation to any investigation, inspection or enquiry conducted pursuant to clause 10.1.
- 10.3** The Licensee(s) acknowledge and agree that, unless the contrary intention is expressed, any investigation, inspection or enquiry undertaken pursuant to this Licence:
- (1) is without prejudice to the Licensee(s) rights and obligations under this Licence or at Law and does not amount to a waiver of any such rights or relieve the Licensee(s) from any such obligations; and
  - (2) does not amount to an acknowledgement by the Minister, or any officer, servant or agent of the Minister, that the Licensee(s) has (have) complied with this Licence or Law in relation to any matters to which the investigation, inspection or enquiry relates.

## **11 STEP IN RIGHTS**

- 11.1** If at any time any obligation of the Licensee(s) under this Licence is not performed, the Minister may give written notice to the Licensee(s) ("Cure Notice") describing the obligation which is not performed and requiring such failure to be remedied within the period specified in the Cure Notice (which period must be reasonable having regard to the nature of the obligation which was not performed).
- 11.2** If the failure to perform the obligation referred to in the Cure Notice is not remedied within the period specified in such Cure Notice, the Minister shall be entitled to

engage any personnel, execute any works and to provide and install any equipment which in the opinion of the Minister may be necessary to secure the performance of the relevant obligations.

11.3 The Minister may recover the costs and expenses of exercising all rights under clause 11.2 from the Licensee(s) as a civil debt in any court of competent jurisdiction.

11.4 The rights under this clause 11 are without prejudice to any other remedies available to the Minister under this Licence or at law.

## 12 TERMINATION

12.1 The Minister may, without prejudice to any other remedies available under this Licence or at Law, terminate this Licence, by notice in writing to the Licensee upon the occurrence of the following events without payment of any compensation or refund by the Minister to the Licensee and without prejudice to any claim by the Minister in respect of any antecedent breach of any covenant or condition herein contained or without prejudice to any obligation or liability on the part of the Licensee arising under any applicable Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence):

- (i) Where, in respect of the application for this Licence, information has been wilfully withheld from the Minister by the Licensee or information provided to the Minister by the Licensee is false or misleading in any material particular;
- (ii) if any moneys payable by the Licensee under this Licence are not paid by the due date for payment and such failure is not remedied within 21 days after receipt by the Licensee of a notice from the Licensee requiring such breach or non-observance or non performance to be remedied and stating that this

Licence may be terminated pursuant to clause 12.1(ii) if such breach or non-observance or non-performance is not remedied;

- (iii) any breach, non- performance, or non-observance by the Licensee of any covenant on the Licensee's part, condition or agreement contained in this Licence or applicable law, which is capable of being remedied and which is not remedied within 21 days after receipt by the Licensee of a notice from the Minister requiring such breach or non-performance or non-observance to be remedied and stating that this Licence may be terminated pursuant to clause 12.1(iii) if such breach or non-performance or non-observance is not remedied;
- (iv) any breach or non-observance or non-performance by the Licensee of any covenant on the Licensee's part, condition or agreement contained in this Licence or applicable law, which is not capable of being remedied;
- (v) repeated breach or non-observance or non-performance by the Licensee of any provision of this Licence or applicable Law which has been notified to the Licensee by the Minister and which has not been disputed in good faith, whether or not they are remedied, which are reasonably determined by the Minister to constitute a breach and which continue after receipt of by the Licensee of a notice from the Minister stating that the Licence may be terminated if such breaches or non-observances or non-performances continue
- (vi) in the event that the Licensee fails to carry out execute and complete the development in accordance with the plans and specifications approved by the Minister to the satisfaction of the Minister within five years of the date specified in the planning permission issued by An Bord Pleanála or such longer period as maybe granted by An Bord Pleanála;

(vii) the Minister is of the view that the capability of the Licensee to discharge fully its obligations under this Licence is materially impaired, including by reason of:

- (a) the occurrence of the Insolvency/Liquidation (other than a voluntary liquidation for the purposes of reconstruction or amalgamation) of the Licensee; or
- (b) any other adverse change in the managerial, technical or financial competence of the Licensee;

**12.2** Without prejudice to Clause 12.1, this Licence may be determined at any time by the Minister giving three months notice in writing, expiring on any day, to the Licensee, and upon the termination of such notice the Licence and permission hereby granted shall be deemed to be revoked and withdrawn without payment of any compensation or refund by the Minister to the Licensee and without prejudice to any claim by the Minister in respect of any antecedent breach of any covenant or condition herein contained or without prejudice to any obligation or liability on the part of the Licensee arising under any applicable Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry of this Licence).

### **13 RIGHTS AND OBLIGATIONS ON TERMINATION OR EXPIRY**

**13.1** On the termination or expiry of this Licence:

- (1) All rights and powers exercisable by the Licensee pursuant to this Licence shall cease and determine, but without prejudice to any obligation or liability arising under any applicable Law or pursuant to this Licence (including any accrued rights or obligations which exist at the date of termination or expiry

of this Licence) or without prejudice to any claim by the Minister in respect of any antecedent breach of any covenant or condition herein contained.

- (2) All Facilities belonging to the Licensee shall be removed by the Licensee on the termination or expiry of this Licence at its own expense to the satisfaction of the Minister and the Licensee shall make good any damage caused by such removal and shall restore Licensed Area to its former condition.

In the event that the Facilities shall not be removed in agreement with the Minister on the termination or expiry of this Licence the Licensee shall pay to the Minister all reasonable costs, expenses and outgoings incurred in so removing the Facilities and making good any damage thereby occasioned.

- (3) Any moneys paid to the Minister under the terms of this Licence shall not be repaid.

#### **14 PAYMENT AND INVOICING**

##### **14.1 All payments by the Licensee in connection with this Licence:**

- (1) shall be made by cheque, bank draft, electronic funds transfer or money order, delivered on or before the due date for payment, to the Minister's address for service pursuant to clause 25 or such other address notified to the Licensee by the Minister in writing and;
- (2) shall be paid in full, without deduction or set off in respect of any amounts in dispute or any other amounts whatsoever.

##### **14.2 If any amount which is payable under this Licence has not been paid on or before the date that payment is due:**



- (1) the party to whom payment is due may institute proceedings for recovery from the other party; and
- (2) in addition to any other remedies under this Licence, the party to whom payment is due is to be paid interest on the outstanding amount at Euribor + 1%, such interest to be calculated from the date that payment was due until the date of actual repayment.

**15 REPRESENTATION AND WARRANTIES (IF LICENSEE IS A COMPANY)**

**15.1 The Licensee(s) represent(s) and warrant(s) to the Minister that:**

- (1) The Licensee is duly incorporated and organised under the laws of its place of incorporation;
- (2) The Licensee has the corporate capacity and authorisation (internal and external) to enter into and perform the terms of the Licence;
- (3) The representative signing this Licence on behalf of the Licensee is duly authorised in that behalf.

**15.2 This Licence 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 Licence.**

**16 ASSIGNMENT AND CHANGE OF CONTROL**

**16.1 Not during the said term to assign or make the subject-matter of any sub-grant or part with the possession of the Licensed Area or any part thereof or do or suffer any act matter or thing whereby the Licensed Area or any part thereof shall or may be assigned or made the subject-matter of any sub-grant or otherwise disposed of or the possession thereof parted with to any person or persons for the whole or any part of the term hereby licensed without the consent in writing of the Minister being first had**

and obtained in accordance with such conditions(including the payment of additional rent) as the Minister may impose such consent not to be unreasonably withheld.

## **17 INDEMNITIES**

**17.1** The Licensee hereby indemnifies (as well as after the expiration of the Term by effluxion of time or otherwise as during its continuance) and agree to keep indemnified and hold harmless the State, the Minister and his/her officers, servants, agents and employees, against all or any actions, expenses, costs, claims, demands, damages and other liabilities whatsoever in respect of:

- (i) the grant of this Licence;
- (ii) the performance of works in the Licensed Area by the Licensee or their servants, agents, employees or contractors; or
- (iii) the injury, sickness or death of any person (including the Minister's servants, agents and employees and any other occupants of the Licensed Area or any adjoining property); or
- (iv) all damage to or loss to or of any property or business arising out of or in any way connected with the existence of the Facilities on the Licensed Area and Licensee's use of the Facilities or the exercise of any of its rights herein contained; or
- (v) as a result of any breach by the Licensee of the terms of this Licence; and
- (vi) any acts or omissions or negligence of the Licensee, its servants, agents, Licensees, invitees, or any persons in or about the Licensed Area expressly or impliedly with the Licensee's authority; and

(vii) in particular but without prejudice to the generality of the foregoing arising directly or indirectly out of:

- (a) the constructions and/or installation of the Facilities on the Licensed Area;
- (b) the state of repair and condition of the Facilities;
- (c) the use of the Facilities;
- (d) any other cause whatsoever arising out of the Facilities,

save to the extent that such actions, loss, claims, damages, expenses and demands are directly attributable to the negligence of the Minister and/or his officers, agents or employees.

**18 JOINT AND SEVERAL LIABILITY (IF MORE THAN ONE LICENSEE)**

**18.1** Save where otherwise specified, any obligations of the Licensee(s) under this Licence are joint and several obligations.

**19 FORCE MAJEURE**

**19.1** Except as otherwise provided by this Licence, where any party or parties are rendered wholly or partially incapable of performing all or any of their obligations under this Licence by reason of Force Majeure:

- (1) as soon as is reasonably practicable, the party affected by Force Majeure shall notify the other parties, identifying the nature of the event, its expected duration and the particular obligations affected and shall furnish reports at such intervals reasonably requested by the other parties during the period of Force Majeure;

- (2) this Licence shall remain in effect but that party's obligations, except for an obligation to make payment of money, and the corresponding obligations of the other party, shall be suspended, provided that the suspension shall be of no greater scope and no longer duration that is required by the Force Majeure;
- (3) subject to full compliance with this clause 19.1, during suspension of any obligation pursuant to clause 19.1(2), the relevant party or parties shall not be treated as being in breach of that obligation;
- (4) the party affected by the Force Majeure shall use all reasonable efforts to remedy its inability to perform all or any of its obligations under this Licence by reason of Force Majeure and to resume full performance of its obligations under this Licence as soon as is reasonably practicable;
- (5) as soon as is reasonably practicable after notification of the Force Majeure, each party shall use all reasonable endeavours to consult with the other parties as to how best to give effect to their obligations under this Licence so far as is reasonably practicable during the period of the Force Majeure;
- (6) upon cessation of a party's inability to perform all or any of its obligations under this Licence by reason of Force Majeure, that party shall notify the other parties; and
- (7) insofar as is possible, any party affected by an event of Force Majeure shall do all things reasonably practicable to mitigate the consequences of the Force Majeure.

19.2 Clause 19.1(4) shall not require the settlement of any strike, walkout, lock-out or other labour dispute on terms which, in the sole judgement of the party involved in the dispute, are contrary to its interests.

**20 DISPUTE RESOLUTION**

**20.1** Subject to clause 20.10, no party may commence proceedings in relation to any Dispute in connection with this Licence without first complying with the provisions of clause 20.

**20.2** Any party may notify another party or parties of the occurrence or discovery of any item or event which the notifying party acting in good faith considers to be a Dispute under or in connection with this Licence ("Dispute Notice").

**20.3** A Dispute Notice shall:

- (1) set out the particulars of the issues in dispute in sufficient detail and be accompanied by sufficient supporting documentation (if relevant) to enable the recipient or recipients of the notice to fully understand the Dispute; and
- (2) identify an individual to represent that party in discussions in relation to the Dispute, such individual to have:
  - (a) expertise or experience in the subject matter of the Dispute; and
  - (b) authority to negotiate in relation to the Dispute.

**20.4** Any recipient of a Dispute Notice shall, within 10 Business Days after the date of the Dispute Notice:

- (1) appoint an individual to represent that recipient in discussions in relation to the Dispute, such individual to have:
  - (a) expertise or experience in the subject matter of the Dispute; and
  - (b) authority to negotiate in relation to the Dispute; and
- (2) notify the details of that individual to the sender of the Dispute Notice

- 20.5 The nominated representatives shall meet as soon as practicable, but in any event not more than 20 Business Days after the date of the Dispute Notice, to attempt in good faith using all reasonable endeavours to resolve the Dispute satisfactorily.
- 20.6 If a Dispute is not resolved to any party's satisfaction by the nominated representatives under clause 20.5 within 30 Business Days after the date of the Dispute Notice, the Dispute may, by notice in writing by any party to each other party to the Dispute, be referred to Arbitration for determination by a single arbitrator appointed by agreement between the parties.
- 20.7 Failing agreement on the appointment of an arbitrator within the time frame set out in clause 20.6, the arbitrator shall be appointed at the request of any party, after giving notice in writing to all other parties to the Dispute, by the President for the time being of the Law Society of Ireland.
- 20.8 The provisions of the Arbitration Acts 1954 to 2010 and any amendments thereto shall apply to the Arbitration.
- 20.9 Performance of obligations under this Licence shall continue during any Dispute Resolution Procedure pursuant to this clause 20.
- 20.10 Nothing in this clause 20 prevents any party from seeking urgent declaratory injunctive or other interlocutory relief.

## **21 COMPLIANCE WITH PLANNING**

- 21.1 The Licensee shall obtain all Planning Permissions and Fire Safety Certificates required for the construction, installation and operation of the Facilities and comply at its own cost therewith and any Local Authority requirements. On the completion of the construction and installation of the Facilities, the Licensee shall furnish the Minister with its Architects Certificate of Compliance in respect of such permissions.

- 21.2 The Licensee shall not implement any planning permission before it and all required Fire Safety Certificates have been produced to the Minister.
- 21.3 In the event of the Facilities or the construction and installation thereof not conforming to the Planning Permission or Fire Safety Certificate procured in respect thereof, the Licensee shall 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 Planning Permission and Fire Safety Certificate procured, to restore the Licensed Area to its former condition and to the satisfaction of the Minister.
- 21.4 The Licensee shall not do any anything on or in connection with the Licensed Area, the doing or omission of which shall be a contravention of the Local Government (Planning and Development) Acts, 2000 to 2011, the Building Control Acts, 1990 and 2007 and the Safety, Health and Welfare at Work Acts, 2005 and 2010 as amended, or of any notices, orders, licenses, consents, permissions and conditions (if any) served, made, granted or imposed thereunder. In the event of permission or approval from any Local Authority under the Local Government (Planning and Development) Acts, 2000 and 2011 or Building Control Acts, 1990 and 2007 or the Public Health Acts 1878 to 1931, and any statutory modification or re-enactment thereof for the time being in force and Regulations or Order made thereunder being necessary for any addition, alteration or change in or to the Licensed Area for the change of user thereof, to apply, at its own cost to the relevant Local Authority for all approvals, certificates, consents and permissions which may be required in connection therewith and to give notice to the Minister of the grant or refusal (as the case may be) together with copies of all such approvals, certificates, consents and permissions forthwith on receipt thereof and to comply with all conditions, Regulations, Bye-Laws and other matters prescribed by any competent authority whether generally or specifically in respect thereof and to carry out such works at the licensee's own expense in a good and workmanlike manner to the satisfaction of the Minister. The Licensee shall

produce to the Minister on demand all plans, documents and other evidence as the Minister may reasonably require in order to satisfy himself that the provisions of this Licence have been complied with in all respects.

**21.5** The Licensee shall give notice forthwith to the Minister of any notice, order or proposal for a notice under the Local Government (Planning and Development) Acts, 2000 and 2011 or the Building Control Acts, 1990 and 2007 or the Public Health Acts, 1878 to 1931 and comply at its own cost therewith.

**21.6** The Licensee shall at the request of the Minister, but at its own cost, make or join in making such objections or representations in respect of any proposal the Minister may require to be made.

## **22 OUTGOINGS**

**22.1** The Licensee shall pay and discharge:

- (i) All rates, taxes, duties, charges, assessments, impositions and outgoings whatsoever charged, levied, assessed, imposed upon or payable in respect of the Facilities hereby granted.
- (ii) All costs associated with the construction and installation of the Facilities and the continued operation and use thereof including the cost of any work which the Minister may have to do to facilitate the carrying out of the works or any act or thing hereby authorised.

## **23 EXERCISE OF RIGHTS**

**23.1** To exercise the Licence hereby granted in such a manner as to cause no damage or injury to the Licensed Area, the Minister, the occupants of the Licensed Area and any adjoining lands or property and to forthwith from time to time with due diligence repair and make compensation for any such damage or injury that may be so caused.



## 24 INSURANCE

24.1 Without prejudice to the Licensee's liability to indemnify the Minister in accordance with the provisions of clause 17, the Licensee shall effect and maintain in the joint names of the Minister and the Licensee from the Commencement Date until the Termination or Expiry of this Licence (and for such further period thereafter as the Minister may reasonably require) the following policies of insurance 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:-

- (1) The Licensed Area and all Facilities and buildings thereon and the fixtures and fittings therein (if any) in the full reinstatement cost thereof (to be determined from time to time by the Minister or his surveyor and including any inflationary factor) against loss or damage by fire, explosion or lightning, impact earthquake, aircraft, floods, storm and tempest, riot, civil commotion and malicious damage or bursting or overflowing of water tanks, apparatus or pipes and including demolition and site clearance expenses, architect's and other fees and taxes in relation to the reinstatement of the Licensed Area. In the event that the Licensed Area or the Facilities or any part thereof shall be destroyed or damaged by fire or any of the aforesaid risks, then and as often as shall happen, the Licensee shall lay out all monies received in respect of such insurance as aforesaid as soon as practicable in or upon rebuilding, repairing or reinstating the Licensed Area in a good and substantial manner and in the event that such monies shall be insufficient for the said purpose, the Licensee shall make good the deficiency.
- (2) A Public Liability Insurance Policy of Indemnity with a limit of €6,500,000 (six million five hundred thousand euro) (or such increased amount as the Minister may from time to time determine) in respect of any one claim and

unlimited as to the number of accidents or claims during the currency of this Licence in respect of any one claim for any damage, loss or injury which may occur to any property (not being the property of the Minister or the Licensee) or to any person by or arising out of the admission of any person to the Licensed Area.

- (3) To effect and keep in force an employer's liability insurance policy with a limit of €12,700,000 (twelve million seven hundred thousand euro) and to extend such policy so that the Minister 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.
- (4) In the event that the Licenced 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 Licenced 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.
- (5) Whenever required to do so by the Minister, to produce to the Minister 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 Minister by the Licensee's insurers, and to comply with all conditions pertaining to any such policy or policies.

- (6) Such joint policy or policies to contain a non vitiation 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 Licensee gives sufficient reason for the insurer to prove the insurance policy to be void, the Minister will not be denied the protection of the policy;
- (7) Not to do or omit to do anything which might cause any policy of insurance relating to the Licenced Area or any Adjoining Property owned by the Minister to become void or voidable, wholly or in part, nor (unless the Licensee has previously notified the Minister and the Licensee has agreed to pay the increased premium) to do anything whereby any abnormal or loaded premium may become payable.
- (8) To immediately notify the Minister in writing of the making of any claim under any policy of insurance and to provide the Minister with all information in relation to any such claim.
- (9) To ensure that any contractors engaged in connection with activities in the Licenced Area or otherwise in connection with this Licence have appropriate insurance and that all copies of such insurance policies shall be provided to the Minister as soon as is reasonably practicable.

24.2 The Licensee shall produce such policy or policies of insurance and the latest receipt of the premium paid for renewal of the said policy or policies to the Minister for inspection as and when called upon to do so by the Minister and to comply with all conditions pertaining to any such policy or policies.

**24.3** The Licensee must immediately notify the Minister in writing of the making of any claim under any policy of insurance and must provide the Minister with all information in relation to any such claim.

**24.4** The Licensee must ensure that any contractors engaged in connection with activities in the Licensed Area or otherwise in connection with this Licence have appropriate insurance and all copies of such insurance policies should be provided to the Minister as soon as is reasonable practicable.

**25 NOTICES**

**25.1** Save where otherwise specified, any notice to be given on foot of this Licence may be given in writing sending same by prepaid post to the registered office of the Licensee for the time being or such other address as shall be notified to the Minister.

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

**26 VARIATION**

**26.1** No amendment to this Licence shall be effective unless it is in the form of a supplemental indenture executed by the parties.

**27 RELATIONSHIP OF THE PARTIES**

**27.1** Nothing in this Licence may be interpreted or construed as creating any landlord - tenant relationship, any tenancy in or right to possession of or any right of easement over or in respect of the Property of the Minister, or any agency, association, joint venture or partnership between the Minister and the Licensee.

- 27.2** Except as is expressly provided for in this Licence, nothing in this Licence grants any right, power or authority to any party to enter into any agreement or undertaking for, act on behalf of or otherwise bind any other party.

**28 SEVERABILITY**

- 28.1** If any provision of this Licence is or becomes or is declared invalid, unenforceable or illegal by the courts of any jurisdiction to which it is subject or by order of the relevant body of the European Union, that provision shall be severed and the remainder of this Licence shall remain in full force and effect.

- 28.2** The parties shall comply with this Licence as amended in accordance with this clause 28.

**29 GOVERNING LAW**

- 29.1** The Licence shall be governed and construed in accordance with the laws of Ireland.
- 29.2** Subject to clause 20, the parties hereby submit irrevocably to the non-exclusive jurisdiction of the courts of Ireland.

**FIRST SCHEDULE**

**(THE LICENSED AREA)**

**ALL THAT AND THOSE** an area of foreshore situate at Bantry Bay in the County of Cork comprising of 753 hectares as shown in Drawing No 1363-001 REV C and as marked out on the map attached hereto

Foreshore Licence MS51/8/1363

Coordinate data provided for information purposes only

Licence area is as shown on foreshore licence map Drg. No.: 1363-001 Rev.: D Date:05/02/2014

Point	Irish National Grid		WGS 1985	
	Easting	Northing	Latitude (N)	Longitude (W)
1	81823	40852	51 ° 36.5040 '	9 ° 42.3966 '
2	81669	41316	51 ° 36.7500 '	9 ° 42.5394 '
3	82562	41757	51 ° 37.0020 '	9 ° 41.7756 '
4	82718	41427	51 ° 36.8220 '	9 ° 41.6334 '
5	83357	42149	51 ° 37.2180 '	9 ° 41.0946 '
6	85978	43443	51 ° 37.9500 '	9 ° 38.8506 '
7	86199	43030	51 ° 37.7280 '	9 ° 38.6508 '
8	83487	41865	51 ° 37.0680 '	9 ° 40.9764 '
9	81110	48205	51 ° 40.4580 '	9 ° 43.1640 '
10	81268	47848	51 ° 40.2660 '	9 ° 43.0200 '
11	81724	47863	51 ° 40.2780 '	9 ° 42.6246 '
12	82212	48220	51 ° 40.4760 '	9 ° 42.2094 '
13	84174	48268	51 ° 40.5300 '	9 ° 40.5084 '
14	84416	48158	51 ° 40.4700 '	9 ° 40.2966 '
15	83977	47734	51 ° 40.2360 '	9 ° 40.6686 '
16	84164	47739	51 ° 40.2420 '	9 ° 40.5072 '
17	84201	48309	51 ° 40.5480 '	9 ° 40.4868 '
18	83984	48459	51 ° 40.6320 '	9 ° 40.6776 '
19	80620	47677	51 ° 40.1640 '	9 ° 43.5780 '
20	80799	47533	51 ° 40.0920 '	9 ° 43.4196 '
21	79684	45796	51 ° 39.1380 '	9 ° 44.3502 '
22	78648	45413	51 ° 38.9220 '	9 ° 45.2400 '
23	78648	45636	51 ° 39.0420 '	9 ° 45.2448 '
24	79000	45802	51 ° 39.1320 '	9 ° 44.9436 '
25	79163	45935	51 ° 39.2100 '	9 ° 44.8050 '
26	79357	47539	51 ° 40.0740 '	9 ° 44.6694 '
27	76512	44634	51 ° 38.4720 '	9 ° 47.0742 '
28	77582	45136	51 ° 38.7540 '	9 ° 46.1586 '
29	77764	45119	51 ° 38.7480 '	9 ° 45.9996 '
30	75730	43592	51 ° 37.9020 '	9 ° 47.7294 '
31	72775	41578	51 ° 36.7740 '	9 ° 50.2452 '
32	71632	41597	51 ° 36.7680 '	9 ° 51.2352 '
33	71621	42303	51 ° 37.1520 '	9 ° 51.2598 '
34	75771	43946	51 ° 38.0940 '	9 ° 47.7018 '
35	75961	44255	51 ° 38.2620 '	9 ° 47.5434 '

## **SECOND SCHEDULE**

### **(SPECIFIC CONDITIONS)**

Prior to commencement of any works the Licensee shall:

- The Licensee shall use that part of the Foreshore the subject matter of this licence for the purposes as outlined in the application and for no other purposes whatsoever.
- The Licensee shall notify the Department of the Environment, Community and Local Government at least 14 days in advance of the commencement of the harvesting.
- The Licensee shall liaise as appropriate with the Harbour Masters in Castletownbere and Bantry during the harvesting activities.
- The Licensee shall furnish the names/registered number of all vessels involved in the operation to the Marine Survey Office in Dublin to ensure compliance with respect to Irish Load line and other relevant vessel certification.
- The Licensee shall submit a detailed monitoring plan for approval by the Department of Environment, Community and Local Government prior to the commencement of any harvesting activity. The parameters to be monitored and the monitoring methods shall be based on those set out in Appendix I.
- The Licensee shall submit an annual report of harvesting activities to include the area and quantities harvested and measured regeneration rates of the seaweed.



- In the event that unacceptable impact on the environment is observed, the Minister reserves the right to modify/restrict harvest practices and schedule as necessary.
- If a passenger boat licence required one must be obtained.
- You are required to arrange the publication of a local marine notice. This notice should give a general description of operations and approximate dates of commencement and completion.

#### Appendix 1

Five locations in outer Bantry Bay have been identified as areas where kelp will be harvested, identified on the attached map as A to E. The sites will be harvested on an annual rota basis, harvesting areas C, D & E annually, with area E split into two sections, E1 & E2, in order to facilitate a four year regeneration cycle. The areas A & B will be preserved for use when the weather conditions don't permit harvesting in the main active area during a particular year. This will require that area B be subdivided into three equal areas, B1, 2 & 3. Together with area A, this will provide 4 overflow/bad weather areas. A harvesting schedule will be created as per the table below.

Year	Harvesting Zone	Bad Weather Zone
1	Area D	Area B, B1
2	Area E, E1	Area B, B2
3	Area E, E2	Area B, B3
4	Area C	Area A

Harvesting schedule

The drawing reference I363-001 REV C shows how the area B & E will be sub-divided.

Only the area that is scheduled to be harvested (and its control site) will be studied in any one year in Spring and Autumn.

#### 1. Fauna

**Invertebrates** – A subtidal survey of the harvest site and a control location will be carried out by experienced marine scientific divers using SCUBA (see personnel profiles at end of proposal). The BACI (Before-After-Control-Impact) protocol will be employed, wherein a baseline survey will be conducted at an agreed number of areas prior to commencement of harvesting. Post-harvest surveys will be carried out in the areas. The transect area will be approx. 100m x 5m and a standard swimming speed (ca 0.5m 1 sec-1) will be used. Diver entry and exit points for each dive will be logged with GPS. It is planned to replicate transects by selecting locations with similar depth profiles. Depending on the size of each harvest block, the total number of transects will vary from 6 - 12. The areas surveyed will include sites from where kelp will be harvested and those where kelp will not/cannot be harvested. Invertebrate species lists will be compiled in situ by the divers and digital still photographs will be taken for detailed post-survey examination. The SACFOR (Superabundant, Abundant, Common, Frequent, Rare) scale will be used to semi-quantify the assemblages.

#### Primary parameters:

- Inventory and relative abundance of macro/epifauna (sufficient seasonal and spatial extent) pre- and post-harvest.
- Harvest and non-harvest areas will have replicate transects stratified by depth.
- Epifauna including fauna attached to kelp and holdfasts as well as to rock in under-story will be inventoried and quantified.

Relative abundance of some species e.g. urchins post-harvest may not become obvious for at least one year. It should be considered to examine harvested sites on an annual basis solely for

this reason.

**Fish** –Two survey methods are proposed to record fish species. The first will be carried out while doing the invertebrate transects; the larger, "over canopy" fish species will be counted and logged. For the smaller "under canopy", cryptic species, a stationary technique will be used. A 10 m line will be laid out at selected sites forming a visual cylinder which will be visually surveyed for ca 10 mins and species and species numbers will be logged.

**Birds** – Bird species will be identified and enumerated from the survey vessel while the SCUBA transects are being carried out. Due to seasonality of some species (Lesser Blackbacked Gull, tern species), it is proposed that the Spring survey will not be carried out until these species are present.

2. **Flora** - These surveys will be carried out at the same time as the invertebrate surveys and in post-harvest surveys will include recovery rates. In pre and post- harvest surveys, SACFOR estimates of species will be determined.

#### **Experimental design**

The experimental design will focus on three main elements – replication, appropriate control sites and selection of species that are suitable for monitoring purposes.

1. With regard to replication, permanent, marked lead lines will be put in place during the first survey and both video and still photography will be used to document flora and fauna along the length of each transect. Each transect will be marked with GPS for relocation during future surveys.
2. In relation to controls, it is imperative that selected sites are as similar as possible to the area being harvested. Both biological and physical characteristics will be

considered when such controls are being considered. Stratification according to broad physical characteristics (e.g. depth and substrate/habitat type) may be necessary when selecting suitable sampling locations and it may be necessary to focus on one particular type in order to fulfil replication requirements (for test and control locations).

3. Kelp forests are species-rich and include many small and cryptogenic and epiphytic/epifaunal taxa that live within hold fasts and under/on rocks and stones. When selecting species suitable for monitoring, many of these type of species will not be considered. Large taxa such as the laminarians and sponges e.g. *Pachymatisma*, *Cliona*, decapods such as *Cancer* and echinoderms such as *Echinus*, *Asterias* and *Holothuria* are likely candidates for long term monitoring. Attention will also be given to the selection of taxa representing different functional groups e.g. epiphytic, epifaunal, mobile, grazers, filter feeders, predatory. The focus upon indicator species covering a range of functional groups as opposed to whole community analysis is considered a more practical approach considering the difficulties of quantitatively sampling in this habitat type, i.e., the fact that full analysis is very time consuming, non-destructive sampling is possible and that the response to the kelp removal (pressure) of non-motile faunal can be measured against those of motile fauna which might be expected to vacate barren areas.

Selection of these indicators allied with suitable replication will provide a sufficiently robust data set such that large scale changes can be identified and recovery tracked over the period of the sampling program.

It is considered that a system-wide approach is more suitable for this type of study than a site/species-specific one and for this reason, adequate replication is required to understand how the system reacts to harvesting (see Section 1. above).

In terms of likely responses to removal of the canopy, it is well understood that seasonal

changes in kelp canopy are limited to minor frond removal during stormy periods. Where individual *Laminaria* stipes are lost, colonisation by such opportunistic species as *Saccorhiza* occurs. This is an annual species and sporelings of this taxon and both *Laminaria* and *Saccorhiza*, will compete to dominate the macrophyte forest. Harvesting of all laminarians will therefore give rise to recolonisation and it is presumed that the opportunistic *Saccorhiza* will be the primary Stage I colonising species. Some sporelings of the other Laminarians will settle also and it is hypothesised that in subsequent years, these will successfully out-compete *Saccorhiza*. Exposure of large areas of reef will alter the microscale physical oceanographic conditions that occur on the seabed.

The statistical analyses will be carried out primarily using PRIMER and will include univariate (number of species, comparison of different depths of transects) and multivariate (species presence/ absence, comparison of different depths of transects, comparison of inter-year variability) analyses. Visual presentation of the data (Multi-Dimensional Scaling) will allow a trajectory of community recovery to a steady state to be documented.

A survey period of 4-years is planned consisting of a pre harvest (assessment (baseline/background) and (initially) 3/4 years post-harvest to monitor short and long-term impacts and recovery. It is intended to review and refine programme after the year 1 post-harvest survey.

### THIRD SCHEDULE

### THIRD SCHEDULE

#### (Provisions as to Licence Rent Revisions)

#### 1. Definitions

##### 1.1 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 Licensed Area might reasonably be expected to obtain as a whole on the open market with vacant possession at the Relevant Review Date by a willing Licensor to a willing Licensee (which expression "willing Licensee" shall for the avoidance of doubt include the Licensee) 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 and otherwise on the same terms and conditions and subject to the same covenants and provisions contained in this Licence (other than the amount of the Licence rent payable hereunder but including provisions for the review of Licence rent in the same form as this Licence at similar intervals):

##### (i) assuming:

- (A) that the Licensed Area is at the Relevant Review Date fit, ready and available for immediate occupation by the willing licensee so that they are immediately capable of being used by the willing licensee for all purposes required by the willing licensee that would be permitted under this Licence, and in calculating the Open Market Licence Rent it shall be assumed that the willing licensee 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 Licensed Area;

- (B) that no work has been carried out to the Licensed Area by the Licensee, during the Term which has diminished the Licence Rent value of the Licensed Area;
  - (C) that if the Licensed Area or any part it has been destroyed or damaged it has been fully rebuilt and reinstated;
  - (D) that the Licensed Area is in a good state of repair and condition;
  - (E) that all the covenants on the part of the Minister and the Licensee contained in this Licence have been fully performed and observed;
  - (F) that the Licensed Area may be used for [any of the purposes permitted by this Licence or any licence granted pursuant to it];
- (ii) but disregarding:
- (A) any effect on the licence rent of the fact that the Licensee, has been in occupation of the Licensed Area or any part of it;
  - (B) any goodwill attaching to the Licensed Area by reason of the business then carried on at the Licensed Area by the Licensee,
  - (C) any effect on the licence rent value of the Licensed Area attributable to the existence at the Relevant Review Date of any works executed by and at the expense of the Licensee with the consent of all relevant persons where required in on or to the Licensed Area [other than in pursuance of an obligation under this Licence or any agreement therefore];
- (b) "the President" means the President for the time being of the Society of Chartered Surveyors and includes any duly appointed deputy of the President or any person authorised by the President to make appointments on his behalf;

- (c) "Review Dates" means 1<sup>st</sup> January in the year 2019 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" means restrictions imposed by any statute in force on a 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 5 of this Licence; and
- (f) "the Surveyor" means an independent chartered surveyor who is experienced in the valuation or licensing of property similar to the Licensed Area and is acquainted with the market in the area in which the Licensed Area is located, appointed from time to time to determine the Open Market Rent pursuant to the provisions of this schedule.
- (g) "Base Rate" means the annual rate of interest for the time being chargeable under section 22 of the Courts Act, 1981

**1.2 IT IS HEREBY AGREED between the Licensor and the Licensee as follows:-**

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

The Open Market Rent at any Review Date may be agreed in writing at any time between the Minister and the Licensee but if, for any reason, they have not so agreed by the Relevant Review Date then the Minister may by notice in writing to the Licensee require the Open Market Rent to be determined by the Surveyor.

**1.2.2 Appointment of Surveyor**

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



### **1.2.3 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 Minister, act either as an arbitrator in accordance with the Arbitration Act 2010 or as an expert, such option to be exercised by the Minister by giving written notice to the President at the time of the Minister's written application to the President but if no written notice is given by the Minister as aforesaid, then the Surveyor shall act as an arbitrator;
- (c) if acting as an expert invite the Minister and the Licensee 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 Licensed 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 Minister and the Licensee shall jointly agree in writing, give to each of them written notice of the amount of the Open Market Rent as determined by him.

### **1.2.4 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 Minister and the Licensee in equal shares who shall each bear their own costs, fees and expenses. Without prejudice to the foregoing, both the Minister and the Licensee 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.

#### **1.2.5 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.

#### **1.2.6 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 Quarterly Gale Day following the Determination Date, the Licensee shall pay to the Minister rent at the yearly rate payable immediately before the Relevant Review Date, and
- (b) within seven days of the Determination Date:
  - (i) the Licensee shall pay to the Minister 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 Minister shall refund to the Licensee 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.

#### **1.2.7 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 Licence (which if previously reviewed shall be the rent payable under this Licence 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.

#### **1.2.8 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 Minister or his Solicitors and shall be signed by or on behalf of the Minister and the Licensee.

- (b) The Licensee shall be responsible for and shall pay to the Minister 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.

**1.2.9 Time not of the essence**

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

IN WITNESS whereof a person so authorised by the Minister under Section 15(1) of the Ministers and Secretaries Act 1924 has hereunto subscribed his name and the Licensee has hereunto affixed his seal the day and year first herein WRITTEN.

PRESENT WHEN THE OFFICIAL

) Louise Roche

SEAL OF THE MINISTER FOR  
ENVIRONMENT, COMMUNITY AND  
LOCAL GOVERNMENT  
WAS AFFIXED HERETO:-

)  
)  
)  
)

) Namé Dm -

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