

DATED THE                      DAY OF                      20

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

One part

AND

**[TBC – FOR TENDER]**

Other part

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**FISHERY HARBOUR CENTRE LEASE**

**PROPERTY: LOTS 1 & 2, DINGLE MARINA BUILDING, DINGLE FISHERY  
HARBOUR CENTRE, COUNTY KERRY**

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## **PROPERTY REGISTRATION AUTHORITY**

**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. Dingle Fishery Harbour Centre, County Kerry was vested in the Minister for the Marine by virtue of Statutory Instrument 233 of 2007- Fishery Harbour Centre (An Daingean) Order, 2007.

3.2. By Deed of Surrender dated 28<sup>th</sup> May 2019 between Lathair Muirina An Daingean Cuideachta Faoi Theorainn Rathaoichta and the Lessor, the Minister for Agriculture, Food and The Marine became the immediate landlord to all of the property comprised in PRAI Folio KY3297L and known as the Dingle Marina Building.

3.3. By divers mesne assurances acts in the law and events and ultimately by Statutory Instrument 455 of 2011, the Lessor became the successor in title to the Minister for the Marine.

3.4. By submitting the winning bid in a tender competition 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 fisheries, seafood and marine related activities/uses, and any other purposes that the Lessor considers advantageous and appropriate in respect of the operation or development of the Fishery Harbour Centre.

- 3.5. 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 €12,000.00 (Twelve Thousand Euro) 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:

[REDACTED]

**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 Dingle Fishery Harbour Centre comprising 286 square metres, together with all buildings, works or other structures constructed thereon, situate in the County of Kerry and shown outlined in red on drawing numbers KY013 8030A and KY001 8025C (Pages 1 and 2), annexed hereto and known as Lots 1, 2, 14a and Lot 15 (Yard), Dingle Marina Building, Dingle Fishery Harbour Centre, County Kerry 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 Lessor'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 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, engineers, surveyors or other relevant professionals/agents 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, with or without construction workers, engineers, surveyors or other relevant professionals/agents or equipment if necessary, 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:-

#### **Initial Alterations, Improvements or Additions to the Leasehold Area (Initial Works)**

- 7.1.1 Where the Lessee indicated in the tender competition for this Lease that it intends to undertake Initial Works and this Lease was granted in consideration that the Initial Works would be initiated (including requesting consent) immediately subsequent to the Term Commencement Date then the Lessee throughout the Term hereby covenants with the Lessor:-

7.1.1.1 not to undertake any Initial 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;

7.1.1.2 to apply to the Lessor for the Lessor's prior written consent pursuant to clause 7.1.1.1 to carry out works where no planning permission is required (based on the submission contained in the tender or as may have been agreed between the parties) within 3 months of the Term Commencement Date;

7.1.1.3 to apply to the Lessor for the Lessor's prior written consent, pursuant to clause 7.1.1.1, to the Lessee's

application for planning permission (based on the submission contained in the tender or as may have been agreed between the parties) if required, within 3 months of the Term Commencement Date.

7.1.2 Where the Lessor has granted his prior written consent for an application for planning permission in respect of the Initial Works to the Leasehold Area, then in those circumstances, the Lessee throughout the Term **HEREBY COVENANTS** with the Lessor:

7.1.2.1 to make such application within 6 months of the date of the Lessor's consent to said application for planning permission and thereafter upon obtaining planning permission the Lessee shall develop the Leasehold Area with the prior written consent of the Lessor as required by clause 7.1.1.1 and in accordance with the Plans submitted to the Lessor and the Local Planning Authority and in accordance with the planning permission granted within 36 months of the date of the Planning Permission.

7.1.3 Without prejudice to any other right, remedy or power herein contained (including the forfeiture provisions in clause 9 of this Lease) or otherwise available to the Lessor, if:

7.1.3.1 after the expiration of 3 months from the Term Commencement Date the Lessee has not requested the prior written consent of the Lessor to carry out Initial Works where no planning permission is required or;

7.1.3.2 after the expiration of 3 months from the Term Commencement Date the Lessee has not requested the prior written consent of the Lessor to the Lessee's application for planning permission or;

- 7.1.3.3 after the expiration of 6 months from the date of the Lessor's consent to the said application, the planning permission as aforesaid shall not have been applied for by the Lessee or;
- 7.1.3.4 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;
- 7.1.3.5 after the expiration of 36 months from the date of the Grant of Planning Permission the Lessee shall not have developed the Leasehold Area in accordance with the Plans submitted to the Lessor and the Local Planning Authority and in accordance with the planning permission granted;

**Then**, and in any such case, the Lessor shall be entitled to determine this Lease and retain 25% of the Premium paid by the Lessee.

- 7.1.4 Where the Lessor exercises said entitlement to determine this Lease and retain 25% of the Premium paid by the Lessee pursuant to clause 7.1.3, the Lessor will give the Lessee no less than one month's notice in writing to that effect whereupon the Lessee shall pay all outstanding rents and outgoings payable on foot of the Lease up to the date of expiry of the notice, and on the expiry of the notice period the Term shall absolutely cease and determine and the Lessee shall be obliged to 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.
- 7.1.5 To ensure that adequate warning notices, fencing or other appropriate security and safety measures are in place for the Initial Works;

- 7.1.6 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 the Initial Works in a good and workmanlike manner to the satisfaction of the Lessor;
- 7.1.7 To obtain and comply with all grants of planning permission, fire safety certificates and Environmental Licences required for the Initial Works, at the cost of the Lessee;
- 7.1.8 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;
- 7.1.9 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 Initial Works 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 Engineers Ireland;
- 7.1.10 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;

7.1.11 To immediately notify the Lessor if at any stage the Lessee becomes aware that the Initial Works do not comply with the Plans that were applicable at the date that the Initial Works were carried out (unless the Lessee was first notified by the Lessor);

7.1.12 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:

7.1.12.1 ensuring that all necessary competent and qualified persons are engaged to carry out the Initial Works;

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

## **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 7.15 provided the prior written consent of the Lessor is obtained by the Lessee.

## **7.4 Rent**

To pay the Initial Rent or the 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**

7.4.1 To pay and indemnify the Lessor against all Outgoings.

7.4.2 To perform and observe all present and future regulations and requirements of each of the utility supply entities 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**

- 7.8.1 To keep all parts of the Leasehold Area clean and tidy;
- 7.8.2 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 (during the Term of the lease)**

- 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 and agreed in advance 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;
- 7.15.4 Not without the prior written consent of the Lessor:
- (a) 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;
  - (b) 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.

- 7.15.5 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;
- 7.15.6 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;
- 7.15.7 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;
- 7.15.8 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;
- 7.15.9 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 Engineers Ireland;

7.15.10 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;

7.15.11 To immediately notify the Lessor if at any stage the Lessee becomes aware that the Development does 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);

7.15.12 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:

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

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

## **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 Not to permit any change in the Control of the Lessee (where the Lessee is a company) without the prior written consent of the Lessor.
- 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 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 or carry out the Permitted User.
- 7.17.8 In considering whether or not to grant consent under Clause 7.16.3 and 7.16.4, the Lessor may:
- 7.16.6.1 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 permitted alienation 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;
- 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 in a timely manner, 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 created 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 sub-lessees 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;

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 the Lease and counterpart thereof in the Land Registry as soon as practicable after the execution thereof and to furnish in due course the counterpart duly stamped and registered together with a sealed and certified copy of the new 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-invalidating 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-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 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, prior to entering on the Leasehold Area, 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 funds 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 Where the Lessee is a company, 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 any previous agreements and understandings between the parties, other than as expressly provided for in this Lease.

## **7.26 Registration of Company**

To comply with all statutory requirements necessary to ensure that the Lessee (being a body corporate) 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 thirty 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 apply for the consent required by clause 7.1 to the Initial Works where applicable or fails to apply for planning permission for said works or fails to obtain planning permission for said works or fails to complete those works, within the timeframes specified in clause 7.1.1 and/or 7.1.2 or;

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 email 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 post, 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.

## SEVENTH SCHEDULE

### Rent Review

#### 10. Definitions

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

- (a) **“Base Rate”** means the annual percentage rate of interest from time to time chargeable under Section 22 of the Courts Act 1981 (or such other rate of interest as may from time to time be chargeable upon judgements under any statutory modification or re-enactments thereof for the time being in force, or if there is no such rate, then the rate of eight (8) per cent per annum);
- (b) **“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 ;
- (c) **“Prescribed Rate”** means the rate per centum per month which exceeds by one half per centum per month the monthly rate of interest for the time being chargeable under Section 1080 of the Taxes Consolidation Act 1997 (or such other monthly rate of interest as may from time to time be chargeable upon arrears of Tax) or, as the Landlord may from time to time elect, the rate of ten (10) per centum per annum;
- (d) **“President”** means the President for the time being of the Society of Chartered Surveyors Ireland or any successor professional body and includes any duly appointed deputy of the President or any person authorised by the President to make appointments on his behalf;
- (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) **“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;

- (g) **“Reviewed Rent”** means the rent agreed or determined in accordance with the provisions of this schedule;
- (h) **“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) act as an expert and not as an arbitrator so that his determination(s) shall be final and conclusive between the Lessor and the Lessee;

- (c) when 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 shall be determined by the Surveyor. The Surveyor shall not however be precluded from notifying both parties of his total fees and expenses notwithstanding the non-publication at that time of his decision and such fees and expenses of the Surveyor together with the costs of his nomination shall at all times 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 twenty eight (28) days of the Determination Date either:-

- (i) The Lessee shall pay to the Lessor as arrears of rent the amount (if any) by which the Open Market Rent reviewed in accordance with this Schedule exceeds the rent actually paid during the Interim Period (apportioned on a daily basis);
- (ii) The Lessor shall pay to the Lessee: the amount (if any) by which the Open Market Rent revised in accordance with this Schedule is less than the rent actually paid during the Interim Period (apportioned on a daily basis);

less any sums due by the Lessee to the Lessor under the terms of this Lease at the Determination Date.

#### **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 sub-lessees, 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 Acts 1990 to 2021 as amended and all amendments, regulations, orders or instruments made under those Acts and Building Bye Laws;
- 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, 2014 as amended;
- 12.5** “**Control**” has the same meaning as in Section 432 of the Taxes Consolidation Act, 1997 as amended;
- 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 European Communities (Environmental Liability) Regulations 2008 to 2011, the European Communities (Control of Major Accident Hazards Involving Dangerous Substances) Regulations 2000- 2006, the Local Government (Water Pollution) Acts, 1977 and 1990, the Water Services Acts, 2007- 2014, the Air Pollution Act, 1987 to 2011, the Dangerous Substances Acts 1972 to 1979, the Litter Act, 1982, the Waste Management Act, 1996 to 2011, the Environmental Protection Agency Acts, 1992 to 2007, the Protection of the Environment Act, 2003 and all amendments, 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 Dingle 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 as amended;
- 12.16 **“Foreshore Act”** means the Foreshore Acts 1933 – 2014 as amended;
- 12.17 **“Half Yearly Gale Day”** means the [ ] and [ ] in every year of the Term;
- 12.18 **“Initial Rent”** means €24,000.00 (Twenty Four Thousand Euro) per annum;
- 12.19 **“Initial Works”** means any or all of the works the Lessee indicated in the tender competition that it intended to initiate on the Leasehold Area after the Term Commencement Date;
- 12.20 **“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;
- 12.21 **“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;

- 12.22 **“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;
- 12.23 **“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 KY013 8030A annexed hereto, together with the Initial Works and the Development thereon;
- 12.24 **“Lessee”** means [ ] including his 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;
- 12.25 **“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;
- 12.26 **“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);
- 12.27 **“Permitted User”** means use of the Leasehold Area for fisheries, seafood and marine related activities/uses 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.

- 12.28 **“Plans”** mean the plans, drawings and specifications supplied by the Lessee and in the custody of and approved in writing by the Lessor (as may be amended from time to time pursuant to clauses 7.1 and 7.14 and other clauses). For the avoidance of doubt, the Plans shall also include the plans, drawings and specifications approved in writing by the Lessor in respect of any further alterations, improvements or additions to the Leasehold Area after the Initial Works the Lessee is obliged to carry out pursuant to clause 7.1.2;
- 12.29 **“Planning Acts”** means the Local Government (Planning and Development) Acts 1963 to 1999 and the Planning and Development Acts 2000 to 2021, the Building Control Acts 1990 to 2020 and all amendments, regulations, orders or instruments made under those Acts and Building Bye Laws;
- 12.30 **“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;
- 12.31 **“Public Health Acts”** means the Local Government (Sanitary Services) Act, 1878 to 2001;
- 12.32 **“Representations and Warranties”** mean the representations and warranties given by the Lessee to the Lessor pursuant to Clause 7.25;
- 12.33 **“Term”** means ten (10) years;
- 12.34 **“Term Commencement Date”** means the [ ] day of [ ] 2023 ;
- 12.35 **“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;
- 12.36 **“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;

12.37 **“the 1860 Act”** and **“the 1881 Act”** mean respectively the Landlord and Tenant Law Amendment Act, Ireland, 1860 and the Conveyancing Act, 1881 as amended.

**IN WITNESS** whereof a person so authorised by the Lessor under section 15(1) of the Ministers and Secretaries Act, 1924 has hereunto subscribed her name and the Lessee has hereunto subscribed his/her 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:** \_\_\_\_\_)

**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: LOTS 1 & 2, DINGLE MARINA BUILDING, DINGLE FISHERY  
HARBOUR CENTRE, COUNTY KERRY**

Maria Browne  
Chief State Solicitor  
Osmond House,  
Little Ship Street  
Dublin 8