



OLLSCOIL NA GAILLIMHE
UNIVERSITY OF GALWAY

Appendix D: FINAL AGREEMENT – GALW/CSO1832/2026

Dated 2026

University of Galway, Galway

AND

(Successful Tenderer NAME to be inserted here)

AGREEMENT

THIS AGREEMENT made on the _____
BETWEEN

- (1) University of Galway a body corporate established by charter, having its seat at University Road, Galway (“**the Client**”); and
- (2) Successful Tenderer NAME -company incorporated under the laws of Ireland with registered number is _____ and having its registered office at (“**the Company**”).

BACKGROUND

- (A) In response to the Request for Tender [CSO 1832/BE3606F] issued by The Client, the Company submitted a Tender to The Client with regard to the provision by it of Services at certain locations on The Client’s Campus (as hereinafter defined). The Client wishes to grant to the Company a licence to occupy those locations for that purpose on the terms and subject to the conditions of this Agreement.
- (B) The parties have entered into this Agreement in order to grant the Company the right to occupy the Premises (as hereinafter defined) for the purpose of providing the Services and otherwise to govern their relationship in that connection.

NOW IT IS AGREED as follows:

1. INTERPRETATION

1.1 Definitions: In this Agreement (including in the Recitals):

“**Commencement Date**” means 23rd May 2026

“**Director of Commercial Services**” means the Director appointed by The Client from time to time;

“**Change Control Procedure**” means the change control procedure set out in Schedule 9

“**Confidential Information**” shall mean such technical and/or commercial information, including but not limited to any documents, drawings, sketches or designs, materials, samples or prototypes disclosed or supplied either by the Client or by the Framework Member to the other party in any format, and which at the time of its disclosure or supply is identified as confidential or proprietary. Oral information which is confidential or proprietary shall be recorded in writing by the disclosing party within thirty (30) days after disclosure, and the resulting document shall specifically state the date of disclosure and designate the information as confidential or proprietary.

“**Core Hours**” means the times indicated in **Schedule 5** for the applicable Premises;

“Director of Management Accounting” means the director of management accounting appointed by the Client from time to time;

“Encumbrance” includes any lien, mortgage, charge, equity, encumbrance or other right exercisable by any third party (other than the Client);

“Equipment” means all and any equipment used in connection with the provision of the Services, including but not limited to all storage units, tables, trolleys, serving units, and all cash registers, stoves, ovens, hobs, grills, canteens, kitchen utensils and implements, office equipment, security equipment, fixtures and fittings and furnishings, at all Premises; and including all such equipment purchased before the date of this Agreement and in the course of the investment programme contemplated by Clause 9 or otherwise;

“Event of Default” has the meaning given to it in **Schedule 2**;

“Expiry Date” means the date falling the day next before the third anniversary of the Commencement Date (or such other later date to which the Expiry Date may be agreed under Clause 2.5) or, such later extension of the Term which may be agreed between the Parties from time to time in accordance with the Request for Tender or if earlier, the date on which the Client, acting in accordance with the provisions of this Agreement, terminates the right of the Company to occupy all or any of the Premises provided that if Clause 17.2 (*condition on vacation*) becomes applicable, then the Expiry Date shall, at the option of the Client, be extended to the date when any non-compliance referred to in that Clause has been rectified;

“Force Majeure Event” means any cause affecting the performance by a party of its obligations under this Agreement arising from acts, events, omissions or non-events beyond its reasonable control, including (a) acts of God, including fire, flood, earthquake, windstorm or other natural disaster and (b) fire, explosion or accidental damage, and (c) pandemic.

“Hospitality Services” means any services provided by the Company to the Client or its nominees or to third parties (on a non-exclusive basis) on terms acceptable to the Client, without limitation, at the Client corporate events and related functions;

“IMRO” means the Irish Music Rights Organisation;

“IPPA” means the Irish Professional Photographers Association;

“Indemnitees” means each of the Client, its officers, governors, employees, agents and contractors and **“Indemnitee”** means any one of them;

“Losses” means any claims, proceedings, liabilities, suits, judgements, costs, expenses, fees, penalties, fines or losses to include reasonable attorney’s fees;

“Manager” means the person referred to in Clause 9.2;

“The Client Campus” means, together, each of the university campuses occupied by the Client for the time being and from time to time;

“Permitted Uses” means, in relation to the Premises, their use to supply the Services and in particular means the use of the Premises for the provision of an in-house catering and hospitality solution for the Client.

“Personnel” means all employees, agents and contractors engaged by the Company in connection with the provision of the Services;

“Premises” means during the continuance of this agreement the following locations (together with associated office and storage space) and any such additional or alternative locations the Company may in accordance with this agreement occupy from time to time:

- Saol Café

more particular details of which are set out on the location maps set out in **Schedule 3** to this Agreement together with the easements, rights and privileges granted to the Company at Part 1 of Schedule 1 hereto and identified in the maps set out in **Schedule 3** to this Agreement as same may be amended or varied from time to time;

“Quarter” means a calendar quarter, ending on any of 31 March, 30 June, 30 September and 31 December (but the first Quarter will begin on the Commencement Date and will end on the next following Quarter end date, and the last Quarter will end on expiry of the Term);

“Regulatory Approval” means any approval, authorisation, consent, licence, permission or permit by whatever name called required by the Company under any law in connection with the performance of its obligations under this Agreement;

“Request for Tender” means the request for tender issued by The Client on _23rd February 2026 in relation to the Services;

“Services” means the services contemplated by the Request for Tender, the Tender and this Agreement and Service means any one of them;

“Tarriff” means the selling price provided by the Company to the Students, teaching staff or members of the public or any other person who can access the Premises.

“Tender” means the tender response to the Request for Tender submitted by the Company including all and any supporting documents submitted by the Company;

“Term” means the period beginning on the Commencement Date and ending on the Expiry Date;

“Turnover” means (a) the total annual sales receivable by the Company in respect of the Premises exclusive of trade discounts and VAT during each year of the Term; and (b) the total annual sales receivable by the Company in respect of the Function Business exclusive of trade discounts and VAT during each year of the Term;

“Waste” means any waste material generated in the provision, use or consumption of the Services;

“Utilities” means electricity, gas, heating, water etc;

“year of the Term” means any period of twelve months, beginning on the Commencement Date or on any anniversary of the Commencement Date, which falls wholly or partly during the Term;

1.2 **Construction:** In this Agreement, unless the contrary intention is stated, a reference to:

- (a) the singular shall include the plural and vice versa;
- (b) either gender includes the other;
- (c) a person shall be construed as a reference to any individual, firm or company, corporation, governmental entity or agency of a state or any association or partnership (whether or not having separate legal personality) or two or more of the foregoing;
- (d) a person includes that person’s legal personal representative, permitted assigns and successors;
- (e) time shall be construed by reference to whatever time may from time to time be in force in Ireland;
- (f) any agreement document or instrument is to the same as amended, novated, modified, supplemented or replaced from time to time;
- (g) clauses and other provisions are references to clauses and other provisions of this Agreement and any reference to a sub-provision is, unless otherwise stated, a reference to a sub-provision of the provision in which the reference appears;
- (h) a law includes any provision of any constitution, statute, statutory instrument, order, by-law, directive, regulation or decision of any governmental entity and any judicial or administrative interpretation of any of the foregoing, in each case, as amended, revised, modified or replaced from time to time;
- (i) writing’ shall include a reference to any electronic mode of representing or reproducing words in visible form; and
- (j) ‘business day’ shall be construed as a reference to a day (other than a Saturday or Sunday) on which the banks are generally open for business in Ireland.

1.3 **‘Services’:** References in this Agreement to any Service or facility or to the provision of a Service shall include a reference to: (a) the provision and/or making available of the service concerned; (b), the supply of all goods and/or comestibles in the course of or in connection with the provision and/or making available of that service, and (c) all preparatory and

ancillary activities associated with the foregoing (whether carried on before, at the same time as or after the foregoing).

- 1.4 **Undertakings Extended:** Any agreement, covenant or undertaking by the Company to do or to refrain from doing some act or thing shall, where the context so admits, be deemed to include an undertaking on the part of the Company to procure that all Personnel do or refrain from doing (as appropriate) that act or thing.
- 1.5 **Classes, Lists & Categories:** This Agreement shall be construed without regard to the rule of construction known as “ejusdem generis”, and the word ‘including’ means comprising, but not by way of limitation to any class, list or category.
- 1.6 **This Agreement:** References to ‘this Agreement’ means
- (i) the Clauses of and the Schedules to, this Agreement, all of which shall be read as one document;
 - (ii) the Request for Tender;
 - (iii) the Tender.

In all other respects, in the event of any inconsistency or conflict between the documents identified at (i) to (iii) above, precedence shall be given to the above documents in descending order;

- 1.7 **Headings:** Headings and captions are to be ignored in the construction of this Agreement.

2. COMMENCEMENT & RIGHT OF OCCUPATION

- 2.1 **Grant:** The Client grants to the Company for the Term the non-exclusive right to occupy and use each of the Premises for the Permitted Uses, together with the easements, rights and privileges specified in **Part 1 of Schedule 1**, upon the terms and subject to the conditions of this Agreement, excepting and reserving to the Client the easements, rights and privileges specified in **Part 2 of Schedule 1**. The Company accepts and will from time to time accept each Premises ‘as is’.
- 2.2 **No Sub-grants:** the Company shall not, without the prior written consent of the Client, grant to any person any right to occupy any of the Premises other than as may be required to permit access to the Premises by those persons requiring it in order for the Company to carry on its business in the provision of the Services.
- 2.3 **General Covenants:** the Company covenants and agrees with the Client in the terms of **Part 3 of Schedule 1**.
- 2.4 **Damage to or Destruction of Premises:** If an existing Premises is destroyed or damaged beyond use by fire or some other hazard or event, then it shall cease to be a Premises until the Client again designates it as such. In these circumstances, where the Company is unable

to provide the Services, the Parties, acting reasonably, will agree to amend and adjust the provisions of Clause 3 herein on a pro rata basis for the period whereunder the Company, through no fault of its own, is unable to provide the Services in accordance with the Change Control process.

2.5 **Option to Extend:** The Client shall have the right, at any time during the Term, by giving written notice to that effect to the Company, to extend the Term by postponing the Expiry Date:

- (a) by two (2) further twenty four (24) month periods (each awarded separately by notice in writing) or such other period or periods as the Client may award by notice in writing from time to time; and
- (b) provided that the Term shall not be extended beyond the date falling on the seventh anniversary of the Commencement Date;

provided that the extension by the Client of the Term shall not be construed as a waiver by it of any breach by the Company of any of its obligations under this Agreement.

2.6 **Utilities:** the Company shall promptly pay all charges levied for the supply and/or consumption of Utilities at the Premises for the purposes of this Agreement (to the extent that they are separately metered). To the extent that any one or more of the Premises are not separately metered in respect of Utilities the Company hereby agrees and acknowledges that it shall be responsible for the payment in respect of same and shall promptly pay all reasonable sums due and owing in this regard as notified by the Client to the Company from time to time. The Client warrants that it will endeavour to ensure that the Client is insofar as within its control and having regard to public procurement availing of the best market rate in relation to the said utilities and will make all reasonable efforts to ensure that the Company is operating on the best economic plan with the Clients utility provider.

2.7 **Relocation:** If at any time during the Term, the Client wishes the Company to vacate a Premises other than:

- (a) upon termination or suspension of the status of that Premises as such pursuant to Clause 2.4 (*damage or destruction*); or
- (b) upon termination or suspension of the status of that Premises as such pursuant to Clause 18.2(c) (*default*);

then the Client may do so **provided that** it:

acts reasonably in requiring the Company to do so;

- (a) gives to the Company at least 30 days notice of the requirement to vacate (except where, for reasons beyond the Client's control, such notice cannot be given, in which case the Client shall give such notice, if any, as is possible);

- (b) (except where the vacation of the existing Premises is temporary) as soon as is practicable, and in consultation with the Company, use its reasonable endeavours to designate an area (if any) comparable to the Premises which is to be vacated as a Premises for the purposes of this Agreement; and
 - (c) use its reasonable endeavours to minimise the disruption to the business of the Company caused by relocation to the new Premises.
- 2.8 **New Developments:** If, after the date of this Agreement, the Client decides to establish a new location, that is not a relocation pursuant to Clause 2.7, on the Client's Campus at which similar Services will be provided, the Company shall be permitted to make a proposal with regard to the provision by it of the services in question at that new location
- 2.9 **Closures:** After the date of this Agreement, the Client reserves the right at any time during the Term, by giving three months written notice to the Company (except where, for reasons beyond the Client's control, such notice cannot be given, in which case the Client shall give such notice, if any, as is possible), to close any one or more of the Premises on the Client's Campus at which similar Services are provided.
- 2.10 **Reserved Matter:** After the date of this Agreement, the Client reserves the right at any time during the Term, by giving thirty (90) days written notice to the Company (except where, for reasons beyond the Client's control, such notice cannot be given, in which case the Client shall give such notice, if any, as is possible), to transfer operation of any one or more of the Premises to an alternative service provider in which case the Company shall comply with the provisions of clause 17 (*Vacation of Premises*).
- 2.11 In the event that during the Term of the Agreement the Client proposes to materially reduce the scope of the Catering Facilities to be offered by Company at the Catering Premises under this Agreement (save as a result of termination arising from an Event of Default) then the Client will (where it is reasonably within its control) complete the Change Control process herein provided.
- 2.12 Change Control and Variation ; Excluding Clause 2.4, Clause 2.7 and Clause 2.9 which shall be governed by the terms of those clauses, the Client may request the Company to make, or the Company may recommend, any modification to the Services, Charges, Tariffs, Service Levels or to the terms of this Agreement only in accordance with the Change Control Procedure set out at Schedule 9 . The Company shall not unreasonably refuse any changes requested by the Client.

3. **CONSIDERATION & PAYMENTS**

- 3.1 **Period Payments:** In consideration of the grant by the Client to the Company of the right to occupy the Premises pursuant to Clause 2.1, the Company shall pay to the Client a fee, in respect of the period of the Term (or part thereof) generated by the Company from

the operation of the Premises and carrying on the hospitality for services the relevant period, all such amounts being exclusive of VAT (the “Licence Fee”). The fee is;

- Year 1: €minimum guaranteed return or x% of turnover, whichever is greater.
- Year 2: €x minimum guaranteed return or x% of net turnover, whichever is greater.
- Year 3: €minimum guaranteed return or x% of net turnover, whichever is greater.

3.2 **Additional Hospitality Services** : Separate to Clause 3,1, The Company shall pay a maximum 6.25% referral fee to Atalia Student Services DAC, a wholly owned subsidiary company of the University, for all direct hospitality business.

3.3 **Payment:**

- (a) If following the end of the each year of the Term following the first year of the Term (or if earlier the date of termination of this Agreement) the sum of minimum guaranteed return as set out at 3.1 (net of VAT) is less than X% of the Turnover for the relevant period, the Company shall within forty (40) days of the end of the relevant year of the Term (or if earlier the date of termination of this Agreement) pay to The Client such sum as shall equal the difference between minimum guaranteed return as set out at 3.1 (net of VAT) and % of the Turnover in the relevant year of the Term.
- (b) The Client shall invoice the Company for the Licence Fee each Quarter (or at such other frequency as it may decide from time to time), in equal quarterly instalments of the Licence Fee. Such invoice shall be sent on or about the last day of the first calendar month of each Quarter. The credit period applicable to invoices presented by The Client to the Company shall be 40 days from the date of presentation of the invoice concerned or such other period as The Client may specify from time to time in writing during the Term.

3.4 **Payment Provisions:** Each amount stated as payable by either party under this Agreement:

- (a) shall be paid in euros;
- (b) shall be paid by electronic funds transfer to such bank account of the payee as it may specify in writing to the payor from time to time, or in such other manner as the payee may from time to time stipulate;
- (c) is exclusive of value added tax and, accordingly, is to be construed as a reference to that amount plus any value added tax payable on or in connection with that amount; and any such value added tax shall be paid by the payor in addition to the amount in question upon presentation to the payor of an invoice for the amount in question, plus value added tax, showing as a separate figure the amount of value added tax due;

- (d) shall be paid without set-off or counterclaim;
 - (e) the Company shall provide printed and electronic invoices compatible with The Client Accounts Payable system
- 3.5 **Late Payments:** The European Communities (Late Payment in Commercial Transactions) Regulations, 2012 shall apply to all payments..
- 3.6 **Additional Charges:** should the Company elect to provide music, radio or background media at the Premises, in that instance, the Company hereby agrees and acknowledges that for the duration of the Term it shall have sole responsibility for the payment of all fees and associated payments payable to the IPPA, Phonographic Performance Ireland and all similar and analogous payments in relation to its operation of the Premises
- 3.7 **Telecommunications:** the Company will pay to the Client promptly upon receipt of reasonable documentation from the Client regarding the same from time to time all charges incurred in the use by the Company of telecommunications equipment located at the Premises.
- 3.8 **Records:** the Company shall: -
 - (a) maintain records of all sales in relation to Turnover and submit to the Client a statement of the Turnover for the immediately prior Quarter on the payment of the Licence Fee (or if earlier on the seventh business day of each month following each Quarter). Such records and statement shall be in the form reasonably approved by the Client ;
 - (b) keep and maintain complete and accurate accounts and records relating to the Services and the Function Business in a form approved by the Client . All such records shall be full, accurate, up to date and sufficient to ascertain the amount of the Turnover and the Licence Fee from time to time. Provide audit certificate from Company's auditor confirming annual turnover at the expense of the Company.
 - (c) provide the Client 's independent accountants with access, during normal business hours to the Company's books and records relating to the Turnover and the Licence Fee for the purpose of verifying the accuracy and reasonable composition of the calculations under this Agreement. In the event of a discovery of a discrepancy following an audit carried out in accordance with this Clause 3.8(c), a correcting payment shall be made forthwith by the Company to the Client upon receipt of a notice to that effect, setting out the amount of the discrepancy and enclosing the Client's independent accountant's report. The Client shall be responsible for The Client's independent accountant's professional charges and expenses unless the discrepancy exceeds 5% (five per cent) of the amount due to the Client for any period in which case the independent accountant's professional charges and expenses of the Client shall be borne by the Company.

- (d) retain its accounting and financial records in relation to the Services, the Function Business, the Turnover and the Licence Fee for at least six years after the end of any accounting year to which those records relate;
 - (e) allow representatives of the Client to investigate the Company's accounting, financial and other records that relate to the Services, Hospitality Services, the Turnover and the Licence Fee and take copies of the Company's accounting, financial and other records on reasonable notice, during usual business hours during the Term and for a period of six years after the termination of this agreement; and
 - (f) supply to the Client copies of financial and fiscal information related to the Services which the Client may reasonably request.
- 3.9 **Refunds:** On the Expiry Date, the Client shall refund to the Company an amount equal to the portion of the then current Licence Fee which was paid in advance for periods after the Expiry Date.
- 3.10 **Hospitality Services Payments:** Within seven (7) days after the end of each calendar month, the Company will submit to the Client (or the appropriate department as directed by the Client) an invoice for any fees owed to the Company for having provided any hospitality services for the previous month. All such invoices shall be paid within forty (40) days of the invoice date or s.
- 3.11 In the event the Client invokes its rights pursuant to the provisions of clause 2.7 (*Relocation*), clause 2.9 (*Closures*) and / or clause 2.10 (*Reserved Matter*), the Client agrees that it shall enter into good faith negotiations with the Company in order to attempt to agree, subject to finalisation of an agreement in writing, an alternative basis for the calculation of the Licence Fee.

4. CAPITAL INVESTMENT BY THE COMPANY

4.1 Investment and Purpose:

In accordance with Schedule 4 of Appendix 2 of the Tender, the Company shall invest a sum €x the Term such that this capital investment facilitates the delivery of the proposed capital development plan of the Client .

- 4.2 **Consent:** All Capital Investment expenditure proposals shall be submitted in writing to the Client by the Company and to the extent approved by the Company in writing, the Company shall if required by the Client to do so issue a public tender for such approved Capital Investment expenditure proposals with such requirements as the Client shall reasonably request. For the avoidance of doubt the methodology for the project management and design of Capital Investment expenditure projects in relation to the Premises and/or the Equipment shall be at the sole discretion of the Client. The Company shall ensure that all sub-contractors engaged by it to carry the Capital Investment expenditure projects envisaged by this clause 4 (*Capital Investment by the Company*) are

properly qualified to carry out the said work and to obtain the written consent of the Client prior to the appointment of any such sub-contractors (each an “**Authorised Sub-Contractor**”). Each Authorised Sub-Contractor shall, as a condition of his appointment, be obliged to furnish a certificate in writing confirming the nature of Capital Investment expenditure projects to be undertaken at the Premises or in relation to the Equipment therein and that such work has been properly carried out to all applicable standards. Copies of all such certificates shall be furnished to the Client. In addition the Client will require sight of, and reserves a right of veto over, any other service contract which the Company may propose to enter into with any third party which would involve the provision of services in or around the Premises or in relation to the Equipment (such veto not to be unreasonably exercised).

- 4.3 **Timing:** Providing the Client provides its approvals, within its control, under clause 4.2 within a reasonable amount of time prior to such date, the Company shall complete the investment contemplated by this Clause 4 at such times as the parties may agree from time to time.
- 4.4 **Evidence of Compliance:** From time to time upon request by the Client, the Company shall provide to the Client written evidence (in form and substance reasonably satisfactory to the Client) of compliance by the Company with its obligations regarding capital expenditure under this Clause 4.
- 4.5 **Other Obligations Stand:** Nothing in this Clause 4 shall be construed as relieving the Company of any of its obligations regarding the Services, or to relax any such obligation.
- 4.6 **Claw Back:** In circumstances where this Agreement is terminated by the Client otherwise than due to the occurrence of an Event of Default and / or as a consequence of the provisions of clause 2.7 (*Relocation*) and / or as a consequence of the provisions of clause 2.9 and / or clause 2.10, the Client shall pay to the Company (subject to the Company being in a position to transfer, free from Encumbrances, the beneficial and legal ownership of the subject matter of all investments made by the Company pursuant to this clause 4) the following payment: -

TERMINATION DATE	TERMINATION PAYMENT
Before the first anniversary of the Commencement Date	The amount of the Capital Investment to the extent paid by the Company in accordance with this clause 4 and subject to the provisions of this Agreement less such amount as shall equal 33.33%.
After the first anniversary but prior to the second anniversary of the Commencement Date	The amount of the Capital Investment to the extent paid by the Company in accordance with this clause 4 and

	subject to the provisions of this Agreement less such amount as shall equal 66.66%.
After the second anniversary but prior to the third anniversary of the Commencement Date	None.

For the avoidance of doubt no payment whatsoever shall be made by the Client to the Company pursuant to Clause 4.6 in circumstances where this Agreement is terminated by the Company.

5. PRICING

Pricing: the Company hereby agrees that the tariff proposal in the Tender shall be applied and the Company shall hold the said price up to and including the first anniversary of this Agreement. Thereafter, the Company reserves the right to review the tariffs on annual basis in line with relevant cost increases and price The Services.

6. THE SERVICES

- 6.1 **Supply:** During the Term, the Company shall supply the Services from the Opening Date and shall continue to supply in the manner, and at the times and places, contemplated by and subject to the terms of this Agreement.
- 6.2 **Meet Demand:** the Company shall meet demand for the Services.
- 6.3 **Act as Principal:** In providing the Services, the Company shall act exclusively on its own account and never as agent of the Client. The Company shall not pledge the credit of the Client or otherwise do or omit to do anything which would or might suggest or indicate that the Company was acting as agent or otherwise on behalf of the Client.

7. EXCLUSIVITY CONTRACTS

- 7.1 An exclusivity contract for the purchase/sales of non-alcoholic cold drink beverages on campus is in place and the Company is required to only work with the Client appointed supplier.
- 7.2 The Client may negotiate other exclusivity contracts for the supply and sale of goods, services and merchandise on campus which the Company will be required to abide by.

8. STANDARDS

- 8.1 **Reasonable Skill & Care:** the Company shall take reasonable care and shall exercise reasonable skill in providing the Services.
- 8.2 **Comply with Laws:**
- (a) the Company shall comply and continue to comply with all applicable laws, regulations, required permits and licences, in providing the Services.
 - (b) Without prejudice to the generality of sub-clause (a), in providing the Services, the Company shall comply with (i) all regulations specified by the Food Safety Authority of Ireland and other regulatory authorities; and (ii) all laws and regulations relating to or connected with health and safety in the workplace.
- 8.3 **Best Practice:** At all times during the Term, the Company shall use its reasonable endeavours to comply with the then current standard industry practices in the European Union applicable industry for catering service providers acting under similar circumstances.
- 8.4 **Best Business Practice:** At all times during the Term, the Company shall use its reasonable endeavours to carry on its business in the provision of the Services in an efficient and businesslike manner and in compliance with the then current industry practices in Irish business for catering service providers acting under similar circumstances.
- 8.5 European General Data Protection 2016 GDPR
- a) All terms used will be defined in accordance with the European General Data Protection Regulation 2016 (“**GDPR**”).
 - b) The Company guarantees that in circumstances where it is acting as a Data Processor on behalf of the Client where the Client is the Data Controller or in any circumstances where it is handling Personal Data (as defined in the GDPR) on behalf of the Client that it shall:
 - c) implement appropriate technical and organisational measures that are sufficient to secure that the processing will (a) meet the requirements of the GDPR and (b) ensure the protection of the rights of the data subject.
 - d) Comply with all reasonable instructions from the Client to allow the Client to comply with its obligations under the GDPR.
 - e) The Company shall notify the Client as soon as is commercially practicable but without delay if it considers that any of the Client 's instructions infringe applicable Data Protection Legislation.

- f)** The Company shall provide all reasonable assistance to the Client in the preparation of any Data Protection Impact Assessment prior to commencing any processing. Such assistance may, at the discretion of the Client, include:
- a.** a systematic description of the envisaged processing operations and the purpose of the processing;
 - b.** an assessment of the necessity and proportionality of the processing operations in relation to the Purpose;
 - c.** an assessment of the risks to the rights and freedoms of Data Subjects; and
 - d.** the measures envisaged to address the risks, including safeguards, security measures and mechanisms to ensure the protection of Personal Data.
- g)** The Company shall, in relation to any Personal Data processed in connection with its obligations under this Agreement: process that Personal Data only in accordance with the instructions of the Client, unless the Company is required to do otherwise by EU and Irish law. If it is so required, the Company shall promptly notify the Client before processing the Personal Data unless prohibited by EU and Irish law.
- h)** The Company shall ensure that it has in place protective measures, which can be reviewed by the Client at the Client's discretion as appropriate to protect against a personal data loss event having taken account of the:
- a.** nature of the data to be protected;
 - b.** harm that might result from a personal data loss event;
 - c.** state of technological development; and
 - d.** cost of implementing any measures;
- i)** The Company shall ensure that:
- 8.6** the Company personnel or employees or agents do not process Personal Data except in accordance with this Agreement; and
 - 8.7** it takes all reasonable steps to ensure the reliability and integrity of any Company personnel or employees or agents who have access to the Personal Data and ensure that they:
 - 8.8** are aware of and comply with the Company's duties under this clause;
 - 8.9** are subject to appropriate confidentiality undertakings with the Company or any Sub-processor;

- 8.10 are informed of the confidential nature of the Personal Data and do not publish, disclose or divulge any of the Personal Data to any third Party unless directed in writing to do so by the Client or as otherwise permitted by this Agreement; and
- a. have undergone adequate training in the use, care, protection and
 - 8.11 not transfer Personal Data outside of the EU unless the prior written consent of the Client has been obtained and the following conditions are fulfilled.
 - 8.12 The Client agrees that the Company may transfer Personal Data outside of the EU and in particular to the United Kingdom and agrees that the Company shall do so under the following circumstances: the Client or the Company has provided appropriate safeguards in relation to the transfer in accordance with the Company's Data Protection Policy;
- b. the Data Subject has enforceable rights and effective legal remedies;
 - 8.13 the Company complies with its obligations under the Data Protection Legislation by providing an adequate level of protection to any Personal Data that is transfer; and
 - 8.14 the Company complies with any reasonable instructions notified to it in advance by the Client with respect to the processing of the Personal Data;
 - 8.15 at the written direction of the Client , delete or return Personal Data (and any copies of it) to the Client on termination of the Agreement unless the Company is required by Law to retain the Personal Data.
 - 8.16 The Company shall notify the Client as soon as is commercially practicable but without delay if it:
 - i. receives a data subject access request (or purported data subject access request);
 - ii. receives a request to rectify, block or erase any Personal Data;
 - iii. receives any other request, complaint or communication relating to either Party's obligations under the Data Protection Legislation;
 - iv. receives any communication from the Information Commissioner or any other regulatory authority in connection with Personal Data processed under this Agreement;
 - (a) receives a request from any third Party for disclosure of Personal Data where compliance with such request is required or purported to be required by Law; or
 - v. becomes aware of a Data Loss Event.

- (b) The Company shall maintain complete and accurate records and information to demonstrate its compliance with this Agreement.
 - (c) The Company shall allow for audits of its Data Processing activity by the Client or the Client 's designated auditor upon being provided with reasonable notice of the timing of any such audit by the Client.
- j) Before allowing any Sub-processor to process any Personal Data related to this Agreement, the Company must notify the Client in writing of the intended Sub-processor and processing; and obtain the written consent of the Client.
- k) The Company shall remain fully liable for all acts or omissions of any Sub-processor.
- l) The Company accepts that the Client shall not accept any liability clauses where Personal Data Processors are indemnified against fines or claims under the GDPR.
 - (d) The Company shall delete or return all Personal Data to the Client at the end of the Term of this Agreement.
- m) Both Company the Client agree that if any Personal Data is to be transferred outside of the European Union that:
- n) The European Union Standard Contractual Clauses are incorporated into this Agreement; and
 - (e) In the event of any conflict or inconsistency between this Agreement and the Standard Contractual Clauses, where applicable the Standard Contractual Clauses shall prevail, as appropriate to the Processing being carried out; and
 - (f) The "**Standard Contractual Clauses**" means the contractual clauses approved by the European Commission in its decision on 4 June 2021; and
 - (g) If any variation is required to the Agreement arising from of a change in European Data Protection Legislation, including any variation which is required to the Standard Contractual Clauses, then either party may provide written notice to the other party of that change in law. The parties shall discuss the change in Data Protection Legislation and negotiate in good faith with a view to agreeing any necessary variations to the Agreement, including the Standard Contractual Clauses, to address such changes.

9. PERSONNEL

- 9.1 **Staffing:** the Company shall employ and pay an adequate staff for the purpose of providing the Services.
- 9.2 **Manager:**

- (a) the Company shall employ and pay throughout the Term at least one person on a full-time basis as manager exclusively in connection with the Services.
- (b) The function of the Manager shall be to manage the provision by the Company of the Services in accordance with this Agreement and to, amongst other matters, arrange for the, opening, closing, locking and securing of the Premises throughout the Term.
- (c) the Company shall use all reasonable endeavours to minimise changes in the identity of the Manager during the Term.
- (d) the Company shall inform the Client of the name, address, contact telephone number, qualifications and experience of the Manager appointed by it promptly following execution of this Agreement and subsequently promptly following the making of any replacement (or change of any details in relation to same), and shall promptly advise the Client of developments regarding the role of Manager.

9.3 Appropriately Qualified:

- (a) the Company shall ensure that all Personnel have the qualifications and experience appropriate to their respective roles and duties.
- (b) Without prejudice to the generality of sub-clause (a), the Company shall ensure that all Personnel are sufficiently conversant with the English language to perform their duties properly and to understand and comply with all safety regulations regarding the Premises.

9.4 Identity & Attire: the Company shall procure that all Personnel are:

- (a) appropriately, cleanly and neatly attired while engaged in connection with the provision of the Services; and
- (b) clearly identified as the personnel of the Company (or of their respective employers).

9.5 Removal: Upon being requested to do so by the Client, the Company shall remove from the provision of the Services any member of the Personnel who, in the opinion of the Client, is guilty of behaviour of gross misconduct and therefore prejudicial to the Client's affairs or interests .

9.6 Transfer of Undertakings: the Company acknowledges and agrees that it not intended that there should be transferred to the Client, the obligations of any person as employer arising under any contract of employment, in consequence of, or in connection with, the entry by the parties into, or the performance by them of their obligations under this Agreement, or by the termination of the right of the Company to occupy any of the Premises, or of the Term or of this Agreement, or the transfer to, or performance by, the Company of any function to be performed by it under this Agreement. If, notwithstanding that intention, any such obligations are transferred to the Client by operation of law

(whether pursuant to the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, or otherwise), then the Company shall indemnify the Client upon request against all Losses which may be suffered or incurred by the Client arising out of or in connection with any such transfer, or any contract of employment so transferred to the Client, or the termination of any such contract of employment by the Client subsequent to any such transfer (which the Client shall free in its absolute discretion to terminate without prejudice to its rights under this Clause).

- 9.7 **Transfer of Undertakings Information:** It is acknowledged and agreed that if, on the termination or expiry of all or part of this Agreement, the provision of some or all of the Services are transferred to a new Company and such transfer constitutes a transfer of a business or undertaking within the meaning of the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003 (as may be amended), then the Company shall comply with its obligations under the European Communities (Protection of Employees on Transfer of Undertakings) Regulations 2003, including but not limited to its information and consultation obligations under Regulation 8, and it shall immediately once notified in writing by the Client to do so, provide the necessary information including all employee information and assistance to a new Company and/or the Client to allow the new Company to comply with its obligations (including providing a list of persons considered to be Retr transferring Employees).
- 9.8 **Car Parking:** the Company hereby agrees and acknowledges that permit parking is in place on the Client Campus and the Company shall have the right, at its own cost and expense, to apply to the Client for car parking permits subject to such rules, policies and regulations for such parking as the Client shall notify the Company from time to time in writing.
- 9.9 **Meetings:** Without prejudice to the generality of clause 13 (*information, reviews and surveys*): -
- (a) The Manager and the Client's Commercial Manager shall (at the discretion of the Client Commercial Manager), during the continuance of this Agreement meet in the Client once in each calendar month during the Term at a time and date to be agreed between the Manager and the applicable Client Manager in order to, *inter alia*, review the operation of the Services for the preceding calendar month and to review the operational outlook and compliance with the terms of this Agreement in relation to the Services for the subsequent calendar months. Both parties shall be responsible for their own costs associated with attendance at these meetings.
 - (b) The Manager and the Client's Director of Management Accounting shall during the continuance of this Agreement meet in the Client quarterly during each calendar year of the Term) at a time and date to be agreed between the Manager and the Client Director of Management Accounting in order to, *inter alia*, review the operation of the Services and compliance with the terms of this

Agreement. Both parties shall be responsible for their own costs associated with attendance at these meetings.

10. EQUIPMENT

10.1 Provision:

- (a) the Company shall be entitled to use all Equipment owned by the Client and in existence at the Commencement Date in the provision of the Services, and the Company accepts all such Equipment ‘as is’. **Schedule 4** to this Agreement lists an inventory of all Equipment owned by the Client and in existence at the Commencement Date (the “**Opening Inventory**”).
- (b) The Client agrees, subject to having the financial resources, to meet the cost of replacing the Equipment due to obsolescence of same or where there is inability to repair or maintain the Equipment.

10.2 **Use:** the Company shall use all Equipment for the Permitted Uses in accordance with the manufacturer’s recommendations and all applicable laws.

10.3 Maintenance:

- (a) the Company shall have sole responsibility for all costs associated with (a) all necessary repairs and maintenance to Equipment save where replacement is required due to obsolescence or inability to repair or maintain same;
- (b) the Company shall generally maintain in good condition and in good and safe working order and repair all Equipment (where applicable, in accordance with the manufacturer’s recommendations).

10.4 Inventory:

- (a) the Company shall promptly and regularly update the Opening Inventory of Equipment from time to time during the Term, and shall provide a copy of each updated inventory of Equipment to the Client upon its completion, together with written details of the manner in which it has been updated.
- (b) Notwithstanding the foregoing, the Company shall, at its own cost, ensure that the inventory of Equipment at all times throughout the Term is sufficient and adequate for performing the Services.
- (c) Within 30 days after the end of the Term, the Company shall provide to the Client an inventory of Equipment as at the date on which the Term ended.
- (d) the Company represents and warrants to the Client that it shall use reasonable efforts to ensure that each inventory list to be delivered by the Company to the Client under this Clause will, when delivered, be true, complete and accurate and not misleading.

10.5 **Location:** the Company shall not remove (except temporarily for the purposes of maintenance or repair and for the purposes of carrying on any required Function Business) any Equipment from the Premises.

10.6 **Ownership:**

- (a) The Company acknowledges that the Client owns all Equipment as set out in the Inventory attached hereto in existence as at the Commencement Date and that nothing contained in or contemplated by this Agreement shall operate to transfer ownership of any such Equipment to the Company.
- (b) Subject always to the provisions of clause 4.6 (*Claw Back*), title to all Equipment purchased under the terms of Clause 4.1 by the Company and / or the Client during the Term shall vest exclusively in the Client .
- (c) Subject always to the provisions of clause 4.6 (*Claw Back*), title to all Equipment acquired by the Company for use in connection with the Services shall, to the extent that it has not then become obsolete or unusable, vest in the Client free from Encumbrances on the Expiry Date.
- (d) the Company shall do all acts and things as may reasonably be requested of it by the Client from time to time in order to give effect to the provisions of this Clause 10.6.

10.7 **Risk:** During the Term, the Company shall bear all risk of loss of and damage to the Equipment, save where the Company can demonstrate to the satisfaction of the Client that such loss and/or damage was caused by the negligence of persons other than the Company, the Personnel, the agents and servants of the Company, contractors or permitted third parties of the Company.

11. **CLEANING, WASTE DISPOSAL & MAINTENANCE**

11.1 **Clean & Tidy:** Save as provided in this clause 11, the Company shall, at its own cost, keep each of the Premises in good order, repair and condition (excluding any major structural works unless resulting from an act or omission of the Company) and clean and tidy.

11.2 **The Company Cleaning:** Save as provided in this clause 11, the Company shall, at its own cost, keep each of the Premises in good order, repair and condition (excluding any major structural works unless resulting from an act or omission of the Company) and clean and tidy (which for the avoidance of doubt shall include all deliveries entrance areas, Waste and recycling areas and any other areas used by the Company in providing the Services) at all times during the Term.

11.3 **Waste Management:** All service providers are required to manage waste in accordance with all relevant legislation and as required by The Client. Information in relation to the production of waste and consumption of energy and water shall be required by the Client Environmental Manager. The Client is committed to a green campus initiative and a recent

development is the introduction of segregated waste bins in the various restaurants. The caterer would be responsible for educating customers on the segregation of waste. Monthly reports on volumes of waste sent to landfill, compost and recycling will be required.

- 11.4 **Maintenance:** the Company will be responsible for any repairs and maintenance.
- 11.5 Records of all maintenance works must be retained and made available for inspection by the University, upon request. Contractors must be appropriately qualified, certified and experienced. All modifications to existing facilities must be approved in advance by the University.
- 11.6 **Waste Disposal:** the Company shall dispose at its own cost all Waste in accordance with best practice in the waste management industry in Ireland for the time being and from time to time and/or such other rules, regulations or policies for the disposal of Waste as THE CLIENT shall implement from time to time.
- 11.7 **Effluent:** the Company shall not, in the provision of the Services, discharge into any conduit any substance which would or might be a source of danger or damage to any part of the Client 's Campus or adjoining areas or which may become a source of injury to any person.
- 11.8 **Building Maintenance:** the Client shall be responsible for keeping the Premises in good structural repair and order (including painting and decorating external portions of the Premises' only).
- 11.9 **Structural Improvements:** For the avoidance of doubt the prior written consent of the Client must be obtained in respect of all structural improvements to the Premises requested by the Company.
- 11.10 **Painting:** the Company will re-paint the internal portion of each of the Premises not less than once every two years during the Term and in any event at such times as may be necessary in order to keep the Premises in good order, condition and clean and tidy subject to the prior agreement of the Client to the re-painting specification to be furnished by the Company to the Client . The Company shall use its best endeavours to re-paint the Premises in an efficient and business like manner and in compliance with the then current best practice.
- 11.11 **Windows:** the Company shall: -
- (a) at least once in every calendar month and at its own cost, arrange for the windows of each of the Premises to be cleaned (both internally and externally);
 - (b) be responsible for the cost of repairing and / or replacing the plate glass in the Premises where same is damaged because of negligence or some other default on the part of the Company or any of its servants or agents.
- 11.12 **Lighting:** the Company shall at its own cost during the Term be responsible for the changing the light bulbs in each of the Premises.

12. REGULATORY APPROVALS

- 12.1 **Other Approvals:** the Company shall obtain all Regulatory Approvals necessary for the provision of the Services at the Premises and shall ensure that all such Regulatory Approvals are in full force and effect throughout the Term. The Company hereby irrevocably agrees and acknowledges that it shall be responsible for all costs, charges, professional fees, stamp duty and other costs (which for the avoidance of doubt shall include all costs of the Client) howsoever arising in connection with the obtaining of all Regulatory Approvals necessary.
- 12.2 **Compliance:** the Company shall comply with the provisions of all Regulatory Approvals issued from time to time in connection with the Services and/or the Premises. The Company shall do nothing which would or might prejudice any Regulatory Approval issued in connection with the Services and/or the Premises.

13. INFORMATION, REVIEWS & SURVEYS

- 13.1 **information:** the Company shall keep the Client informed of its progress and performance (financial and otherwise) in the provision of the Services, and shall furnish to the Client , to such extent and in such form and detail as it may from time to time require, particulars of any matter concerned with and arising out of the activities of the Company in the provision of the Services. In particular, but without prejudice to the generality of the foregoing, the Company shall continue to provide to the Client such regular reports as it has prior to the date of this Agreement provided to the Client in connection with the provision by it of the Services on the Client 's Campus.
- 13.2 **Reviews Meetings:** the Company shall attend at such meetings with the Client as the Client may reasonably request on reasonable notice from time to time for the purpose of reviewing and assessing the manner of provision of the Services and discussing matters raised by the Client and/or customers in connection with the Services.
- 13.3 **The Company's Representatives:** the Company shall be represented at review meetings by such of its personnel as the Client may reasonably request from time to time. Such representatives need not be among those engaged by the Company on the Client 's Campus or directly involved in the provision of the Services.
- 13.4 **Response:** the Company shall promptly consider in good faith all observations and requests regarding the Services made to it at review meetings, and shall use all reasonable endeavours to accommodate those observations and requests. Nothing in this Clause 13.4 shall be construed as relieving the Company of any of its obligations regarding the Services, or to relax any such obligation.
- 13.5 **Surveys:**
- (a) the Company shall do all such acts and things as may reasonably be requested of it by the Client from time to time in order to facilitate the carrying out of

such reviews, surveys and assessments of the Services as the Client deems appropriate from time to time.

- (b) Each party shall promptly and fully disclose to the other the terms of reference and the results of any survey, assessment or review of the Services from time to time which is carried out by it or on its behalf.

14. CONFIDENTIALITY

- 14.1 **Keep Confidential:** Each party agrees that it shall take all reasonable precautions to keep confidential the other party's Confidential Information, and shall not, without the prior written consent of the other, use, disclose, copy or modify the other party's Confidential Information other than as necessary for the exercise of its rights, and performance of its obligations, under this Agreement.
- 14.2 **Employees & Agents:** Each party undertakes to disclose the other party's Confidential Information only to those of its officers, employees, agents and contractors to whom, and to the extent to which, such disclosure is necessary for the exercise of its rights, and performance of its obligations, under this Agreement, and to procure that such persons are made aware of, and agree to observe the obligations of confidentiality in Clause 14.1.
- 14.3 **Notify Misuse:** Each party shall give notice to the other of any unauthorised use, disclosure, theft or other loss of that other party's Confidential Information as soon as is practicable after becoming aware of it.
- 14.4 **Exceptions:** The provisions of Clause 14.1 and 14.2 shall not apply to information which:
 - (a) was, at the time of receipt by the recipient party, in the public; or
 - (b) has, after receipt by the recipient party, entered the public domain, through no act or omission of the recipient party or its servants, agents or contractors; or
 - (c) the recipient party can demonstrate was already lawfully in its possession at the time of receipt, without any restrictions on its disclosure; or
 - (d) the recipient party can demonstrate, was independently developed by it or on its behalf;
 - (e) is obtained by the recipient party from a third party free from any obligation of confidentiality for the benefit of the disclosing party; or
 - (f) is by law or by any court or order of any governmental or regulatory authority to be disclosed.

15. INDEMNITIES

15.1 The Company will defend, indemnify and the Indemnities on demand from and against all Losses arising from Company's negligence, acts or omissions otherwise than in the proper performance of this Agreement or arising from matters under the Company's control which may at any time be suffered or incurred to the extent directly or indirectly as a result of or in connection with:

- (a) the provision, use or consumption of any Services or of any goods or of any comestible supplied in that connection;
- (b) any personal injury to or death of any Personnel occurring in the course of the provision of the Services;
- (c) any personal injury to or death of any person or loss of or damage to property occurring at any Premises;
- (d) any personal injury to or death of any person or loss of or damage to property caused by any act or omission on the part of the Company or any Personnel;
- (e) any failure by the Company to comply with any of Clauses 8.2 (*comply with laws*), 11.3 and 11.6 and 11.7 (*waste & effluent*) and 12 (*regulatory approvals*);
- (f) any failure by the Company to comply with Clause 6.3 (*act as principal*) or the trading of the Company; or
- (g) any personal injury to or death of any person or any loss related to any cryptosporidium or analogous contamination at the Services.
- (h) Save for death or personal injury; or for any fraud; for any other sort of liability that, by law, cannot be limited or excluded; no party shall be liable to the other for any loss of profit, loss of revenue, or loss of contracts, loss of goodwill, loss of reputation, or any indirect or consequential loss howsoever caused arising out of or in connection with the performance or non-performance (as the case may be) by that party of its obligations under this Agreement

16. INSURANCES

16.1 **Effect & Maintain:** the Company will effect, and will maintain in full force and effect during the Term, such insurances in connection with:

- (a) the provision of the Services;
- (b) public liability risk in respect of each of the Premises; and
- (c) its obligations in respect of the Personnel;

as would in each case be effected by a prudent person in the position of the Company in like circumstances to those contemplated by this Agreement.

16.2 Insurance Provisions: All insurances required to be effected by the Company:

- (a) will be effected through or with (as the applicable) insurance brokers and insurers of recognised standing;
- (b) will be in such indemnity amounts, and subject to such levels of self insurance, as would be effected by a prudent person in the position of the Company;
- (c) provide that the insurers will hold harmless and waive any rights of recourse and/or subrogation against the additional insureds or to be subrogated to any rights of the Client.

16.3 Evidence of Compliance: At least once in every year of the Term, and from time to time upon request by the Client, the Company shall provide to the Client written evidence (in form and substance satisfactory to the Client) of compliance by the Company with its obligations regarding insurances under this Clause 16. Without prejudice to the generality of the foregoing, the Company shall promptly notify the Client of any material changes in any policies of insurance contemplated by this Clause 16 or in any of the circumstances affecting any such policies of insurance. shall be entitled to retain for reference, and permit access by its insurance and professional advisers to, a copy of each document provided to it pursuant to this Clause 16.3.

16.4 If the Company fails to obtain and maintain insurance in accordance with clause 16.1, the Client may, in its sole discretion either:

- (a) obtain the appropriate insurance itself and charge the cost of same to the Company; or
- (b) terminate this Agreement in accordance with clause 18 (*Default*).

16.5 Notwithstanding the generality of the foregoing the Company shall effect and maintain in force with a reputable insurance company the following minimum levels of insurances: -

- (a) employers liability insurance with a limit of not less than €13,000,000 for any one occurrence or claim; and
- (b) public liability insurance with a limit of not less than €6,500,000 for any one occurrence or claim; and
- (c) Product Liability insurance with a limit of not less than €6,500,000 for any one occurrence or claim; and
- (d) **Cyber Insurance** with a limit of not less than €500,000 for any one occurrence or claim; and

- (e) **Motor Insurance** To the required level and should include a specific indemnity in favour of University of Galway third party property damage

17. VACATION OF PREMISES

- 17.1 **Vacate:** On the Expiry Date, the Company will promptly vacate each Premises and leave the same in a good, clean, wholesome and tidy condition.
- 17.2 **Condition:** Unless a Premises or piece of Equipment has been previously replaced, disposed of (with the Client's consent) damaged beyond use or destroyed by fire or some other event, the Company will leave it or re-deliver it (as appropriate) in the condition in which it would be assuming that the Company had complied with all of its obligations under this Agreement.
- 17.3 **De-selection of Premises:** Clauses 17.1 and 17.2 shall apply *mutatis mutandis* to any Premises which ceases to be such for any reason during the Term.
- 17.4 **Non-Compliance:** To the extent that, on the Expiry Date, the Company has not complied with its obligations regarding the condition of a Premises, the Company shall, at the Client's option:
 - (a) rectify such non-compliance within 7 working days of the notification of such non-compliance by the Client, and the Company's obligations under this Agreement shall continue in full force and effect until such non-compliance is rectified; or
 - (b) vacate the Premises in question, and indemnify the Client (and provide to the Client's satisfaction cash as security for that indemnity) against the cost of putting the Premises in question into the condition required by this Agreement.
- 17.5 **Re-licensing of Concession:** From time to time during the Term, the Company shall may be requested by the Client to do such acts and things (including the provision of information) as the Client may require in order to facilitate (a) the re-licensing by the Client of the right to provide Services at any of the Premises following expiry of the Term; and (b) the orderly and efficient transfer of functions to any person other than the Company upon any such re-licensing. Notwithstanding the foregoing, nothing herein shall constitute an exception to or waiver of the obligations contained in Clause 14 (*confidentiality*).

18. DEFAULT

- 18.1 **Consequences:** The occurrence of an Event of Default will constitute a repudiation (but not a termination) of this Agreement by the Company (whether the occurrence of any such Event of Default is voluntary, involuntary or occurs by operation of law or otherwise).

18.2 **Rights & Remedies:** If an Event of Default occurs and is continuing, the Client may at its option (and without prejudice to any of its other rights under this Agreement or law):

- (a) Request the appropriate remediation of such breach causing the Event of Default and permit sufficient time to the client to remediate such a breach.
- (b) accept such repudiation and by notice to the Company and, with effect from such date as may be specified by the Client, terminate the right of the Company to occupy each of the Premises (but without prejudice to the continuing obligations of the Company under this Agreement, and for the purposes of those obligations, the Term shall be deemed to continue), whereupon all rights of the Company under this Agreement shall cease; and/or
- (c) proceed by appropriate court action against the Company to enforce the performance of this Agreement or to recover damages for the breach of this Agreement; and/or
- (d) terminate, or suspend until further notice, the status of any Premises as such; and/or
- (e) procure compliance with any or all of the obligations in respect of which the Company is in default (and the Company shall indemnify the Client on demand against all reasonable costs incurred by it in so doing, together with interest in accordance with Clause 3.4 (for which purpose due date for payment of a given amount shall be the date on which the Client pays out the corresponding amount)).

18.3 **Termination on Notice:** Notwithstanding the foregoing, this Agreement may be terminated by either party by the giving to the other of not less than three months notice in writing provided the effective date of such termination takes place during a Client term holiday

19. **GOVERNING LAW & ARBITRATION**

19.1 **Law:** This Agreement shall be governed by and construed in accordance with the laws of Ireland.

19.2 Any dispute question or difference whatsoever which may at any time hereafter arise between the parties arising out of or in connection with this Agreement shall be, and is referred to mediation by a single mediator, to be nominated by all the parties in dispute or in default of agreement, on the application of any such party, appointed by the Chairperson for the time being of the Chartered Institute of Arbitrators - Irish Branch or in the event of his being unwilling or unable to do so, by the next senior officer at the Chartered Institute of Arbitrators - Irish Branch who is willing and able to make the appointment. If the dispute is not resolved within three months of the appointment of the mediator, then unless otherwise agreed by all the parties in dispute, the dispute shall be referred to a single arbitrator, to be nominated by all the parties in dispute or in default of agreement, on the

application of any such party, appointed by the Chairperson for the time being of the Chartered Institute of Arbitrators - Irish Branch or in the event of his being unwilling or unable to do so, by the next senior officer at the Chartered Institute of Arbitrators - Irish Branch who is willing and able to make the appointment provided always that this provision shall apply also to the appointment (whether by agreement or otherwise) of any replacement arbitrator where the original arbitrator (or any replacement) has been removed by order of the High Court or refuses to act or is incapable of acting or dies. Such arbitration shall be finally binding and shall be conducted in accordance with and subject to the provisions of the Arbitration Act 2010 or any statutory modification or re-enactment thereof for the time being in force. Unless otherwise agreed in writing between the parties, such arbitration shall take place at Galway.

20. COMMUNICATIONS

20.1 **Notices:** All notices under, or in connection with, this Agreement may be given in writing by hand, by ordinary pre-paid post or by facsimile. Any notice so given shall be deemed to have been served:

- (a) if by hand, when delivered to the address for the time being stipulated by the addressee in accordance with this Clause;
- (b) if by electronic transmission, upon production by the transmitting device of a confirmation of successful transmission of all pages comprised in the communication to the number for the time being stipulated by the addressee in accordance with this Clause.

20.2 The address, telephone number and facsimile number of each party for the purpose of the giving of notices under this Agreement shall be that set forth below in relation to that party (or such other address or number or address (if any) as has, for the time being, most recently been stipulated by the addressee concerned in a notice to the other party given in accordance with this Clause):

THE CLIENT Address: University of Galway
University Road
Galway

Attn: Chief Operating Officer

Telephone: +353 91 492 633

The Company Name:

Email :

21. **FORCE MAJEURE**

- 21.1 A party, provided that it has complied with clause 21.2, shall not be in breach of this Agreement, nor liable for any failure or delay in performance of any obligations under this Agreement arising from a Force Majeure Event.
- 21.2 Any party that is subject to a Force Majeure Event shall not be in breach of this Agreement provided that:
- (a) it promptly notifies the other party in writing of the nature and extent of the Force Majeure Event causing its failure or delay in performance;
 - (b) it could not have avoided the effect of the Force Majeure Event by taking precautions which, having regard to all matters known to it before the Force Majeure Event, it ought reasonably to have taken, but did not; and
 - (c) it has used reasonable endeavours to mitigate the effect of the Force Majeure Event to carry out its obligations under this Agreement in any way that is reasonably practicable and to resume the performance of its obligations as reasonably possible.
- 21.3 If the Force Majeure Event prevails for a continuous period in excess of 21 days, either party may suspend this Agreement on 10 days written notice. If after a further 30 days the Force Majeure Event continues, either party may terminate this agreement with 10 days notice. Termination under this clause 21.3 shall be without prejudice to the rights of the parties in respect of any breach of this Agreement occurring before such termination.

22. **DEED OF RENUNCIATION**

- 22.1** It is a requirement of this Agreement that Company hereby agrees to enter into a Deed of Renunciation of Landlord and Tenant Rights in respect of the Premises to be occupied by Company as set out in Schedule 7 attached hereto.

23. **GENERAL PROVISIONS**

- 23.1 Intellectual Property and Copyright:** Each Party shall retain the ownership of their own Copyright material relating to this contract for the duration thereof. Either Party may afford the other, the use on a royalty licence fee free basis, of all Intellectual Property, which included but is not limited to computer software programs, signage, marketing and promotional materials, recipes or other material for the duration of the Agreement to

facilitate the property delivery of the Services. Upon termination of this Agreement, all use of trademarks, service marks and logos owned by the owning party or licensed to the owning party by third parties shall be discontinued by the using party, and the using party shall immediately return to the owning party all Proprietary Materials.

- 23.2 **Costs:** Each party will pay its own costs in connection with or incidental to the preparation, negotiation and execution of this Agreement.
- 23.3 **Good Faith:** Each of the parties shall exercise its rights, and perform its obligations, under this Agreement in good faith.
- 23.4 **Survival of Obligations:** The provisions of Clauses 1 (*interpretation*), 14 (*confidentiality*), 15 (*indemnity*), 19 (*law & arbitration*) and 23 (*general provisions*) shall survive the expiration or termination of this Agreement however it arises, and shall continue to bind the parties or the relevant party (as applicable) without limit in time.
- 23.5 **Accrued Rights:** Termination or expiration of this Agreement shall not affect any rights of the parties accrued up to the date of termination.
- 23.6 **Standard form Documents:** The parties recognise that printed form purchase orders, invoices and other commonly used form documents relating to the performance of any obligations hereunder may contain terms which conflict with one or more terms of this Agreement. In case of any such conflict, the relevant terms of this Agreement shall prevail.
- 23.7 **No Partnership etc:** Nothing in this Agreement shall create, or be deemed to create, a partnership, joint venture, or the relationship of principal and agent, between the parties, and neither of the parties shall have any right or authority to act on behalf of the other or to bind the other in any way.
- 23.8 **Assignment:** the Company may not, without the written consent of the Client : (a) assign, transfer (whether voluntarily or involuntarily, by operation of law or otherwise) or create or permit to exist any right, title or interest (including, without limitation, any security interest and any beneficial interest under any trust) in, to or under, any of its rights under this Agreement; or (b) purport to transfer, sub-contract or delegate any of its obligations under this Agreement. the Client shall however be entitled without the prior written consent of the Company, to assign, transfer, mortgage, charge, declare a trust of or deal in any other manner with this Agreement or any of its rights and obligations under or arising out of this Agreement.
- 23.9 **Severability:** If the whole or any part of a provision of this Agreement is or becomes illegal, invalid or unenforceable in any jurisdiction, that will not affect the legality, validity or enforceability in that jurisdiction of the remainder of the provision in question or any other provision of this Agreement; or the legality, validity or enforceability in any other jurisdiction of that or any other provision of this Agreement.
- 23.10 **Counterparts:** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same instrument.

- 23.11 **Consequential Loss:** Neither Party shall be liable to the other for any indirect or consequential loss, damage, cost or expense of any kind which that other may suffer or incur, which arises out of, or is connected with, this Agreement or any matter contemplated by it, however, nothing in this Agreement excludes any Party's liability to the extent it may not be so excluded under applicable law, including any such liability for death or personal injury, or liability for fraud.
- 23.12 **Sole and Entire Agreement:** The express terms of this Agreement constitute the sole and entire agreement between the parties in relation to the occupation by the Company of each of the Premises and the provision by the Company of the Services on the Client's Campus. the Company acknowledges that it occupies and shall from time to time occupy each of the Premises as a non-exclusive licensee of the Client upon the terms and subject to the conditions of this Agreement and that nothing in this Agreement shall be construed so as to create a relationship of landlord and tenant between the parties grant, or create any obligation for the granting of, any lease of any premises to the Company. Nothing in this Agreement shall be construed so as to restrict the ability of the Client to engage others to provide the Services at any place on the Client Campus and the Client shall be free to do so.
- 23.13 **Waivers, Remedies Cumulative:** Each of the rights of each party under this Agreement may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that party may have under this Agreement, law or otherwise; and may be waived only in writing and specifically. Delay by a party in exercising, or the non-exercise by a party of, any such right will not constitute a waiver of that right.
- 23.14 **Amendments:** Any amendment to this Agreement must be in writing and duly signed for and on behalf of each of the parties to this Agreement.

IN WITNESS OF WHICH, this Agreement has been duly executed by the undersigned signatories on behalf of the parties on the date first above written, and each signatory represents and warrants to the party other than that which he or she represents that he or she has the authority to sign on behalf of the party which he or she purports to bind.

SIGNED for and on behalf of

University of Galway

by _____

A duly authorised representative

in the presence of:

Name: _____

Title: _____

SIGNED for and on behalf of

Director

Person duly authorised

in the presence of:

Witness to Signature

Witness' address

Witness' occupation

SCHEDULE 1

EASEMENT, RIGHTS, PRIVILEGES AND COVENANTS

1. Easements, Rights and Privileges Granted to the Company

- 1.1 Save in respect of deliveries to the Premises which shall be made via the roadways marked yellow on the maps attached hereto at **Schedule 3** (or such alternative roadways as the Client may specify and notify to the Company from time to time), the full and free right in common with others of ingress and egress into and from the Premises and over the roads and entrances to the Client's Campus at all reasonable times for the purpose of exercising the rights and privileges granted by this Agreement.
- 1.2 The use of all water, gas, electricity, telephone and other pipes, wires and cables upon, through or under the Client's Campus insofar as such rights may reasonably be necessary for the enjoyment of the Premises in common with the Client and all others authorised by the Client or otherwise entitled thereto.
- 1.3 Subject to the provisions of clause 10.9 (*Effluent*) and there being sufficient capacity, the right to make use of the sewers drains and channels connecting to the Premises.

2. Easements, Rights and Privileges reserved by THE CLIENT

- 2.1 The right of uninterrupted passage and running of water, soil, air, gas, electricity, telephone and other services from and to property adjoining the Premises through any gutters, pipes, sewers, mains, drains, watercourses, channels, conduits, ducts, flues, wires, and cables running through in over or under the Premises from time to time during the Term, and the right to install, add to, inspect, maintain, replace and repair the same.
- 2.2 The right to execute works and make erections upon or to erect rebuild or alter any buildings or erections on any part of the Client's Campus in such manner as the Client may think fit notwithstanding that the access of light and air to any Premises or any part thereof may thereby be interfered with.
- 2.3 The right of the Client from time to time to make reasonable rules and regulations for the orderly, safe, convenient and proper operation of the Client's Campus, or any part thereof, all of which rules and regulations shall be deemed to be and form part of this Agreement.

2.4 The right of the Client with all necessary materials and appliances a manner which does not affect the delivery of the Services) to enter and remain upon the Premises for any of the following purposes: -

- (a) to view and examine the state and condition of the Premises and to take schedules or inventories of the Equipment;
- (b) to exercise any of the rights excepted and reserved by, and to carry out any obligations arising under, this Agreement;
- (c) for any other purpose connected with the interest of the Client in the Premises.

3. **General Covenants of the Company**

3.1 the Company covenants and agrees with the Client , during the Term:

- (a) to use the Premises solely for the Permitted Use in compliance with all statutory or regulatory requirements or any codes of practice governing or relating to the provision of the Services;
- (b) not to carry out any works on, or make any alteration whatsoever in the internal arrangements or external appearance of the Premises, nor to erect and wireless or television aerial or other equipment for the transmission of electronic signals without first obtaining the consent in writing of the Client ;
- (c) not to suffer or cause any obstruction to the Client's Campus;
- (d) to make all reasonable endeavours to keep the Premises open for business during such hours as the Client may specify from time to time;
- (e) not to cause suffer or permit or do any act or omission which may be or become an actionable nuisance, or which may cause harm, annoyance, inconvenience or disturbance to the Client, occupiers of any other part of the the Client Campus and / or to occupiers of adjoining properties or lands;
- (f) all deliveries to the Premises shall be made via the roadways marked yellow on the maps attached hereto at **Schedule 3** (or such alternative roadways as the Client may specify and notify to the Company from time to time) and no deliveries shall be made to any one or more of the Premises outside the Core Hours. If the Company shall desire, from time to time, to accept deliveries to any one or more of the Premises outside the Core Hours, then the Company shall on each occasion make prior arrangements with the Client and comply with any requirements as to the time of deliveries, the means of access to any one or more of the Premises (as the case may be) and any such other conditions and requirements as the Client may stipulate from time to time;
- (g) To make all reasonable endeavours not to permit noise from any equipment or appliance (including but without prejudice to the generality of the foregoing any radio,

television or other audio equipment) on the Premises to be audible outside the Premises or in any other part of the adjoining area;

- (h) not to use upon the Premises any electrical devices without surge protectors fitted thereon or without the same being properly earthed;
- (i) not to knowingly do or bring, cause or permit to be done upon any Premises or any part thereof by reason or in consequence of which the rights of the Client under any policy of insurance in respect of the said Premises or any adjoining or neighbouring premises would or might be prejudicially affected;
- (j) to comply at all time with the regulations made by the Client for the good management of the Client's Campus, a copy of such regulations to be provided to the Company upon request to repair any damage caused to any part of the Client's Campus as a result of the Company's occupancy of the Premises;
- (k) to pay all rates, taxes and charges (including emergency service charges) or any description which may at any time during the Term be payable in respect of the Premises;
- (l) to comply with any laws relating to the use of the Premises from time to time (including, without limitation, in relation to planning permission and fire safety); and
- (m) to notify the Client of any notices or instructions received by it from the planning authority, fire officer, or any other governmental agency or authority in connection with any Premises or its user from time to time.

SCHEDULE 2

EVENTS OF DEFAULT

Each of the following events or conditions shall be an ‘Event of Default’.

- (a) **non-payment:** the Company fails to make any payment under this Agreement on or prior to the due date;
- (b) **insurances:** the Company fails to comply with any provision of Clause 15 (*insurances*);
- (c) **non-compliance:** the Company fails to comply with Clause 6.1 and the failure to comply is not capable of remedy or (if capable of remedy) continues for twenty one fourteen days after the giving by the Client to the Company of notice requiring the failure to comply to be remedied (*services*);
- (d) **laws & approvals:** the Company fails to comply with any provision of Clauses 8.2 (*laws*) or 12 (*approvals*);
- (e) **representations:** any representation or warranty made by the Company under this Agreement is or proves to have been incorrect in any material respect;
- (f) **other breach:** the Company fails to comply with any provision of this Agreement other than those referred to at sub-clauses (a) to (e) above, and the breach or failure is not capable of remedy or (if in the opinion of the Client capable of remedy) continues for thirty days after the giving by the Client to the Company of notice requiring the breach to be remedied;
- (g) **regulatory approvals:** any Regulatory Approval is withheld or is revoked, suspended, cancelled or withdrawn, terminated or not renewed or otherwise ceases to be in full force and effect or is modified or made subject conditions in a manner unacceptable to the Client ; and
- (h) **insolvency:** the Company is, or is deemed for the purposes of any relevant law to be, unable to pay its debts as they fall due or to be insolvent, or any step is taken with a view to a composition, assignment or arrangement with any creditors of, or the liquidation or dissolution of, the Company; or any liquidator, receiver, administrator, examiner or similar officer is appointed to or in respect of the Company or any of its assets.

Tender Submission

Reference _____ OJEU Ref:
submitted post tender receipt.

As submitted by
, inclusive of any clarifications

PRICES – Rates – Tariffs

As provided in the Tender

SCEDULE 7

Deed of Renunciation

Section 17 of the Landlord and Tenant (Amendment) Act, 1980 (as amended by Section 4 of the Landlord and Tenant (Amendment) Act, 1994 and Section 47 of the Civil Law (Miscellaneous Provisions) Act, 2008)

Renunciation of rights to a new tenancy

THIS RENUNCIATION dated _____

In this Renunciation the following words and expressions have the following meanings:

“Acts” means the Landlord and Tenants Acts 1967 to 2008 as amended replaced or supplemented from time to time;

“Licence” means the licence between the Client and the Company dated _____

“Premises” means the area as so defined and described in schedule 1 of the Licence;

“Company”
means

|Insert Name

The Client has agreed to grant the Company, in common with the Client, the right to enter upon and obtain access to the Premises subject to the terms and conditions set out in the Licence. The Client and the Company hereby acknowledge and agree that it is the strict intention of the parties that the Licence will not create a tenancy within the meaning of Acts or otherwise and that the Premises does not constitute a tenement within the meaning of the Acts.

The Company acknowledges that it has received independent legal advice in relation to this Renunciation from [INSERT SOLICITORS NAME HERE], and has been advised that should the Licence be deemed to create a tenancy and the Premises be deemed to be a tenement, then the Company may, subject to the terms of the Acts, be entitled to a new tenancy in the Premises at the expiry or sooner determination of the Licence.

Having received and considered such advice, and under the provisions of Section 17 of the Landlord and Tenant (Amendment) Act, 1980 (as amended by Section 4 of the Landlord and Tenant (Amendment) Act, 1994 and Section 47 of the Civil Law (Miscellaneous Provisions) Act, 2008), the Company **HEREBY RENOUNCES** any entitlement which it may have under the Acts to a new tenancy in the Premises should such entitlement, but for this Renunciation, accrue upon the expiration or sooner determination of the Licence.

IN WITNESS WHEREOF the Company has caused its common seal to be affixed hereto on the date written above.

PRESENT when the Common Seal

of []LTD
was affixed hereto :-

Director

Director/Secretary

In the presence of

Solicitor

SCHEDULE 8

Incumbent Service Personnel Information to be released at Tender Stage

- 1. The following anonymised information will be provided:**
 - 1.1. The total number of staff that currently undertake the work and who may therefore be transferred.
 - 1.2. The total number of posts or proportion of posts expressed as a full time equivalent value that currently undertakes the work that is to transfer.
 - 1.3. The preceding 12 months total pay costs.
 - 1.4. Total potential redundancy liability if all the transferring employees were made redundant.
- 2. In respect of each of those members of staff included in the total at 1.1 above; the following anonymised information:**
 - 2.1. Age (not date of Birth).
 - 2.2. Employment Status (i.e. Fixed Term, Casual, Permanent).
 - 2.3. Length of current period of continuous employment (in years and months).
 - 2.4. Weekly contracted hours of attendance (gross).
 - 2.5. Standard annual holiday entitlement/current holidays accrued.
 - 2.6. Redundancy liability information.
 - 2.7. Annual salary.
 - 2.8. Details of any regular overtime commitments (these may be weekly, monthly or annual commitments for which staff may receive an overtime payment).
 - 2.9. Details of shift pay, overtime rates, Sunday premium and other attendance patterns that attract enhanced rates of pay or allowances.
 - 2.10. Regular/recurring allowances.
- 3. Any additional information about factors that may influence staffing levels and costs.**
- 4. The information to be provided at paragraphs 1, 2 and 3 should not identify an individual member of staff by name or other unique personal identifier.**
- 5. The general employment terms and conditions applicable to those members of staff identified at 2 above.**
- 6. Anonymised details of any employment terms or terms and conditions that deviate those disclosed at 5 above.**

We undertake that within 9 months prior to expiry of the awarded contract, we will comply fully with any request from the Contracting Authority for information on staff employed, hours of operation, rates of pay, holiday entitlements, pension obligations, redundancy liabilities, and any other information deemed necessary to be made available for future tender competitions in order to ensure a fair and equitable competitive process.

SCHEDULE 9

Change Control Procedure

1. At any time during the term of this Agreement, the Client may request or the Company may recommend a change in the goods, Services, the Service Levels, the Charges or otherwise. Any such request or recommendation shall be notified to the Company or the Client, as appropriate, in writing with reasonable details of the requested or recommended change. The Company shall not unreasonably withhold or delay its agreement to any request by the Client.
2. The Company shall upon receipt of a written request for change from the Client investigate the likely impact of the requested change upon the Services, the Service Levels, the Charges or otherwise and shall, within ten (10) days submit to the Client an impact statement (the **“Impact Statement”**). Any recommendation for a change made by the Company shall be accompanied by an Impact Statement.
3. Any Impact Statement shall set out:
 - a. details of the proposed change;
 - b. the originator and the date of the request or recommendation for the change;
 - c. the reason for the change;
 - d. any variation in the Charges, if any, which might result from such change;
 - e. a timetable for implementation together with any proposals for acceptance of the change;
 - f. the impact, if any, of the change on other aspects of the Agreement;
 - g. the date of expiry of validity of the Impact Statement;
4. For each recommendation made by the Company, the Client shall, within the period of the validity of the accompanying Impact Statement:
 - a. evaluate the Impact Statement and as appropriate either:
 - i. request further information; or
 - ii. approve the Impact Statement;
 - iii. notify the Company of the rejection of the Impact Statement.
5. If the Impact Statement is approved by the Client, the Company will arrange for a copy of an approved Impact Statement to be signed by the Nominated Representatives of each Party on behalf of the Client and the Company.
6. Following the approval of an Impact Statement by the Company and the Client an amendment to this Agreement shall be entered into by the Parties.
7. Until such time as a change is made in accordance with this Change Control Procedure, both Parties shall, unless otherwise agreed in writing, continue to perform their obligations under the Agreement, as if the request or recommendation had not been made.
8. The Contractor hereby agrees to reasonably reduce the Charges in the event that the Parties agree to a reduction in the scope of the Services or in the Service Levels.
9. Any dispute between the Parties as to whether the Contractor has unreasonably withheld or delayed its agreement to any Client requested change shall be determined without delay in accordance with the dispute resolution clauses of this Agreement.

IN WITNESS whereof this Agreement has been duly entered into on the date shown at the beginning of this Agreement.

**SIGNED for and on behalf of the Company by
its duly authorised representative:**

Signatory

Title

Signature:

**SIGNED for and on behalf of the Client by
its duly authorised representative:**

: _____