



This Licence Agreement made the day of

BETWEEN;

1. **HEALTH SERVICE EXECUTIVE** having its administration address at Oak House, Limetree Avenue, Millennium Park, Naas, County Kildare (hereinafter called "the Licenser" which expression shall where the context so admits or requires includes its successors and assigns) of the one part and;
2. **[INSERT SERVICE PROVIDER]** having its registered office at/of **[INSERT SERVICE PROVIDERS ADDRESS]** (hereinafter called "the Licensee") of the other part

WITNESSETH as follows:

1.1 DEFINITIONS AND INTERPRETATION

In this Licence Agreement the following expressions shall have the following meanings: -

"Commencement

Date" means the **[INSERT DATE]**.

"Hospital"

means **[INSERT HOSPITAL]** in the County of **[LOCATION]**.

"Fit Out"

means Licensee fit out works in accordance with the Specification contained in Schedule 3 of this Licence Agreement.

"Licensed Area"

means that part of the Hospital comprised in Schedule 4 of this Licence Agreement;

"Licence Fee"

means the fee as provided for and set out in the Service Level Agreement and in Schedule 2 to this Licence together with any VAT payable thereon at the applicable rate, which shall be payable monthly on the last calendar day of each preceding month.

"Licence Period"

means the period of **[INSERT DURATION]** years from the Commencement Date (including any extension or extensions of the Licence Period made pursuant to Clause 2.7) or until the date on which the Licensee's rights are determined in accordance with the terms of this Agreement, whichever is the earlier.

"Licensed Hours"

means **[INSERT OPENING TIMES]** am **[INSERT CLOSING TIMES]** pm **[Monday to Friday]**, **[INSERT OPENING TIMES]** am to **[INSERT CLOSING TIMES]** pm **[Saturday and Sunday]** of the Licence Period or such further hours as the Licenser and Licensee may from time to time agree.

"Outgoings"	means any charges arising in connection with the Licensee's use and occupation of the Licensed Area to include all charges in respect of the supply of electricity to the Licensed Area and in connection with any telephone line to be installed in the Licensed Area together with the charges in respect of insurance specified at Clause 3.12 of this Licence Agreement.
"Permitted Use"	means use of the Licensed Area for the sale [and/or consumption] ¹ of the products as listed in Schedule 2 - Products of the Service Level Agreement.
"Service Level Agreement"	means the Service Level Agreement entered into between the Licensor and the Licensee contemporaneously with the execution of this Licence for the delivery of the Services at the Licensed Area.
"Services"	means the services to be provided by the Licensee in respect of the Licensed Area as provided for and as defined in Schedule 1 - Services of the Service Level Agreement.
"VAT"	means Value Added Tax.
"VAT ACT"	means the Value Added Tax Act 2010.

1.2 INTERPRETATION

Unless there is something in the subject or context inconsistent therewith, in interpreting this Agreement:

- (a) references to any document being in "the agreed form" shall mean in a form agreed on or before the execution of this Agreement between the Licensor and the Licensee and for the purpose of identification only signed on behalf of the Licensor and Licensee;
- (b) where two or more persons are included in the expression "Licensor" or "Licensee" the covenants which are expressed to be made by the Licensor or the Licensee shall be deemed to be made by such persons jointly and severally;
- (c) words importing persons shall include firms, companies and corporations and vice versa;
- (d) any covenant by the Licensee not to do any act or thing shall include an obligation not to permit or suffer such act or thing to be done and any references to any act, neglect, default or omission of the Licensee shall be deemed to include any act, neglect, default or omission of the Licensee or the under-lessees, servants, agents, licensees or invitees of the Licensee or any person under its or their control;

¹ Delete if not appropriate.

- (e) references to any right of the Licensor to have access to or entry upon the Licensed Area shall be construed as extending to all persons authorised by the Licensor and any persons having an interest in the Licensed Area superior to that of the Licensor;
- (f) any reference to a Law (whether specifically named or not) or to any sections or sub-sections in a Law shall include any amendments or re-enactments of it for the time being in force and all statutory instruments, orders, notices, regulations, directions, bye-laws, certificates permissions and plans for the time being made, issued or given thereunder or deriving validity from it;
- (g) any reference to any Society, Institute or other professional body shall include any other body established from time to time in succession to or in substitution for or carrying out the function formerly carried out by such Society, Institute or other professional body;
- (h) if any term or provision shall be held to be illegal or unenforceable in whole or in part, then that term shall be deemed not to form part of this Agreement and the enforceability of the remainder of this Agreement shall not be affected;
- (i) clause or schedule headings are for reference only and shall not affect the construction or interpretation;
- (j) unless otherwise stated, any reference to a clause, sub-clause or Schedule shall mean a clause, sub-clause or Schedule of this Agreement and a reference in a Schedule to a paragraph is to a paragraph of that Schedule; and
- (k) any reference to the masculine gender shall include reference to the feminine and neuter gender and any reference to the neuter gender shall include the masculine and feminine genders and reference to the singular shall include reference to the plural and vice-versa.

2. GRANT OF LICENCE

THE PARTIES HEREBY AGREE AND DECLARE as follows;

- 2.1. In consideration of the payment of the Licence Fee to the Licensor and the undertakings hereinafter contained on the part of the Licensee to be observed and performed, the Licensor hereby grants unto the Licensee the non-exclusive right in common with the Licensor during the Licence Period unless earlier determined by the Licensor or Licensee in accordance with the provisions of this Agreement and subject always to the provisions of Clauses 2.2, 2.3 and 2.4 hereof, during the Licensed Hours to use the Licensed Area for the Permitted Use and to have a right of access to and egress from the Licensed Area, over the entrance halls, corridors and stairways of the Hospital (subject to compliance by the Licensee with regulations from time to time made by the Licensor to secure the safe and orderly use of the Hospital by all of the occupants thereof and visitors thereto). For the avoidance of doubt it is hereby agreed and declared that the Agreement will be non-

exclusive and will not prevent the Licensor from appointing another person, persons, concern or concerns to provide similar services and products at different locations in the Hospital.

- 2.2. The Licensor shall have the full right and entitlement if it deems it necessary or desirable in its absolute discretion to designate any other part of the Hospital as a new or alternative location for the Licensed Area and in such event, the Licensed Area shall be such unit as is situate at such other location. The Licensee agrees that (s)he shall be subject to the directions of the Licensor in this regard and that (s)he shall, as soon as is practicable following receipt of notice from the Licensor and in any event not later than fourteen (14) days after receipt of the said notice, do all such things as may be necessary to facilitate the relocation of the Licensed Area within the Hospital.
- 2.3 If, in the opinion of the Licensor, the necessity arises to have a rearrangement of the Licensed Area and other areas at the Hospital, the Licensor may, by giving not less than three (3) months' notice in writing, require the Licensee to stop using the whole or any part of the buildings at the Hospital in which event, the Licensor shall use its reasonable endeavours to provide alternative Licensed Area and if this is not possible then this agreement may be terminated by the Licensor in whole if the entire Licensed Area is affected or in part if only some of Licensed Area is affected.
- 2.4 The Licensor shall use its reasonable endeavours to provide the Licensed Area within the agreed time period, however, the Licensor does not guarantee that the Licensed Area will be available within the specified period and the Licensor accepts no responsibility for any loss suffered by the Licensee as a result thereof.
- 2.5. The Licensee shall be permitted to fit out the Licensed Area for use in accordance with the Permitted Use subject to any such fittings being first approved in writing by the Licensor and compliance by the Licensee of the provisions of Clause 4 hereof. The Licensee hereby indemnifies and agrees to keep indemnified, the Licensor, from and against all costs, claims, expenses, actions, damage, injury or demands incurred, sustained or borne by the Licensor arising directly or indirectly out of the licence hereby granted or arising from the use by the Licensee, his/her Sub-Contractors or agents of the Licensed Area, the fitting out of the Licensed Area or the carrying out of any works on or in relation to the Licensed Area.
- 2.6. The Licensee's rights pursuant to this Agreement shall be determined forthwith, by written notice from the Licensor to the Licensee, in the event of the Licensee ceasing for whatever reason and for whatever period to keep open the Licensed Area and/or provide the Services to the Hospital.
- 2.7 Provided that the Licensee is not in default of any term, covenant or condition of the Licence, the Licence hereby granted may be extended by the mutual agreement of the parties to this Licence for [**INSERT EXTENSION OPTION**] (the "Renewed Licence Period") each to commence immediately on the expiration of the original Licence Period or the previous Renewed Licence Period as the case may be strictly subject to the Licensee giving not less than six (6) months prior written notice by the Licensor prior to the expiry of the original Licence Period of its desire to extend the Licence Period (and in case where the

initial Licence Period herein has been extended for the first Renewed Period of [**INSERT FIRST EXTENSION OPTION**], such notice in respect of its desire to extend the Licence Period for the second Renewed Period, then on the giving of not less than six (6) months' notice prior to the expiry of the first Renewed Licence Period).

The Renewed Licence Period shall be on the same terms covenants and conditions as are contained in this Licence and the Licence Fee for such Renewed Licence Period shall be determined in accordance with Schedule 3 - Charges of the Service Level Agreement.

3. LICENSEE'S UNDERTAKINGS

The Licensee agrees covenants and undertakes with the Licensor as follows:-

- 3.1 To pay to the Licensor the Licence Fee. If the Licensee shall fail to pay the Licence Fee or any other sum payable under this Licence within twenty (20) business days of the date on which the payment of same becomes due, then such unpaid Licence Fee or sum shall bear interest from the date upon which the same becomes due to the date of actual payment at a rate which shall equal the monthly rate of interest for the time being chargeable under Section 1080 of the Taxes Consolidation Act 1997 (or such other monthly rate of interest which as may from time to time be chargeable upon arrears of tax) or if the Licensor shall so elect, at the rate of 14% per annum.
- 3.2 Not to use or occupy the Licensed Area or permit same to be used or occupied otherwise than for the Permitted Use or for any purpose or in any manner inconsistent with such user or occupation.
- 3.3 The Licensee shall comply at its own expense in all respects with all obligations and requirements arising from or under any statutory provision Act of the Oireachtas or rule of law or imposed under powers conferred on any authority or court of competent jurisdiction in relation to the use of the Licensed Area and, without prejudice to the generality of the foregoing, the Licensee shall observe and comply with all infection control standards and health and safety requirements in respect of the Licensed Area.
- 3.4 To keep the Licensed Area fully and properly equipped and fitted out for the purposes of the Permitted Use in accordance with the requirements and provisions of the Health and Safety Act, 1989 and any amendments or alterations thereto and any regulations made pursuant thereto and in order to provide the Services to the public, staff, and patients of the Hospital and to provide all fittings, equipment and supplies as are necessary for the efficient and correct provision of the Services.
- 3.5 The Licensee shall keep the Licensed Area properly staffed and opened during the Licensed Hours.
- 3.6 The Licensee shall observe and cause its staff to observe the regulations from time to time made by the Licensor in relation to the maintenance and repair of the Licensed Area at all times during the Licence Period notified to the Licensee and shall keep the Licensed Area in a neat and tidy condition and free from rubbish and shall remove all rubbish to the

appropriate receptacles.

- 3.7 The Licensee shall be responsible for the cleaning of the Licensed Area in accordance with the standards laid down by the Licensor/the Hospital management and the Licensee shall observe and cause their staff to observe the regulations from time to time made by the Licensor in this regard as notified to the Licensee. The Licensee shall be solely responsible for the cleaning of the Licensed Area, fixtures and fittings, furnishings, furniture and equipment therein which shall be cleaned to the satisfaction of the Licensor and in accordance with the Regulations, Standards and Guidelines set out in the Service Level Agreement. If the Licensee wishes to employ independent Cleaning or other Sub-Contractors for the purposes of this Agreement the Licensee shall seek the prior written approval of the Licensor to such appointment and such approval shall not be unreasonably withheld.
- 3.8 The Licensee shall be responsible for the making good of any want of repair or decorative condition to the Licensed Area, or any other part of the Hospital where the same arises as a result of the act, neglect, default or omission of the Licensee or their servants, agents or invitees or any other party under the control of the Licensee PROVIDED ALWAYS that the Licensee shall have no liability for normal wear and tear or due to deterioration of structures or materials arising from the passage of time or for latent or inherent defects.

In the event of the Licensor notifying the Licensee of any want of repair or condition for which the Licensee is responsible pursuant to the preceding sub-paragraph, the Licensee shall either (at the direction of the Licensor in its exclusive discretion); -

- (a) make good such want of repair or decorative condition as soon as reasonably practicable, at its own cost and during such times and with such materials as shall be directed by the Licensor; or
- (b) reimburse on demand the cost incurred by the Licensor in procuring the making good of such want or repair or decoration.

The Licensee shall repair and maintain the Licensed Area (including the fit-out) fixtures and fittings, furnishings, furniture and equipment therein and the installations thereof and shall keep the same in good order repair and condition throughout and maintain a clean and attractive appearance and if necessary shall at its own cost replace any furnishings, furniture or equipment which shall become damaged or worn with furnishings, furniture and equipment of comparable quality. The Licensee shall use the Licensed Area, the installations, furnishings, furniture and equipment therein with all due care and for the purpose intended and in the case of equipment in accordance with the Manufacturers' recommended methods of operation. The Licensee shall not add to alter or interfere with the installations or overload the same and shall forthwith notify the Licensor or any defect in the installations.

- 3.9 The Licensee shall on the termination of the Licensee's right to occupy the Licensed Area

provided for by this Agreement, yield up the Licensed Area in such good and substantial repair and condition as shall be in accordance with the undertakings on the part of the Licensee herein contained and in any licence or consent granted by the Licensor pursuant to the provisions of this Licence and in case any of the Licensor's fixtures and fittings shall be missing, broken, damaged or destroyed to forthwith replace them with others of a similar kind and of equal value and to remove from the Licensed Area any moulding, sign, writing or painting of the name or business of the Licensee and the Licensed Area shall be left empty of stock, clean and in the same condition in which it was found and if so required by the Licensor, but not otherwise, to remove and make good to the original prevailing condition, all alterations or additions made to the Licensed Area by the Licensee including the making good of any damage caused to the Licensed Area by the removal of the Licensee's fixture, fittings, furniture and effects and if so required by the Licensor, but not otherwise, to remove and make good to the original prevailing conditions, all alterations or additions made to the Licensed Area by the Licensee including the making good of any damage caused to the Licensed Area by the removal of the Licensee's fixture, fittings, furniture and effects.

- 3.10 The Licensee shall insure all of its equipment and fittings located in the Licensed Area with a reputable insurance company and shall, on request by the Licensor, furnish satisfactory evidence of such insurance, and the Licensee shall also insure all other property of the Licensee from time to time in the Licensed Area.
- 3.11 The Licensee shall indemnify and keep indemnified the Licensor (both during and after the Licence Period) from and against all actions, proceedings, costs, claims, damages, expenses, claims, demands occasioned and liabilities arising in any way directly or indirectly out of:
- 3.11.1 any act, default, omission, negligence, breach of duty or breach of statutory duty by the Licensee or any person in and on the Licensed Area with the Licensee's authority or by the Licensee's invitation;
 - 3.11.2 any action or omission or conduct by the Licensee, its agents, employees, invitees, proprietors, partners or officers in the Hospital or in or on other areas adjacent to or in the vicinity of the Licensed Area over which the Licensee may have rights of access or use;
 - 3.11.3 the Permitted Use;
 - 3.11.4 any claim which might be made against the Licensor by any employee(s) of the Licensee whether under the European Communities (Safeguarding or Employees Rights on Transfer of Undertakings) Regulations 1980 or otherwise, upon the expiration or termination for whatever reason of this Licence; and
 - 3.11.5 any breach by the Licensee of its obligations, its undertakings, the conditions or other provisions contained in this Licence.
- 3.12 The Licensee shall effect and keep in force during the Licence Period such public liability,

employer's liability and other policies of insurance (to the extent that such insurance cover is available) as may be necessary to cover the Licensee against any claim arising either directly or indirectly out of the licence hereby granted and to extend such policies of insurance so that the Licensor is indemnified by the insurers in the same manner as the Licensee. The Licensee shall keep up such insurances as may be required for the purpose of better securing the aforementioned indemnities and shall pay all premiums in respect of such insurances when the same shall become due and shall produce to the Licensor the policy or policies of such insurance and the receipt or receipts for the last premium paid in respect thereof and in particular and without prejudice to the generality of the foregoing shall:

- a) The Licensee shall insure and keep insured the furnishings, fit-out, furniture and equipment in the Licensed Area against all risks usually covered on a Comprehensive Policy in the full replacement or reinstatement cost thereof and in the event of the destruction of or damage to all or any of the said furnishings, fit-out, furniture and equipment by reason of any of the said risks shall ensure that all moneys payable under or by virtue of such Policy of Insurance as aforesaid shall with all speed be laid out in repairing, replacing or otherwise reinstating the furnishings, fit-out, furniture and equipment;
- b) The Licensee shall effect and keep in force during the Licence Period such liability insurance in accordance with the provisions of Schedule 4 of the Service Level Agreement for any one claim or series of claims arising from a single occurrence and other policies of insurance (to the extent that such insurance cover if available) as the Licensor shall direct and as may be necessary to cover the Licensee against any claim arising either directly or indirectly out of the licence hereby granted and to extend such policies of insurance so that the Licensor is indemnified by the insurers in the same manner as the Licensee AND whenever required to do so by the Licensor, to produce to the Licensor the said policy or policies together with satisfactory evidence that the same is/are valid and subsisting and that all premiums due thereon have been paid. In the case of employers liability and public liability insurances an indemnity to principals clause must be included.
- c) The Licensee shall ensure that their insurers shall not cancel the policy required by this clause without giving to the Licensor thirty (30) days' notice in writing of its intention to cancel the said policy(s).

3.13 The Licensee shall refrain from doing any act which would render any insurance policy on the Licensed Premises and the Hospital void or voidable or which would increase the insurance premium.

3.14 The Licensee shall on the Licensed Area, sell Products in accordance with Schedule 2 – Products of the Service Level Agreement.

3.15 The Licensee shall be solely responsible for the discharge of all the Outgoings.

3.16 The Licensee shall be responsible for all costs associated with car parking facilities for the

Licensee and any staff of the Licensee.

- 3.17 The Licensee must not use the Licensed Area or the Hospital premises in such a way as to cause any nuisance, damage, disturbance, annoyance, inconvenience or interference to the Hospital or to the owners, employees, patients or visitors of the Hospital.
- 3.18 The Licensee must not obstruct any part of the Hospital, or make it dirty or untidy, or leave any rubbish on it.
- 3.19 The Licensee must indemnify the Licensor, and keep the Licensor indemnified, against all losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability arising from any negligence, breach of duty including breach of statutory duty of the Licensee, or the exercise or purported exercise of any of the rights given in Clause 2 of this Licence Agreement.
- 3.20 The Licensee shall not bring into the Hospital or keep in or on the Licensed Area any article or thing which is or might become dangerous, offensive, unduly combustible or inflammable radio-active or explosive or which might unduly increase the risk of fire or explosion;
- 3.21 The Licensee shall not keep or operate in the Licensed Area any machinery which shall be unduly noisy or cause vibration or which is likely to annoy or disturb the owners, employees, patients or visitors of the Hospital.
- 3.22 The Licensee shall not overload the floors of the Licensed Area or suspend any excessive weight from the roofs, ceilings, walls, stanchions or structure of the Licensed Area and shall observe the weight limits and capacity prescribed for all lifts in the Hospital.
- 3.23 The Licensee shall not make any alterations or additions to the Licensor's fixtures in the Licensed Area without obtaining the prior written consent of the Licensor, such consent not to be unreasonably delayed or withheld and not to make any alterations or additions whatsoever of a structural nature or non-structural nature to the Licensed Area.
- 3.24 The Licensee shall not erect or display in or on the exterior of the Licensed Area so as to be visible from the exterior any advertisement poster, notice or other sign or thing whatsoever without obtaining the prior written consent of the Licensor.
- 3.25 The Licensee shall not permit any goods or property of the Licensee to be placed outside the Licensed Area, without the prior consent of the Licensor.
- 3.26 To comply with all reasonable regulations made by the Licensor from time to time and notified to the Licensee in writing for the general management, use and enjoyment and security of the Licensed Area, and the Hospital
- 3.27 To comply with the terms and conditions of the Service Level Agreement and to provide the Services in accordance with the Licensee's obligations under the Service Level Agreement and generally to comply with all of the covenants and conditions in the Service Level Agreement on the Licensee's part as if the provisions of the Service Level Agreement

were set out *ad logum* in this Licence and formed part of this Licence to the intent that the Licensee's obligations under the Service Level Agreement shall form part of the Licensee's obligations under this Licence and (without prejudice to the Licensor's rights under the Service Level Agreement or any other right, remedy or power available to the Licensor whether pursuant to this Licence or otherwise) shall be enforceable as Licensee's obligations under this Licence. It is agreed that nothing in this Licence shall in any way limit or reduce the responsibilities or liabilities of the Licensee under the Service Level Agreement and the obligations contained in the Service Level Agreement shall be additional to those herein contained and cumulative.

3.28 Taxes

- 3.28.1 The Licensee shall pay and discharge all rates (including Local Authority Rates), taxes (including Value Added Tax) and other assessments payable in respect of the operation of the Licensed Area and all taxes, impositions and burdens whatsoever that may be assessed charged or imposed on the Licensed Area and/or arising from the operation of this Agreement and shall produce when required evidence of such payments to the Licensor.
- 3.28.2 Licensee undertakes to notify the Licensor in relation to any demand or correspondence in relation to an assessment of the location for the purpose of imposing such a charge.
- 3.28.3 Upon termination of this Agreement for any reason any outstanding charges fees or municipal rates referable to the services and/or the Licensed Area shall remain due and payable by the Licensee in accordance with the terms of this Agreement.
- 3.28.4 The Licensee shall prior to and on the execution hereof furnish to the Licensor evidence of the existence of a current General Tax Clearance Certificate by way of a printout from the Irish Revenue Online System ("ROS") confirming a Tax Clearance Certificate has issued for the Licensee or, if requested by the Licensor details of the Licensee's Tax Return Number together with relevant ROS Tax Clearance Access Number prior to entering into this Licence.

3.29 Outgoings

The Licensee shall be solely responsible for the discharge of all and any charges arising in connection with the Licensee's use and occupation of the Licensed Area to including all charges in respect of the supply of electricity to the Licensed Area and in connection with any telephone line to be installed in the Licensed Area together with the charges in respect of insurance specified at clause 3.12 of this Licence Agreement.

3.30 Telephone facilities and charges

If the Licensee requests the use of the Licensor's telephone system (if required and available) the Licensee shall pay to the Licensor the costs of installing and maintaining such extensions in the Licensed Area and shall pay all call charges in respect of the use thereof

and if the charges for the use thereof are in arrears for one (1) month the Licensor shall have the right to disconnect the connection in the Licensed Area forthwith without notice.

3.31 Power & utilities charge

The Licensee shall pay to the Licensor on demand for all electrical energy water and hot water used and consumed in accordance with the metering systems installed in the Hospital.

3.32 Refuse

The Licensee shall pay to the Licensor the cost of collection and removal of refuse from the Licensed Area and shall comply with all reasonable requirements imposed by the Licensor in connection with the storage of refuse pending collection and removal.

3.33 Inspection

The Licensee shall not hinder or obstruct the Licensor or its servants or agents in inspecting the Licensed Area and the installations therein or the contents thereof for any purpose or in effecting any repair decoration maintenance or alteration (structural or otherwise) to any part of the Hospital buildings which the Licensor may consider necessary.

3.34 Traffic management

- (a) The routing and positioning on the Hospital of vehicles operated by the Licensee and its suppliers shall at all times be subject to control of the Licensor and the Licensee and its suppliers shall comply with all traffic regulations on the Hospital whether statutory or by virtue of a direction of the Licensor and for the avoidance of doubt it is hereby agreed and declared that this Agreement does not entitle the Licensee to park or maintain its vehicles at the Hospital.
- (b) The routing and positioning of deliveries made by the Licensee and its suppliers through the Buildings at the Hospital shall be made as far as possible to avoid peak periods and the Licensee shall use equipment of a design to the satisfaction of the Licensor and shall be subject to the control of the Licensor.

3.35 Security

While the Licensor shall be responsible for the provision of security on the Hospital campus as a whole and shall provide out of hours alarm response, responsibility for security within the Licensed Area rests with the Licensee who shall report all security related incidents to the Licensor and to An Garda Siochana.

3.36 The Licensee shall comply at its own expense in all respects with all obligations and requirements arising from or under any statutory provision Act of the Oireachtas or rule of law or imposed under powers conferred on any authority or court of competent jurisdiction in relation to the use of the Licensed Area and, without prejudice to the generality of the

foregoing, the Licensee shall observe and comply with all infection control standards and health and safety requirements in respect of the Licensed Area.

- 3.37 On demand the Licensee shall not sell or shall cease selling any product which in the reasonable opinion of the Licensor should not be sold at the Licensed Area/location for reasons of hygiene, health, safety, welfare of patients, staff and visiting public or which for justifiable grounds is inconsistent with the hospital policies and ethos.
- 3.38 The Licensee shall meet with [INSERT HOSPITAL CONTACT] or his/her/their nominated representative on a [INSERT FREQUENCY] basis to review all aspects of the service.
- 3.39 At the expense of the Licensee to comply with all the provisions and requirements of any Act or Acts of the Oireachtas now or afterwards to be passed and every order regulation notice and bye-law made under or in pursuance of such Acts or by any local or other authority in respect of the Licensed Area or the user of it or the person or any fixture or machinery plant or chattels for the time being in it including without prejudice to the generality of this clause the provisions of the Safety in Industry Act 1955 and 1980, Offices Premises Act 1958, the Safety Health and Welfare at Work Act 1980 and the Fire Services Act 1981 and any regulations permissions directions order bye-laws building regulations and orders made under such Acts and to indemnify the Licensor at all times against all proceedings actions and costs charges claims expenses damages liabilities losses and demands arising from any breach of this obligation and to maintain such suitable and serviceable firefighting equipment in the Licensed Area as may be specified by the Licensor whether in conformity with the requirement of the local or fire authorities or the Licensor's insurers or otherwise.
- 3.40 The Licensee shall comply with all laws, rules and regulations in relation to equality of access by all persons (including but not limited to persons with disabilities) whether such obligations arise under the Equal Status Acts 2000-2004, the Disability Act 2005 or otherwise, and immediately to notify the Licensor in writing of any breach or notice received from the Equality Authority or any similar body, of which the Licensee or his servants or agents become aware, and the Licensee hereby acknowledges that any breach of this obligation shall entitle the Licensor to terminate this agreement.
- 3.41 The Licensee shall obtain and maintain in force at its own expense any licences necessary to enable the business to be legally carried on.
- 3.42 Before commencement of trade at the Licensed Area the Licensee as a food business operator undertakes to register appropriately as necessary with a competent authority.
- 3.43 The Licensee undertakes to ensure that there is a food safety management system in operation based on the principles of HACCP in compliance with Regulation 852/2004/EC on the hygiene of foodstuffs, including temperature control, HACCP, equipment, transport, waste, personal hygiene, and training, and that this food safety management system extends to the delivery of foodstuffs to the Licensed Area and to the exposure for sale of foodstuffs inside the Licensed Area.
- 3.44 The Licensee shall comply forthwith with any directions or requirements of the Licensor in conjunction with or for the purpose of the safety of persons using the Licensed Area and

shall notify the Licensor of any accidents to its own or other hospital staff or to members of the public who may be injured and shall co-operate with the Licensor in any investigation which may be appropriate.

- 3.45 The Licensee must instruct its suppliers/deliveries regarding designated delivery points at the Hospital which are to be agreed in advance with the [INSERT HOSPITAL CONTACT] or his/her/their nominated representative and internal delivery routes within the Hospital to the Licensed Area and ensure that deliveries are only made to the designated delivery points and delivery routes. Deliveries at the main entrance of the Hospital are not permitted.
- 3.46 The Licensee shall ensure when delivering goods that its staff, suppliers and their agents use the service lifts in the Hospital or in the event of the service lifts being out of service the stairs.
- 3.47 The Licensee shall ensure its staff, suppliers and agents use only trolleys provided by themselves for the purpose of their business but in no circumstances shall use trolleys provided for patient use or for transport of hospital supplies.
- 3.48 The Licensee shall agree with the Licensor, within one (1) month of the commencement of this agreement, a set of service standards to be applied during this agreement.
- 3.49 Upon termination of this Agreement for any reason any outstanding charges fees or municipal rates referable to the services and/or the Licensed Area shall remain due and payable by the Licensee in accordance with the terms of this Agreement.

4. FIT OUT BY LICENSEE

Prior approval & Sub-Contractors insurances

- 4.1. The Licensee before commencing the Fit Out shall:
 - a) Submit to the Licensor all details Plans and Specifications of the Fit Out including a Risk Assessment and Method Statement in relation to the proposed Fit Out and obtain the prior approval of the Licensor of same.
 - b) If the Fit Out is to be carried out by way of Sub-Contract, submit in advance for information a copy of the Sub-Contract and details of the Sub-Contractor to the Licensor and, in particular, and without prejudice to the generality of the foregoing subject always to the exigencies of Irish Law obtain the approval of the Licensor to the insurance obligations imposed on the Sub-Contractor and the requirements in relation to providing a Performance Bond imposed on the Sub-Contractor. For the avoidance of doubt the Licensor shall not be obliged to approve the Sub-Contract unless the Licensor is satisfied as to the provisions of the insurance (including subrogation) and indemnity clauses.

The Licensor Supervision

- 4.2 The Fit Out is to be carried out subject to the supervision of the Licensor and any Sub-Contract for the execution of the said Fit Out shall expressly provide for such supervision.
- 4.3 The Fit Out will be carried out to the satisfaction of the Licensor and upon the expiration or earlier termination of this agreement shall become the property of the Licensor.
- 4.4 The Licensee shall use a universal cabling system which may be provided by the Licensor and no other system without the prior consent in writing of the Licensor and shall pay the appropriate charge(s) fixed from time to time by the Licensor.

Installation costs

- 4.5 The Licensee shall be responsible for all costs relating to the installation, maintenance and removal of their equipment in use in the Licenced Area.

Fire certification

- 4.6 The Licensee shall obtain a fire certification in relation to the Fit Out (if required) and shall notify the Licensor of all applications for fire certification and shall provide the Licensor with copies of all relevant documentation.

Time scale

- 4.7 The Licensee shall adhere to the time scale agreed between the Licensor and the Licensee for carrying out Fit Out.

Remedies

- 4.8 The Licensee shall from time to time and when necessary have recourse to such of its remedies against its Sub-Contractors, as the Licensor shall require.

Fit Out Insurance

- 4.9 Prior to the commencement of the Fit Out to take out or procure that the Licensee shall take out:
 - (a) public liability insurances with a limit of indemnity not less than €6,500,000 (six million five hundred thousand euro) for any one claim, covering any liability, loss, claim or proceedings in respect of the carrying out of the Fit Out, such insurance to be extended to provide an indemnity to principals with Licensor noted as principal; and
 - (b) employers liability insurances with a limit of indemnity not less than €13,000,000 (thirteen million euro) for any one claim, covering any liability, loss, claim or

proceedings in respect of the carrying out of the Fit Out, such insurance to be extended to provide an indemnity to principals with the Licensor noted as principal; and

- (c) "All risks" insurance covering loss or damage to the Fit Out from the date of their commencement until completion of all of the Fit Out (including making good the defects) for a sum insured equivalent to the reinstatement cost thereof plus provision for professional fees, site clearance and inflation such insurance to note the Licensor and the Licensee as Joint Insured.

4.10 To provide such reasonable evidence of insurances as may be required by the Licensor from time to time, including evidence of renewals.

4.11 To comply with all conditions pertaining to any such policy or policies of insurance effected in accordance with the terms of this Licence.

Equipment standards

4.12 All furnishings, furniture and equipment installed in and used in the Licensed Area shall be approved by the Licensor and be of a high standard of design and quality and shall harmonise with the rest of the Hospital building, such approval shall not be unreasonably withheld.

5. LICENSOR'S UNDERTAKINGS

5.1 Subject to payment by the Licensee of the Licence Fee in the manner hereinbefore provided and the power and utility charges set out in Clause 3.31, the Licensor shall provide in the Licensed Area reasonable electric energy, water, hot water and radiated heat PROVIDED THAT the Licensor bears no responsibility for any breakdown or failure of such services or any part thereof or for any consequential loss arising therefrom other than through the default of the Licensor or its agents. The Licensor does not guarantee the provision of a power supply free from harmonics, distortions, surges or other disturbances or free from occasional interruptions and the Licensor will not be liable for any damage to equipment or inconveniences or financial loss suffered as a result of interruptions or disturbances in power and water supplies or signal cables.

5.2 To insure the Hospital (but not any property of the Licensee) against fire and such other risks as the Hospital may in its discretion decide.

6. MATTERS AGREED BETWEEN THE LICENSOR AND LICENSEE

6.1 Termination

The Licensor shall be entitled to terminate this Agreement by written notification:-

6.1.1 Immediately in the event of the breach by the Licensee of its undertakings contained in Clause 3.

6.1.2 At any time any payment due hereunder by the Licensee to the Licensor is unpaid for twenty (20) days after becoming due whether demanded or not.

- 6.1.3 On giving not less than twenty-eight (28) days' notice to the Licensee to expire on any day.
- 6.1.4 Immediately upon the sale of the Hospital by the Licensor.
- 6.1.5 Immediately on the termination of the Service Level Agreement or in the absence of a Service Level Agreement immediately upon the cessation of the Services to be provided by the Licensee.
- 6.1.6 If the Licensee (being a company) shall suffer the appointment of a Receiver or an Examiner or shall have an order made or effective resolution passed for its liquidation or if any of the property of the Licensee shall be taken in execution or process of law.
- 6.1.7 If the Licensed Area shall become incapable of use through fire destruction or any other such reason beyond the control of the Licensor.
- 6.1.8 The Licensee ceasing for whatever reason and for whatever period to utilise the Licensed Area for the Permitted Use and/or to provide any of the Services at the Licensed Area.
- 6.1.9 In any case if the Licensee's business is sold or taken or transferred to any other party the Licensor has the right to terminate the Agreement forthwith without payment of compensation to the Licensee in respect of goodwill or otherwise.

6.2. **Licence personal to Licensee**

- 6.2.1 The benefit of this Licence is personal to the Licensee and is not assignable and shall not be assigned, transferred or licensed to any other person or entity, and the rights given in Clause 2 of this Agreement may only be exercised by the Licensee and its employees and invitees.
- 6.2.2 The Licensee shall not sub-contract the performance of its obligations and responsibilities under this Agreement or any part thereof without the prior written consent of the Licensor.
- 6.2.3 The Licensee shall notify the Licensor forthwith and in writing of any change in the control of the Licensee or any major change in the constitution of the Licensee or the Group company (if any) of which it forms part and the Licensor may at its discretion summarily terminate this Agreement in the event that any such changes take place which the Licensor in its sole discretion reasonably decides are detrimental to the interests of the Licensor or the Hospital.

6.3 **Liability Excluded**

The Licensor shall not to be liable for the death of, or injury to the Licensee or its employees and invitees, or for damage to any property of theirs, or for any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by them in the exercise or purported exercise of the rights granted by Clause 2 of this Agreement and, for the avoidance of doubt, any personal effects or belongings of the Licensee or its employees and invitees are at all times the risk of the Licensee and its invitees and employees.

6.4 **Licence Only**

This Licence is not intended nor shall it operate or be deemed to operate either at law or in equity as a demise of any property the subject of this Licence nor shall the Licensee have or be entitled to any estate right or interest in any property the subject of this Licence nor shall the relationship of landlord and tenant exist or arise or be deemed to exist or arise

between the parties hereto and that the licence is dependent upon the Licensee continuing to provide the services of a Licensed Area in the Hospital. This Licence is not intended to confer and shall not confer any right to exclusive possession of the Licensed Area or any other part of the Hospital on the Licensee and nothing shall be done to hinder the occupation of the Licensor or any third party of the Licensed Area.

The Licensee agrees to renounce any entitlement which the Licensee may have under the provisions of the Landlord and Tenant (Amendment) Act 1980 (as amended by section 47 of the Civil Law (Miscellaneous Provisions) Act 2008) to a tenancy in the Licensed Area on the termination of the Licence in accordance with the Deed of Renunciation at Schedule 1 of this Licence Agreement.

6.5 Governing Law

This Agreement shall be governed by and construed in accordance with the Laws of the Republic of Ireland.

6.6 Force Majeure

The doctrine of Force Majeure shall apply to the provisions of the Agreement in the following respects. Neither party shall be liable for any delay or failure to carry out its obligations under this agreement caused by force majeure provided that it promptly gives written notice of the occurrence of the force majeure relied on to the other party and it uses all reasonable endeavours to remove or avoid the effect of such force majeure as promptly as practicable. If any force majeure is relied on for longer than 60 days by either party under this clause the other shall be entitled to terminate this Agreement forthwith on written notice.

6.7 Co-operation

The Licensor and the Licensee mutually agree to co-ordinating mechanisms which shall be representative of the Licensor Management and the Licensee with the purpose of ensuring that the commencement of the business and the standards of business are facilitated and maintained through mutual co-operation.

6.8 Variation

This agreement shall be capable of being varied only by a written instrument signed by a duly authorised officer or other representative of each of the parties.

6.9 Dispute arbitration

All disputes or differences which may arise touching the provisions of this Agreement or the operations or construction thereof or the rights or liabilities of the Licensee or the Licensor in respect of which no provision has been made in this Agreement shall be referred to the arbitration of a single arbitrator to be appointed by agreement between the Licensee and the Licensor or in default of agreement to be appointed on the application of either party by the President for the time being of the Law Society of Ireland (which term shall include any other Body established from time to time in succession to or substitution for or carrying on the function

currently carried on by the same) and in default of any such appointment for any reason within one month of such application by a Senior Council to be nominated by the Licensor and this Sub-Clause shall be deemed to be a submission to arbitration within the Arbitration Acts, 2010, or any Act or Acts amending same any statutory modification or re-enactment thereof for the time being in force and to the jurisdiction of the Courts of the Republic of Ireland for the enforcement of any award of the said Arbitrator.

Notwithstanding anything to the contrary in this clause, if both parties are in agreement any dispute relating to this agreement may be referred by the parties to a mediator for non-binding mediation, such appointment to be made by agreement between the parties or in default by the Mediators Institute of Ireland.

6.10 Stamp Duty

The Licensee shall pay all Stamp Duty (if any) payable on this Agreement and on the Counterpart thereof and shall furnish the Counterpart to the Licensor within one month of the execution of this Agreement duly stamped.

6.11 Notices

Any Notice required under this Agreement to be served on the Licensee shall be sufficiently served on the Licensee if left addressed to the Licensee at the e-mail address or business centre premises or forwarded to the Licensee by post or left at the Registered Office of the Licensee registered under the provisions of the Companies Acts, 2014 or any Act or Acts amending same. Any Notices required by this Agreement to be served by the Licensee on the Licensor or any Statements to be submitted to the Licensor at [INSERT HOSPITAL CONTACT].

6.12 Entire Agreement

This Agreement forms the entire of the Agreement between the Licensor and the Licensee to the exclusion of all or any other correspondence and representations.

- 6.13 That if the Licence hereby created should continue beyond the term herein specified or beyond any extended term specified in Clause 2.7 it shall in the absence of a new Agreement be deemed to be a licence determinable by three (3) calendar month's notice in writing to be given by either party to the other expiring on any day.
- 6.14 On the due expiration of the agreement or sooner determination of same the Licensed Area shall become the property of the Licensor without payment of any compensation to the Licensee or otherwise and the Licensee shall handover to the Licensor the Licensed Area with all necessary and immovable fittings in good working order and condition and in compliance with Clause 3.9.
- 6.15 The Licensee shall not be entitled to any compensation for any improvements carried out by the Licensee to the Licensed Area or to any compensation for disturbance or otherwise on vacating the Licensed Area in accordance with the provisions hereinafter contained on the termination of this Agreement by passage of time or on the termination of this Agreement under Clause 6.1.

7. IT IS HEREBY AGREED AND ACKNOWLEDGED BY THE LICENSEE as follows:-

- 7.1. That the Licensor is not responsible for nor does the Licensor have any liability to the Licensee or any other party for the security and safety of the Licensee's contents in the Licensed Area and the Licensor shall bear no responsibility for any items lost or stolen for the Licensed Area.
- 7.2. The Licensor gives no warranty with regard to revenue or income which may be derived from the operation of the Licensee's business pursuant to this Agreement and the Licensor shall have no liability to the Licensee for, nor shall the Licensee be relieved from any obligations pursuant to this Licence arising from, any reduction or variation in revenue or income arising by virtue of any bed closures, restrictions in the provision of services by the Licensor or otherwise.
- 7.3 That the Licensor is covered under State Indemnity pursuant to the National Treasury Management (Amendment Act 2000 and such State Indemnity extends solely to cover personal injury and third party damage claims arising from the negligence of the Licensor.
- 7.4 That the Licensor is not responsible for nor does the Licensor have any liability to the Licensee or any other party for the security and safety of the Licensee's property of any type in the Licensed Area and the Licensor shall bear no responsibility for any items lost or stolen for the Licensed Area.
- 7.5 In the performance of the Services:
 - 7.5.1 The Licensee shall be and shall be deemed to be an independent contractor and self-employed person or entity who shall not be entitled to any benefits applicable to employees of the Hospital and/or the Licensor. Nothing in this agreement shall establish any partnership or joint venture between the Licensor and the Licensee.
 - 7.5.2 The Licensee shall comply with all applicable governmental (both Irish and foreign) laws and regulations;
 - 7.5.3 The Licensee shall have sole responsibility for the payment of all applicable governmental taxes including State and local income taxes, commercial rates, social insurance, employment levies and other similar taxes;
 - 7.5.4 The Licensee shall not and shall not be at liberty to enter into any contractual agreements on behalf of the Licensor and/or the Hospital.

Agreed and Accepted

SIGNED by []
on behalf of the Licensor
in the presence of:

SIGNED by []
on behalf of the Licensee
in the presence of:

Deed of Renunciation

THIS RENUNCIATION dated the day of 20

A. The Licensee has negotiated with the Licensor to take a Licence of the Licensed Area for the term of [] years and upon the terms and conditions contained and set out in the Licence.

B. The Licensee acknowledges that it has received independent legal advice in relation to this Renunciation from a qualified Solicitor who holds a Practising Certificate from the Law Society of Ireland namely [] of

and has been advised that under existing Landlord and Tenant legislation it would, if the Licence deemed to be a de facto lease subject to the terms of that legislation, be entitled to a new tenancy in the Licensed Area at the expiry of the proposed Licence if it should continue for any reason for [INSERT DURATION] years or more.

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SCHEDULE 2

Licence Fee

[TO BE INSERTED FOLLOWING TENDER PROCESS]

SCHEDULE 3

Fit Out

[TO BE INSERTED FOLLOWING TENDER PROCESS]

SCHEDULE 4

Licensed Area

[DESCRIPTION / PLAN / PHOTO TO BE INSERTED FOLLOWING TENDER PROCESS]

Dated the day of

HEALTH SERVICE EXECUTIVE

One Part

-and-

[]

Other Part

LICENCE AGREEMENT
