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To: Heads of Departments/Offices

Circular 11/15: Protocols for the Transfer and Sharing of State Property Assets

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The Government's Public Service Reform Plans 2011-2013 and 2014-2016 outline a series of reform actions for property asset management in the Public Service. The reforms in this area are to improve efficiencies in relation to the use and operational management of the wider State property portfolio.

A Steering Group on Property Asset Management was established in 2012 chaired by the OPW, to identify the key reform actions that are required to drive the property management reform programme. Membership of the Steering Group is drawn from property holding Government Departments (which also represent Agencies under their remit), the Health Service Executive and the Local Authority sector.

In July 2013, on foot of work done by the Steering Group, the Government published "*Accommodating Change - Measuring Success: Property Asset Management Delivery Plan*" (PAMDP) which sets out the necessary actions to be progressed by property holders implementing the property reform programme. A key element of the Plan was to develop Protocols for (i) the transfer of State property assets between public service property holders and (ii) the arrangements that apply to State entities who intend to share office space within the properties they hold.

The attached documents entitled

- Protocol for the Intra-State Transfer of State Property Assets
- and
- Protocol for the Intra-State Sharing of State Property Assets

have been agreed by the Steering Group and set out the mechanism for the transfer of property assets from one State entity to another and an agreed guide for future occupation/sharing arrangements of the State's property portfolio. Sections 1-7 of both Protocols cover mostly the same governance and other general matters. Sections 8 and 9 differ in the types of transactions to be covered and in the mechanism to be followed. The Protocols can also apply to commercial semi-State bodies by agreement between the appropriate parties.

The Protocols are not intended to address the full range of issues that might arise for such transactions, but rather to provide the methodology to be applied and will form the basis of a more streamlined administration process.

**Each Owning Stakeholder will continue to be responsible for managing its properties and for complying with all legislative and regulatory requirements.**

**The Protocols will be subject to review from time to time by the Steering Group on Property Asset Management.** All queries or suggestions on future development of these Protocols should be addressed to [jane.mcgee@opw.ie](mailto:jane.mcgee@opw.ie).

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25 September 2015



# **PROTOCOL FOR THE INTRA STATE TRANSFER OF STATE PROPERTY ASSETS**

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## 1. **INTRODUCTION:**

The Government's programme of property asset management and public sector reforms seeks to:

- (1) implement the policy of rationalisation of the State's property portfolio and
- (2) improve efficiencies in relation to the use of that portfolio.

The Government established the Steering Group on Property Asset Management to encourage intra-State communication in the context of the proposed reforms and ultimately to prepare a plan to drive forward these reforms. In July 2013, the Steering Group published "*Accommodating Change – Measuring Success: Property Asset Management Delivery Plan*" which enumerates the strategic actions required for achieving the Government's programme for reforms in relation to the State's property portfolio.

One of the goals set in the Property Asset Management Delivery Plan is to develop this Protocol as an agreed guide for all *future* acquisitions and disposals by Stakeholders of property forming or intended to form part of the State's property portfolio. A separate agreed Protocol will guide all *future* occupation/sharing arrangements between the Stakeholders.

Each Owning Stakeholder will continue to be responsible for managing its properties and for complying with all legislative and regulatory requirements.

Where the Stakeholder is a Local Authority, this Protocol shall not replace existing governance requirements or alter the position of elected members in the performance of their reserved functions in relation to disposals and acquisitions.

**This Protocol may be subject to review from time to time by the Steering Group on Property Asset Management.**

## 2. **DEFINITIONS:**

For the purposes of this Protocol, these words shall have the following meaning:

**"Acquiring Stakeholder"** shall mean the Stakeholder proposing to acquire a State Property;

**"Central Government"** shall mean all central Government Departments and the Office of Public Works;

**"CSSO"** shall mean the Chief State Solicitor's Office;

**"Freehold"** shall mean a Fee Simple interest where ownership is not restricted to a number of years;

**"Lease"** shall mean a Lease held directly from the freehold owner;

**"Intra Central Government"** shall mean within Government Departments and the OPW;

**"Leasehold"** shall mean property which is held for a specified number of years;

**"Market value"** shall mean the estimated amount for which an asset or liability should exchange on the valuation date between a willing buyer and a willing seller in an arm's length transaction after proper marketing and where the parties had each acted knowledgeably, prudently and without compulsion.

**"Non State Party"** shall mean a party that is not a Stakeholder;

**"Ownership"** shall mean freehold ownership and leasehold ownership;

**“Property”** shall mean land and buildings;

**“Owning Stakeholder”** shall mean any Stakeholder who owns or holds under lease the relevant State Property by freehold or leasehold;

**“Property Managers Network”** shall mean such persons nominated by their respective Stakeholders whose role is to support the implementation of the Property Asset Management Delivery Plan, supply information to the State Property Register and provide a forum for discussion and recommendation of property solutions. The Office of Public Works will chair meetings of the Property Managers Network, to be established on a regional basis;

**“Quarterly”** shall mean 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July, 1<sup>st</sup> October in each year of the currency of the Protocol, commencing on the 1<sup>st</sup> October 2015.

**“Relevant Property”** shall mean property proposed to be transferred;

**“Senior Responsible Owner”** shall mean the Chairman of the Office of Public Works or senior official nominated by the Chairman;

**“Stakeholder(s)”** shall mean Central Government, State bodies or agencies, Health Service Executive and Local Government;

**“State Property”** shall mean lands and buildings owned or held by the State;

**“State Property Portfolio”** shall mean all freehold or freehold equivalent property or leasehold property now owned or held by any Stakeholder or to be acquired by any Stakeholder in the future;

**“Steering Group”** shall mean such persons nominated by Stakeholders who with the Senior Responsible Owner will have an oversight and monitoring role in the implementation of the Government’s programme of reforms and the actions outlined in the Property Asset Management Plan. Any meetings held will be chaired by the Senior Responsible Owner or senior nominated official;

**“Surplus Property”** shall mean property that the Owning Stakeholder identifies on the State Property Register as being surplus to its requirements and available for occupation or disposal. Such property can comprise either a whole State Property or part of a State Property. It is acknowledged that there are instances where Stakeholders are required to dispose of properties/land for a specific purpose in accordance with their statutory obligations e.g. for the purposes of developing industrial or commercial units by local authorities. Such properties/land are not be considered as part of this Protocol and though on the Register are not required to be identified as surplus for the purposes of intra-State transfers.

### **3. PARTIES GOVERNED BY THE PROTOCOL:**

The parties governed by this Protocol and known as the Stakeholder(s) are all ‘parties’ with a legal entitlement to acquire or otherwise hold State property, including but not limited to the following:

- 3.1 Central Government;
- 3.2 State bodies or agencies;
- 3.3 Health Service Executive;
- 3.4 Local Government (namely, each Local Authority).

#### **4. NATURE OF OWNERSHIP:**

The nature of ownership of State Property to be governed by this Protocol is as follows:

- 4.1 Freehold interest or freehold equivalent;
- 4.2 Leasehold interest.

#### **5. TYPES OF TRANSACTIONS:**

This Protocol sets out the procedure to be followed when any Stakeholder proposes to enter into any of the following type(s) of transaction:

- 5.1 Transfer of an interest in State Property, either freehold or freehold equivalent;
- 5.2 Assignment of a Leasehold interest in a property.

It is acknowledged that, in some circumstances, intra State transfers may be made under Statute. Such statutory transfers are not addressed in this Protocol; however, they are referenced in Appendix 2, Option 3.

#### **6. MANAGING THE STATE PROPERTY PORTFOLIO:**

Each Stakeholder is responsible for managing its own property portfolio in accordance with existing relevant legislation, codes of practice and governance arrangements.

To facilitate a more strategic and co-ordinated management of the State's property holdings, there shall be a State Property Register established by the Commissioners of Public Works in Ireland. The State Property Register will be populated with certain categories of information on all property owned or managed by the State. The Commissioners will facilitate communications in relation to the establishment of the Register. The Stakeholders shall have regard to the Office of Public Works' State Property Register Viewer – User Guide Version 1 and any revisions thereto. The Stakeholders shall maintain the State Property Register in the following manner:

- 6.1 Each Stakeholder shall enter in the State Property Register specific details of the point of contact within their organisation responsible for updating the State Property Register.
- 6.2 Each Stakeholder shall complete the State Property Register record in full for each property, including details of all Surplus State Property on an ongoing basis. The Protocol shall apply to those properties identified by the Owing Stakeholder as being surplus to requirements and being available for disposal.
- 6.3 On an annual basis each Stakeholder shall review the State Property Register in full to ensure that all State Property held by that Stakeholder has been entered on the State Property Register and ensure that the Register accurately reflects their property portfolio.
- 6.4 Any property acquisition, whether it is a freehold or equivalent or a Leasehold interest, should involve a review by the Acquiring Stakeholder of the State Property Register to establish whether there is any other surplus State Property which may meet their needs.
- 6.5 Any disposal of a property to a Non-State Party should only occur in the event that there have not been any expressions of interest identified to the Owing Stakeholder within a one month timeframe of the relevant State Property being listed on the State Property Register as surplus by an Owing Stakeholder.

- 6.6 Acquisition of Pre-Emption Agreement/Rights, rights under an Option Agreements and right to a Break Option must be recorded by Owing Stakeholders. The Property Managers Network may provide a suitable forum through which such information may be communicated to other Stakeholders.
- 6.7 Disposal/Release of Pre-Emption Rights and rights under Option Agreements or Break Options should only occur in the event that there has not been any expression of interest by any other Stakeholder within a one month timeframe.
- 6.8 A Stakeholder who has an interest in acquiring Surplus Property shall engage with the Owing Stakeholder in relation to their interest in acquiring a Surplus Property by contacting the Owing Stakeholder's designated point of contact available on the State Property Register.
- 6.9 Any expression of interest must include a Business Plan submitted to the Owing Stakeholder which will incorporate details of whether the parties are seeking to acquire the State Property by intra-State disposal or by lease/licence to occupy, the extent/area of property required, the purpose of requiring the property, the duration of requirement (if applicable) and the date on which the State Property is required for acquisition/occupation.
- 6.10 It shall be noted that multiple Stakeholders can simultaneously express an interest in any Surplus State Property.
- 6.11 Where multiple Stakeholders have expressed an interest, the Owing Stakeholder will select the successful Acquiring Stakeholder on the basis of broadest State interest/value in the proposals.
- 6.12 Negotiations to acquire a State Property shall not continue for a period longer than six months from the date of the expression of interest by the Acquiring Stakeholder during which period the value of the asset being transferred shall be determined. If negotiations are not concluded within six months and Clause 7 below has not been exercised, then the State Property Register will reflect the further availability of the property.
- 6.13 In the event that negotiations are successfully concluded within six months, the agreement shall be formalised in accordance with this Protocol.

## **7. EXTENSION OF TIME**

Any time period referred to in the Protocol may be extended by a period of up to six months on agreement by the Owing Stakeholder.

## **8. CORPORATE GOVERNANCE:**

Where Stakeholders engage in a transaction set out in Clause 5, the following corporate governance principles shall apply:

- 8.1 The Stakeholders shall comply with all legislative and regulatory requirements, including codes of practice on the governance of State Bodies. In the case of local authorities, disposal of property/land will be entered into in compliance with their statutory obligations. Where VAT arises, consideration should be given to its implications in the initial decision making stages of the negotiations.
- 8.2 Stakeholders shall comply with the Public Spending Code and any update or amendment thereto to include a replacement thereof.

- 8.3 Stakeholders shall ensure that they each obtain all appropriate consents (where necessary) prior to entering into formal arrangements enumerated in Clause 9 below.
- 8.4 Stakeholders proposing to enter into a formal arrangement with another Stakeholder should ensure that they each adhere to their own internal procedures and requirements in respect of that transaction, including but not limited to sealing requirements.

## **9. MANAGING SURPLUS PROPERTY**

### **9.1 Where a Stakeholder owns the Freehold interest or equivalent in a surplus State Property –**

Where a Stakeholder owns the freehold interest or equivalent in a surplus State Property and it is proposed that this property will be occupied by another Stakeholder, the following options shall arise:

- 9.1.1 Transfer of the title to the relevant State Property from an Owing Stakeholder to an Acquiring Stakeholder in accordance with Clause 9.2 below;
- 9.1.2 Lease for occupation of the entire State Property by the Acquiring Stakeholder – refer to the *Protocol for Intra State Sharing of Property Assets*
- 9.1.3 Licence for occupation of the entire State Property by the Acquiring Stakeholder – refer to the *Protocol for Intra State Sharing of Property Assets*

The decision in relation to which of the options listed in Clause 9.1 hereof is to be exercised shall be determined by negotiation between the Owing Stakeholder and an Acquiring Stakeholder, having regard to the Exchequer as a whole and all issues including tax implications.

### **9.2 Transfer of the title of a Freehold Interest or equivalent in a surplus State Property by an Owing Stakeholder to an Acquiring Stakeholder –**

- 9.2.1 Where the proposal for an intra State transfer is being progressed by both parties, the Owing Stakeholder of the relevant State property shall request a determination of Market Value from the Valuation Office where the valuation is binding. The determination shall be carried out in accordance with the RICS Valuation – Professional Standards (Red Book), of the edition current at the time. Any costs associated with the valuation will be borne by the Owing Stakeholder. The information required by the Valuation Office is set out in Appendix 1.
- 9.2.2 Intra State property transfers should be completed in accordance with the options set out at Appendix 2.

A ‘Due Diligence Pack’ for Option 1 is set out in Appendix 3 and the standards set out in this Clause include:

- (i) The title shall be good marketable title;
- (ii) The title shall be free from encumbrances in so far as possible;
- (iii) The title shall be registered in the Property Registration Authority (PRA) by an Acquiring Stakeholder;

The level of Due Diligence to be carried out will be determined by the Acquiring Stakeholder and may be influenced by factors such as the value of the property, the intended purpose of the property, the



administrative cost of achieving all items on the Due Diligence list as against the value or need for the property.

**Or**

- 9.2.3 The Stakeholders may determine that the transfer should proceed in accordance with the minimum level of disclosure and deletion of warranties as set out in Option 2 of Appendix 2 and the insertion of Special Conditions into a Contract for Sale as appropriate.
- 9.2.5 A claw back is to be calculated if the property acquired by a Stakeholder is disposed of to a Non-State Party within ten to fifteen years from the date of the Deed of Transfer or Conveyance to the Owning Stakeholder from another Stakeholder and in accordance with Appendix 4.
- 9.2.6 The decision in relation to which method of calculation of the clawback to be used in relation to Clause 9.2.5 and the decision in relation to which of the options listed in Clause 9.2.2 and 9.2.3 above is to be exercised shall be determined by negotiation between the Owning Stakeholder and the Acquiring Stakeholder having regard to the Exchequer as a whole.

**9.3 Where the Owning Stakeholder holds the State Property under a Lease from a Non-State Party -**

Where the Owning Stakeholder holds the State Property under a Lease from a Non-State Party and it is proposed that this property will be occupied by another Stakeholder, the following options shall arise:

- 9.3.1 If the Lease permits, an Assignment of the Leasehold interest of the relevant State Property by the Owning Stakeholder to the Acquiring Stakeholder of the entire property under lease for the remainder of the term provided for in the Lease;
- 9.3.2 If the Lease permits, a Sublease by the Owning Stakeholder to the Acquiring Stakeholder - reference should be made to the *Protocol for the Sharing of State Property Assets* which sets out the general guidelines to be followed.

The decision in relation to which of the options listed in Clause 9.3 above is to be exercised shall be determined by negotiation between the Owning Stakeholder and an Acquiring Stakeholder, having regard to terms in the Head Lease and the Exchequer as a whole.

**9.4 Assignment of a Leasehold Interest to an Acquiring Stakeholder -**

It must be recognised that an assignment of a Leasehold interest may impose financial penalties on the Acquiring Stakeholder and these must be identified and taken into account at the initial discussion phase. Therefore, it is advisable to include a request for a determination of potential financial penalties from the Valuation Office as part of 9.3.1.

9.4.1 Where the proposal for an intra State transfer is being progressed by both parties, the Owning Stakeholder of the relevant State property shall request a determination of Market Value from the Valuation Office where the valuation is binding. The determination shall be carried out in accordance with the RICS Valuation – Professional Standards (Red Book), of the edition current at the time. Any costs associated with the valuation will be borne by the Owning Stakeholder. The information required by the Valuation Office is set out in Appendix 1.

9.4.2 The Owning Stakeholder may review:

(i) the Head Lease to consider whether a break option arises and consider whether to exercise the break option by surrendering the leasehold interest (a formal Surrender should be executed where this option is being pursued). Where it appears prudent due consideration should be given to exercising the break option.

**and/or**

(ii) whether a new Lease would be taken by an Acquiring Stakeholder from the Non-State Party. Consideration should be given to the recommended sample clauses set out in Appendix 5, where applicable.

**Or**

(iii) whether the Owning Stakeholder may decide by agreement of the Acquiring Stakeholder to assign the Lease to the Acquiring Stakeholder, subject to the conditions set out in the Head Lease.

9.4.3 The decision in relation to which option within Clause 9 hereof is to be exercised shall be determined by negotiation between the Owning Stakeholder and the Acquiring Stakeholder having regard to the Exchequer as a whole and all issues including tax implications.

## APPENDIX 1

### Outline of Role of the Valuation Office in the Intra State Asset Transfer Process

1. The Valuation Office will provide an independent valuation accepted by both parties without dispute.
2. The valuation request/instruction will be referred to the Valuation Office by the Owning Stakeholder and there will be single points of contact between the Owning Stakeholder and the Valuation Office.
3. The Valuation Office requirements in terms of information to be supplied by Owning Stakeholder/ Acquiring Stakeholder as appropriate are:
  - Address / location of property
  - Contact details for access to the property
  - Title documents (or copies of) as complete as possible
  - Site areas and/or floor areas.
  - Maps and/or floor plans
  - Condition / structural reports (if any)
  - Feasibility studies (if any)
  - Current planning permissions (if any)
  - Contamination issues (if any)
  - Encumbrances / disputes affecting the property
  - Special value to vendor or purchaser
  - Signed declaration [draft attached] that
    - The information supplied is complete and accurate
    - The valuation will be accepted by both parties.
4. The Valuation Office undertakes to provide a professional valuation
  - Expeditiously
  - To SCSI/RICS Red Book standards
  - Carried out by a competent valuer who is or is overseen by a qualified Chartered Surveyor
  - With a full written report detailing the basis of the valuation.
5. See next page - Declaration to be submitted to the Valuation Office when requesting single valuations:

***DECLARATION***

We the undersigned confirm that, to the best of our knowledge, the information provided by us is true and accurate and that we are not aware of any further information relevant to the valuation of the property.

We also confirm that the open market valuation of this property as determined by the Valuation Office is the value that will be accepted by both parties without dispute.

Signed \_\_\_\_\_

Organisation: \_\_\_\_\_

Signed \_\_\_\_\_

Organisation: \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX 2

### Options for Intra State Property Transfers

Outlined below are three differing options or approaches which could assist in streamlining property transfers between State entities, thereby leading to greater efficiency and improved value for money for the State.

#### **Option 1 Due Diligence Pack detailing all matters relating to each property:**

This transfer option would involve the advance preparation of the elements identified in Appendix 3 - Due Diligence List - by State entities in relation to each property in consultation with respective Solicitors. The Due Diligence Pack would be prepared in accordance with the steps outlined in Appendix 3 below and the Pack would contain, in general, the documents outlined therein. The Pack should contain all the information and documentation relevant to each property. In this option the Owing Stakeholder takes on the risk and pre-disposal cost involved with the preparation of the documents. This option would increase the efficiency of the disposal and simplify all future disposals of the property.

Timely advance agreement between State entities as to the *basic format* of Contract for Sale and the content of the Due Diligence Pack would mean that the main document left to be agreed upon between the State entities during the disposal transaction would be the Deed of Transfer and/or Conveyance.

#### **Option 2 Minimum level of disclosure and deletion of warranties:**

This transfer option involves advance agreement between State entities on a form of Contract for Sale to be used, setting out title and attaching replies to Requisitions on Title, Building Rating Certificates and all other relevant documents. However, this form of Contract would contain several agreed Special Conditions limiting queries with the Owing Stakeholder in relation to any matters and thereby placing the onus on the Acquiring Stakeholder to carry the risks in relation to matters such as Notices, Planning, Building Regulations, Environmental, Services. All warranties in favour of the Acquiring Stakeholder would be removed from Contract by means of special condition and risk would pass to the Acquiring Stakeholder.

This option can increase the risk to the Acquiring Stakeholder where properties transferred in this manner are more of burden to the State than a benefit due to their condition or due to issues regarding title/planning. This is one of the main risks arising from not carrying out proper due diligence procedures when obtaining properties.

#### **Option 3 Enactment of Legislation:**

The Government may decide to enact legislation to enable ownership of properties to be moved by Statute between State entities. This could be extended to improve the title to property which is disposed of to another State entity. In this situation the disposal would operate to vest the property in the Acquiring Stakeholder in fee simple free from encumbrances. It should be noted that the Government decision relating to the property reform area requires all State property to be registered with the Property Registration Authority.

## **APPENDIX 3**

### **Due Diligence List**

**Steps and/or documentation required for the preparation of the Due Diligence Pack:** Actions for Owning Stakeholder, where appropriate and relevant–

- Prepare title documents to the Solicitors
- Prepare map to Property Registration Authority Standards (where the Solicitors advise necessary)
- Prepare Declaration of Identity (where the Solicitors advise necessary)
- Carry out Property Survey (considering property boundary issues etc)
- Prepare Services Report with Map attached
- Prepare Environmental Report
- Furnish Asbestos Report to the Solicitors where appropriate
- Furnish details of all Easements in existence or to be retained to the Solicitors (with map if the Solicitors advise necessary)
- Furnish details of all Charges or Liabilities to the Solicitors
- Furnish all Planning Documents and Certificates of Compliance in relation to Planning and Building Regulations to the Solicitors
- Furnish Building Energy Rating Certificate (BER) to the Solicitors
- Consider whether VAT may arise on a disposal & furnish the Solicitors with details of VAT history
- Furnish the Solicitors with details of all outgoing affecting the property
- Furnish details of all Notices affecting the property (Notice Register should be set up)
- Furnish the Solicitors with details of occupiers and their terms of occupation
- Furnish the Solicitors with unconditional Section 183/relevant Consents
- Ensure availability of keys & alarm code

## **APPENDIX 4**

### **Method of calculation of Clawback**

Where the Acquiring Stakeholder is disposing of the property to a Non-State party within ten years of the date of the Deed of Transfer or Conveyance to the Owning Stakeholder, the computation shall be as follows:

The payment due shall be 50% of the disposal price to be paid by the Non-State party less the amount paid by the Acquiring Stakeholder on the acquisition thereof and less any capital expenditure by the Acquiring Stakeholder expended on the relevant property.

### **OR**

If the use of the Premises changes to a higher value use the following provisions shall apply to clawback the increased value over cost to the vendor:

Duration of Ownership	% Profit to Vendor
0 - 5 years	50%
5 -10 years	30%
10 - 15 years	10%
Over 15 years	0%

(a) the profit to the Vendor is calculated as the difference between the final resale price and the base price (purchase price) and less any capital expended on the relevant property following the intra State transfer.

(b) for the purpose of this clawback calculation the base price shall be increased in line with the Building Cost Index as produced by the Construction Industry Federation.

## **APPENDIX 5 - Sample Lease Clauses**

### **SAMPLE PROVISOS FOR ALIENATION CLAUSES**

**PROVIDED ALWAYS** that the entire provisions of the within clause shall not apply where the Tenant is a State Authority, State Body or State Agency and the alienation or parting with possession, as hereinbefore referred to, of the whole or any part of the Demised Premises is in favour of another State Authority, State Body or State Agency or where the licensing of any part of the Demised Premises is to enable the provision of facilities for the occupier/s of the Demised Premises.

**PROVIDED ALWAYS** that the foregoing provisions of the within clause shall not apply where the Tenant is a State Authority, State Body or State Agency and the intended alienation or sharing of possession of all or any part of the Demised Premises is in favour of another State Authority, State Body or State Agency.

**PROVIDED ALWAYS** that where the Tenant remains x (in this clause referred to as 'the x') the Landlord shall allow the occupation from time to time of the whole or any part of the Demised Premises by any other State Authority, State Body or State Agency without requiring compliance with the foregoing provisions of this clause but the x shall notify the Landlord of any such intended change of occupant and the Landlord may make observations thereon.

### **SAMPLE LANDLORD'S REPAIR COVENANT**

The Landlord shall keep and maintain the building, of which the Demised Premises forms part, including the Common Areas and the exterior of the Demised Premises, in good and substantial repair, order and condition.

### **SAMPLE LANDLORD'S COVENANT RE. TAX CLEARANCE CERTIFICATE**

The Landlord shall produce to the Tenant annually a current valid General Tax Clearance Certificate in the event that the amount paid by the Tenant in respect of rent or other sums payable hereunder exceeds €10,000 in any year **PROVIDED ALWAYS** that, notwithstanding any other provision contained in this Lease, in the event that the said Certificate is not produced in accordance with the foregoing provision, the payment of the rent hereby reserved and the other sums, if any, payable hereunder shall be suspended (or withheld) until such time as the said Certificate has been produced.

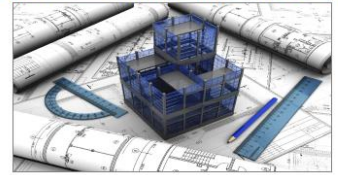
### **SAMPLE LANDLORD'S INDEMNITY**

The Landlord hereby indemnifies and shall keep indemnified the Tenant and the owners/occupiers for the time being of the Demised Premises against all claims, demands, expenses, losses, liabilities, costs, proceedings and actions whatsoever in respect of the death or injury of any person or damage to any property howsoever arising directly or indirectly out of the state of repair or condition of the Common Parts or arising out of or in connection with the use or occupation of those parts of the Building not hereby demised.



**SAMPLE CLAUSE RE. LANDLORD'S EXERCISE OF RIGHTS**

In exercising any of the Landlord's rights of entry or other rights in relation to the Demised Premises, the Landlord shall take all necessary steps to ensure that as little damage is done to the Demised Premises and as little inconvenience is caused to their occupiers as is reasonably practicable and the Landlord shall make good without delay any damage which may be caused by such exercise.



# **PROTOCOL FOR THE INTRA STATE SHARING OF STATE PROPERTY ASSETS**

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**APPENDIX 1**  
**APPENDIX 2**

Role of the Valuation Office in the Intra State Asset Sharing Process  
**Sample** Form of Licence between State entities

## **1. INTRODUCTION:**

The Government's programme of property asset management and public sector reforms seeks to:

- (1) implement the policy of rationalisation of the State's property portfolio and
- (2) improve efficiencies in relation to the use and operational management of the State's property portfolio.

The Government established the Steering Group on Property Asset Management to encourage intra-State communication in the context of the proposed reforms and ultimately to prepare a plan to drive forward these reforms. In July 2013, the Steering Group published "*Accommodating Change - Measuring Success: Property Asset Management Delivery Plan*" which enumerates the strategic actions required for achieving the Government's programme for reforms in relation to the State's property portfolio.

One of the goals set in the Property Asset Management Delivery Plan is to develop this Protocol as an agreed guide for future occupation/sharing arrangements by Stakeholders of property forming or intended to form part of the State's property portfolio. Occupation/ sharing arrangements will be put in place wherever all or part of a State Property is surplus to requirements. A separate agreed Intra State Transfer Protocol will guide all future acquisitions/disposals between the Stakeholders where Stakeholders wish to acquire/dispose of entire State properties.

Each Owing Stakeholder will continue to be responsible for managing its properties and for complying with all legislative and regulatory requirements.

Where the Stakeholder is a Local Authority, this Protocol shall not replace existing governance requirements or alter the position of elected members in the performance of their reserved functions in relation to disposals and acquisitions.

Please note that the application of this Protocol is not relevant to the provision of office accommodation to Central Government Departments/Offices by the Office of Public Works.

This Protocol may be subject to review from time to time by the Steering Group on Property Asset Management.

## **2. DEFINITIONS:**

For the purposes of this Protocol, these words shall have the following meaning:

“**Acquiring Stakeholder**” shall mean the Stakeholder proposing to occupy a State Property;

“**Central Government**” shall mean all central Government Departments and the Office of Public Works;

“**CSSO**” shall mean the Chief State Solicitor's Office;

“**Freehold**” shall mean a Fee Simple interest where ownership is not restricted to a number of years;

“**Head Lease**” shall mean a Lease held directly from the freehold owner;

“**Intra Central Government**” shall mean within Government Departments and the OPW;

“**Lease**” shall mean a Lease held directly from the freehold owner;

“**Leasehold**” shall mean property which is held for a specified number of years;

“**Market Rent**” shall mean the estimated amount for which a property, or space within a property, should lease (let) on the date of valuation between a willing lessor and a willing lessee on appropriate lease terms in an arm's length transaction after property marking wherein the parties had acted knowledgeably, prudently and without compulsion.”

“**Non State Party**” shall mean a party that is not a Stakeholder;

“**Ownership**” shall mean freehold ownership and leasehold ownership;

“**Owning Stakeholder**” shall mean any Stakeholder who owns or holds under lease the relevant State Property by freehold or leasehold;

“**Property**” shall mean land and buildings;

“**Property Managers Network**” shall mean such persons nominated by their respective Stakeholders whose role is to support the implementation of the Property Asset Management Delivery Plan, supply information to the State Property Register and provide a forum for discussion and recommendation of property solutions. The Office of Public Works will chair meetings of the Property Managers Network, to be established on a regional basis;

“**Quarterly**” shall mean 1<sup>st</sup> January, 1<sup>st</sup> April, 1<sup>st</sup> July, 1<sup>st</sup> October in each year of the currency of the Protocol, commencing on the 1<sup>st</sup> October 2015.

“**Relevant Property**” shall mean property proposed to be occupied;

“**Senior Responsible Owner**” shall mean the Chairman of the Office of Public Works or senior official nominated by the Chairman;

“**Stakeholder(s)**” shall mean Central Government, State bodies or agencies, Health Service Executive and Local Government;

“**State Property**” shall mean lands and buildings owned or held by the State;

“**State Property Portfolio**” shall mean all freehold or freehold equivalent property or leasehold property now owned or held by any Stakeholder or to be acquired by any Stakeholder in the future;

“**Steering Group**” shall mean such persons nominated by Stakeholders who with the Senior Responsible Owner will have an oversight and monitoring role in the implementation of the Government’s programme of reforms and the actions outlined in the Property Asset Management Plan. Any meetings held will be chaired

by the Senior Responsible Owner or senior nominated official;

“**Surplus Property**” in this Protocol shall mean property that the Owing Stakeholder identifies on the State Property Register as being surplus to its requirements and available for occupation. Such property can comprise either a whole State Property or part of a State Property. It is acknowledged that there are instances where Stakeholders are required to dispose of properties/land for a specific purpose in accordance with their statutory obligations e.g. for the purposes of developing industrial or commercial units. Such properties/land are not be considered as part of this Protocol and though on the Register are not required to be identified as surplus for the purposes of intra-State sharing.

### **3. PARTIES GOVERNED BY THE PROTOCOL:**

The parties governed by this Protocol and known as the Stakeholder(s) are all ‘parties’ with a legal entitlement to acquire or otherwise hold State property, including but not limited to the following:

- 3.1 Central Government;
- 3.2 State bodies or agencies;
- 3.3 Health Service Executive;
- 3.4 Local Government (namely, each Local Authority).

### **4. NATURE OF OWNERSHIP:**

The nature of ownership of State Property to be governed by this Protocol is as follows:

- 4.1 Freehold interest or freehold equivalent;
- 4.2 Leasehold interest.

### **5. TYPES OF TRANSACTIONS:**

This Protocol sets out the procedure to be followed when any Stakeholder proposes to enter into any of the following type(s) of transaction for the purposes of sharing occupation:

- 5.1 Licence of the property;
- 5.2 Lease of the property;
- 5.3 Sub Lease of the property.

### **6. MANAGING THE STATE PROPERTY REGISTER:**

Each Stakeholder is responsible for managing its own property portfolio in accordance with existing relevant legislation, codes of practice and governance arrangements.

To facilitate a more strategic and co-ordinated management of the State's property holdings, there shall be a State Property Register established by the Commissioners of Public Works in Ireland. The State Property Register will be populated with certain categories of information on all property owned or managed by the State. The Commissioners will facilitate communications in relation to the establishment of the Register. The Stakeholders shall have regard to the Office of Public Works' State Property Register Viewer – User Guide Version 1 and any revisions thereto. The Stakeholders shall maintain the State Property Register in the following manner:

- 6.1 Each Stakeholder shall enter in the State Property Register specific details of the point of contact within their organisation responsible for updating the State Property Register.
- 6.2 Each Stakeholder shall complete the State Property Register record in full for each property, including details of all Surplus State Property on an ongoing basis. The Protocol shall apply to those properties identified by the Owing Stakeholder as being surplus to requirements (or space available) and being available for occupation.
- 6.3 On an annual basis each Stakeholder shall review the State Property Register in full to ensure that all State Property held by that Stakeholder has been entered on the State Property Register and ensure that the Register accurately reflects their property portfolio.
- 6.4 Any property acquisition, whether it is a freehold or equivalent or a Leasehold interest, should involve a review by the Acquiring Stakeholder of the State Property Register to establish whether there is any other surplus State Property or available space which may meet their needs.
- 6.5 Any disposal of a property to a Non-State Party should only occur in the event that there have not been any expressions of interest identified to the Owing Stakeholder within a one month timeframe of the relevant State Property being listed on the State Property Register as surplus by an Owing Stakeholder.
- 6.6 Acquisition of Pre-Emption Agreement/Rights, rights under an Option Agreements and right to a Break Option must be recorded by Owing Stakeholders. The Property Managers Network may provide a suitable forum through which such information may be communicated to other Stakeholders.
- 6.7 Disposal/Release of Pre-Emption Rights and rights under Option Agreements or Break Options should only occur in the event that there has not been any expression of interest by any other Stakeholder within a one month timeframe.
- 6.8 A Stakeholder who has an interest in occupying a Surplus Property shall engage with the Owing Stakeholder in relation to their interest in occupying the property by contacting the Owing Stakeholder's designated point of contact available on the State Property Register.
- 6.9 Any expression of interest to occupy a property must include a Business Plan submitted to the Owing Stakeholder which will incorporate details of whether the parties are seeking to occupy the State Property by lease/licence, the extent/area of property required, the purpose of requiring the property, the estimated duration of requirement (if applicable) and the date on which the State Property is required for occupation.
- 6.10 It shall be noted that multiple Stakeholders can simultaneously express an interest in occupying a property that has been identified as surplus to the Owing Stakeholder's requirements.
- 6.11 Where multiple Stakeholders have expressed an interest, the Owing Stakeholder will select the successful Acquiring Stakeholder on the basis of broadest State interest/value in the proposals.
- 6.12 Negotiations to occupy a State Property shall not continue for a period longer than six months from the date of the expression of interest by the Acquiring Stakeholder during which period the value of the asset being occupied and the terms of occupation shall be determined. If negotiations are not concluded within six months and Clause 7 below has not been exercised, then the State Property Register will reflect the further availability of the property.
- 6.13 In the event that negotiations are successfully concluded within six months, the agreement shall be formalised in accordance with this Protocol.

## **7. EXTENSION OF TIME**

Any time period referred to in the Protocol may be extended by a period of up to six months on agreement by the Owing Stakeholder.

## **8. CORPORATE GOVERNANCE:**

Where Stakeholders engage in a transaction as set out in Clause 5, the following corporate governance principles shall apply:

- 8.1 The Stakeholders shall comply with all legislative and regulatory requirements, including codes of practice on the governance of State Bodies. In the case of local authorities, decisions in relation to occupation of property/land will be entered into in compliance with their statutory obligations. Where VAT arises, consideration should be given to its implications in the initial decision making stages of the negotiations.
- 8.2 Stakeholders shall comply with the Public Spending Code and any update or amendment or replacement of the Code.
- 8.3 Stakeholders shall ensure that they each obtain all appropriate consents (where necessary) prior to entering into formal arrangements enumerated in Clause 9 below.
- 8.4 Stakeholders proposing to enter into a formal arrangement with another Stakeholder should ensure that they each adhere to their own internal procedures and requirements in respect of that transaction, including but not limited to sealing requirements.
- 8.5 Where it is agreed to grant a Lease between an Owing Stakeholder and an Acquiring Stakeholder, the Acquiring Stakeholder will execute a Deed of Renunciation of renewal rights prior to executing the Lease.

## **9. MANAGING SURPLUS PROPERTY:**

### **9.1 Where a Stakeholder owns the Freehold interest or freehold equivalent in a Surplus State Property –**

Where a Stakeholder owns the freehold interest or freehold equivalent in a Surplus State Property and it is proposed that this property will be occupied by one or more Stakeholders, the following options shall arise:

9.1.1 a Licence shall be granted in accordance with the terms similar to those as set out in Appendix 2;

OR

9.1.2 a Lease shall be granted, subject to agreed terms;

9.1.3 The rent shall be the market rent or other such lesser amount by agreement between the parties. In the event of failure to agree a rental value, the Owing Stakeholder of the relevant property shall request a determination of Market Rent from the Valuation Office where the valuation is binding. The determination shall be carried out in accordance with the RICS Valuation – Professional Standards (Red Book), of the edition current at the time. The valuation of market rent will be binding

on the Stakeholders and any costs associated with the valuation will be borne by the Owing Stakeholder. The information required by the Valuation Office is set out in Appendix 1.

The decision in relation to which of the options listed in Clause 9.1 above is to be exercised shall be determined by negotiation between the Owing Stakeholder and an Acquiring Stakeholder, having regard to the Exchequer as a whole.

## **9.2 Where the Owing Stakeholder holds the State Property under a Lease from a Non-State Party -**

Where the Owing Stakeholder holds the State Property under a Lease from a Non-State Party and it is proposed that this property will be occupied by another Stakeholder, the following options shall arise:

9.2.1 Subject to the terms of the Head Lease, a Licence shall be granted by the Owing Stakeholder to the Acquiring Stakeholder in accordance with the terms similar to those as set out in Appendix 2;

OR

9.2.2 Subject to the terms of the Head Lease, a Sublease may be granted by the Owing Stakeholder to the Acquiring Stakeholder;

OR

9.2.3 If the Head Lease permits, an Assignment of the Leasehold interest of the relevant State Property by the Owing Stakeholder to the Acquiring Stakeholder of the entire property under lease for the remainder of the term provided for in the Lease – reference should be made to the *Protocol for Intra State Transfer of State Property Assets*;

9.2.4 Subject to the terms of the Head Lease, the rent consideration shall be agreed between parties. In general, the appropriate rent will be the market rent. In default of agreement, this can be determined by the Valuation Office.

The decision in relation to which of the options listed in Clause 9.2 above is to be exercised shall be determined by negotiation between the Owing Stakeholder and an Acquiring Stakeholder, having regard to terms in the Head Lease and the Exchequer as a whole.



## APPENDIX 1

### **Outline of Role of the Valuation Office in the Intra State Asset Sharing Process**

1. The Valuation Office will provide an independent valuation accepted by both parties without dispute.
2. The valuation request/instruction will be referred to the Valuation Office by the Owing Stakeholder and there will be single points of contact between the Owing Stakeholder and the Valuation Office.
3. The Valuation Office requirements in terms of information to be supplied by Owing Stakeholder/Acquiring Stakeholder as appropriate are:
  - Address / location of property
  - Contact details for access to the property
  - Copy of the Head Lease
  - Site areas and/or floor areas to be agreed
  - Maps and/or floor plans of the area to be agreed
  - Signed declaration [draft attached] that
    - The information supplied is complete and accurate
    - The valuation will be accepted by both parties.
4. The Valuation Office undertakes to provide a professional valuation
  - Expeditiously
  - To SCSI/RICS Red Book standards
  - Carried out by a competent valuer who is or is overseen by a qualified Chartered Surveyor
  - With a full written report detailing the basis of the valuation.
5. See next page - Declaration to be submitted to the Valuation Office when requesting single valuations:

***DECLARATION***

We the undersigned confirm that, to the best of our knowledge, the information provided by us is true and accurate and that we are not aware of any further information relevant to the valuation of the property.

We also confirm that the open market rental valuation of this property as determined by the Valuation Office is the value that will be accepted by both parties without dispute.

Signed \_\_\_\_\_

**Organisation:** \_\_\_\_\_

Signed \_\_\_\_\_

**Organisation:** \_\_\_\_\_

Date: \_\_\_\_\_

## APPENDIX 2 - SAMPLE form of Licence between State entities

**THIS AGREEMENT** made the \_\_\_\_\_ day of \_\_\_\_\_ 2015  
**BETWEEN** \_\_\_\_\_ of \_\_\_\_\_ (“the Licensors”) of the one part  
**AND**

### **WHEREAS:-**

- A. The Licensors are the registered owner of the property described in the First Schedule hereto (“the Property”) comprising all that and those the premises known as XXX of the Register County XXX and shown for the purpose of identification only edged in red on the map annexed to this licence
- B. The Licensees have applied to the Licensors for permission to occupy part of the Property described in the Second Schedule hereto (hereinafter called “the Licensed Property”).
- C. The Licensors have limited present need for the Licensed Property, but reserve the right to apply it to such use as may be appropriate in the future having regard to the Licensors needs.
- D. The Licensors have agreed to grant the within Licence permitting the Licensees to occupy the Licensed Property **strictly subject** to and in accordance with the terms and conditions hereinafter appearing.

**NOW IT IS HEREBY WITNESSETH** that in pursuance of the said agreement and for the consideration hereinafter stated the Licensors **HEREBY GRANT** unto the Licensees permission to occupy the Licensed Property on the terms and conditions following:-

1. The Licensees shall pay to the Licensors a Licence fee of € ( Euro) per annum payable quarterly in advance (if required);
2. The Licensees agree and undertake that it will comply with the Licence Conditions for the full period of the Licence Period.

### **THE LICENCE PERIOD**

The Licensees have the right from the date hereof until the \_\_\_\_\_ day of \_\_\_\_\_ 201 to use the Licensed Property for all purposes connected with the lawful use of the Licensed Property as an (e.g. Office accommodation) in accordance with Clause 4 below, unless prior termination occurs.

#### **2. Licence**

So long as this Licence shall remain in operation the Licensor LICENSES and authorises the Licensee (subject to the terms and conditions contained in this Licence) to enter upon and use solely for the purpose of the Permitted Use the Licensed Area as a Bare Licensee subject to the Licensor’s termination specified at clause 8.

#### **4. The Period of Licence**

This Licence shall continue in force during the Licence Period.

### **THE LICENSED USES**

The Licensed Uses (which are to be construed as limited by the terms of the Licence Conditions where the context permits) are as follows:

- a. To enter upon the Licensed Property.
- b. To use the Licensed Property as (e.g. office accommodation)

- c. To store files, documents and office equipment on the Licensed Property.
- d. To use all services appertaining to the Licensed Property, including heating, electricity, water supply, sewers, access paths and parking areas.
- e. To display artworks, posters, notices and similar exhibits on the internal walls of the Licensed Property.

## **5. The Licensee's Obligations**

### **The Licensee AGREES AND UNDERTAKES:-**

- 5.1 To pay the Licence Fee on the day and in the manner specified in this Licence.
- 5.2 To pay and discharge all sums due in respect of all heating, lighting, electricity, gas, water or other service used or consumed by the Licensees on or in respect of the Licensed Area.
- 5.3 To keep the Licensed Area clean neat and tidy and free from any rubbish or fire or health hazard ;
- 5.4 Not to damage any part of the Licensed Area and to bear any costs incurred by the Licensor in making good any damage caused by the Licensee or any employee servant agent or invitee of the Licensee;
- 5.5 To notify the Licensor immediately in writing of any damage to or deterioration in the Licensed Area howsoever arising;
- 5.6 (i) To use the Licensed Area for the Licensed Uses only.  
(ii) Not to do or permit to be done in or about the Licensed Area anything which shall be a nuisance inconvenience or disturbance to the Licensor or the occupiers of any adjoining property;
- 5.7 Not to overload the floor of the Licensed Area or the electrical installations or the other services of or to the Licensed Area;
- 5.8 Not to keep on the Licensed Area any inflammable explosive dangerous or harmful substance liquid or gas;
- 5.9 Not to do or permit to be done anything on the Licensed Area whereby any policy of insurance may become void or voidable and to comply with all conditions pertaining to any or all of the policies of insurance relating to the Licensed Area.
- 5.10 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.
- 5.11 To indemnify the Licensor and its officers, agents and employees (both during and after the Licence Period) from and against:-
  - 5.11.1 all actions, proceedings, costs, claims and demands occasioned by or arising out of any breach by the Licensee, its agents, employees, proprietors, partners, officers or invitees of any statutory or other regulatory provision, notice, bye-law, direction or order;

- 5.11.2 all claims, losses, damages, costs and expenses (to include legal costs and expenses) which the Licensor may suffer as a direct or indirect result of, any action or omission or conduct by the Licensee, its agents, employees, invitees, proprietors, partners or officers or in consequence of any death of, or any bodily injury, harm, pain or suffering happening to any person or property on or at the Licensed Area arising directly or indirectly from the activities carried out from the Licensed Area by the Licensee, its agents, employees, proprietors, partners, officers or invitees;
- 5.11.3 any claim which might be made against the Licensor by any employee(s) of the Licensee whether under the European Communities (Safeguarding of Employees Rights on Transfer of Undertakings) Regulations 1980 or otherwise, upon the expiration or termination for whatever reason of this Licence;
- 5.12 *(Save in the case of a State Licensee whose insurance is covered by State Liability Insurance)* Without prejudice to the Licensees liability to indemnify the Licensor in accordance with the provisions herein, the Licensee will take out and maintain during the period of the licence a policy of public liability insurance and employers liability insurance covering any liability loss, claim or proceedings in respect of the matters herein referred to with a limit of €6,500,000 (six and a half million Euro) for public liability and €6,500,000 (six and a half million Euro) for employers liability in respect of any one claim AND the Licensee shall whenever so required produce to the Licensor evidence of such insurance cover and the last receipt for payment of the premium due and that this insurance be extended to cover the Licensor and any officers, servants, agents, employees, workers or contractors of the Licensor whilst they are in or on the Licensed Area;
- 5.13 To immediately notify the Licensor in writing of the making of any claim under any policy of insurance relevant to the Licensed Area and to provide the Licensor with all information in relation to any such claim
- 5.14 Not to permit any congestion or obstruction of any roadways or footpaths adjoining the Licensed Area. The Licensor accepts no responsibility or liability for any loss or damage to or theft of or from any motor car or other vehicle pedal or motor bike or scooter parked on the Licensed Area.
- 5.15 Not to make any alteration or addition to the Licensed Area and not to erect any sign or advertisement in or upon the Licensed Area, without consent in writing.
- 5.16 To obtain the written approval of the Licensors before installing any plant machinery equipment or processes in the Licensed Property;
- 5.17 The Licensees shall pay all existing and future rates taxes assessments and outgoings of every description for the time being payable by either the Licensors or the Licensees in respect of or charged upon the Licensed Property, in respect of the period of the Licensees occupation in accordance with the Fourth Schedule hereto;
- 5.18 To permit the Licensor and their servants or workmen at all reasonable times of the day to enter upon the Licensed Property all persons authorised by the Licensor to enter the Licensed Area at any time and for any purpose;
- 5.19 Immediately upon termination of the Licensee's right to use the Licensed Area to remove all the Licensee's property from the Licensed Area and to leave it clean and tidy and to bear the cost (if any) incurred by the Licensor in making good any damage caused in the course of the removal of the Licensee's property;
- 5.21 To obtain all necessary approvals and consents to ensure that the permitted use complied with the Local Government (Planning & Development) Acts 1963 to 1999 and the Planning and Development Acts 2000 to 2002 and to comply in every respect with the said Acts and the Building Control Act 1990 and all regulations and orders made under them;

5.22 To keep the Licensed property in good repair, order and condition (including decorative condition) and to keep the windows, walls and floors clean. The Licensees shall maintain the interior of the Licensed property together with the surrounding land in its current state of repair.

## **6. The Licensor Agrees:-**

6.1 To repair the external fabric of the building PROVIDED ALWAYS that the quality and level of the repairs to be provided by the Licensor will be solely at the discretion and within the control of the Licensor.

## **7. Termination**

7.1 This Licence may be terminated by the Licensor giving to the Licensee not less than six calendar months notice in writing expiring on any day and by the Licensee giving to the Licensor not less than six calendar months notice in writing expiring on any day.

7.2 This Licence shall terminate immediately

7.2.1 if the Licensee is in breach of any of the obligations agreements terms and conditions of the Licence or

7.2.5 if the Licensed Area shall become incapable of use through fire destruction or any other such reason beyond the control of the Licensor.

## **8. General Provisions**

8.1 The Licensor shall not in any circumstances be responsible to the Licensee or its employees servants agents or invitees and the Licensee shall indemnify the Licensor against any injury illness death damage destruction or financial loss or consequential loss (including loss of sales or profits) which may at any time be caused or done to the Licensee or its employees servants agents and invitees or to the Licensed Area or to any of the goods merchandise plant equipment machinery or property of the Licensee or its employees servants agents or invitees in or about the Licensed Area by reason of any act neglect default omission of the Licensor or its employees servants agents invitees and licensees or by reason of the stoppage breakage failure defect or inadequacy of any lighting power heating plumbing or any other pipes appliances apparatus or machinery in or connected with or used for the purpose of the Licensed Area or any part of it or by reason of fire water damage or any other cause.

SIGNED by.....  
A person authorised under Section xx to sign  
on behalf of XXXX  
In the presence of:-

PRESENT when the Common Seal of the \_\_\_\_\_  
LICENSEE was affixed hereto:

**FIRST SCHEDULE**  
("The Property")  
**SECOND SCHEDULE**  
("the Licensed Property")  
**Third Schedule**  
("Condition Report")

**Fourth Schedule**  
**(Services and Service Charge Mechanism)**

"Services" means:

- (a) lighting, heating, providing electricity to, maintaining and repairing the Premises;
- (b) insuring the Premises in accordance with the provisions of clause 4.2;
- (c) the payment of rates (if any) levied against the Premises;
- (d) the hiring of contract cleaners twice a year to clean the Premises and related facilities (including the toilets).
- (e) general cleaning of the Premises;
- (f) the provision of toiletries in the toilets situated in the Common Areas;

"Service Charge Calculation Mechanism" means:

The Licensee shall pay to the Licensor:

- X% of the total costs incurred by the Licensor lighting, heating, providing electricity to, maintaining, repairing (name of property);
- X% of the total costs incurred by the Licensor insuring (name of property);
- X% of the amount of rates payable in respect of (name of property);
- X% of the costs to the Licensor of hiring contract cleaners twice a year to clean the Premises;
- X% of the costs of providing toiletries to the toilets situated in the Common Areas.

[Note: The % calculation above is based on the % square meterage occupation of the property]

**PRESENT** when the Common Seal  
of \_\_\_\_\_ was affixed  
hereto and authenticated by the signature of:

\_\_\_\_\_  
Signature of Witness

\_\_\_\_\_  
Name of Witness

\_\_\_\_\_  
Address of Witness

**PRESENT** when the Common Seal  
of \_\_\_\_\_  
was affixed hereto:-

**Dated the \_\_\_\_\_ day of \_\_\_\_\_ 2015**

**-with-**

**LICENCE**