|  |
| --- |
| Dated |
|  |
| [LANDLORD]  and  [TENANT] |
|  |
| **RENT DEPOSIT DEED**  Relating to a lease of premises known as [DETAILS] |
|  |
|  |

**CONTENTS**

**Clause Page**

[1. Definitions 1](#_Toc6302426)

[2. Interpretation 3](#_Toc6302427)

[3. Deposit Account 3](#_Toc6302428)

[4. Charge 4](#_Toc6302429)

[5. Deposit Balance 4](#_Toc6302430)

[6. [Payment of interest 5](#_Toc6302431)

[7. Repayment of the Deposit Balance 5](#_Toc6302432)

[8. Disposals 6](#_Toc6302433)

[9. Legal effect 6](#_Toc6302434)

[Schedule 1 7](#_Toc6302435)

[Release Date 7](#_Toc6302436)

**RENT DEPOSIT DEED**

**PARTIES**

1. [LANDLORD] (incorporated and registered in [England and Wales] [the United Kingdom] [COUNTRY] under company registration number [COMPANY NUMBER]), the registered office of which is at [ADDRESS] and any Successor (the “**Landlord**”); and

2. [TENANT] (incorporated and registered in [England and Wales] [the United Kingdom] [COUNTRY] under company registration number [COMPANY NUMBER]), the registered office of which is at [ADDRESS] (the “**Tenant**”).

**IT IS AGREED AS FOLLOWS**

1. Definitions
   1. This Deed uses the following definitions:

**“Bank”**

[[NAME OF BANK] or any other][a] UK Clearing bank that the Landlord may nominate;

**“Business Day”**

any day other than a Saturday, Sunday or a bank or public holiday in England and Wales;

**“Covenants”**

the tenant’s obligations and conditions contained in the Lease;

**“Deposit”**

[AMOUNT IN WORDS] pounds (£[AMOUNT IN FIGURES]);[[1]](#footnote-1)

**“Deposit Account”**

a separate interest-bearing deposit account opened with the Bank;

**“Deposit Balance”**

the balance from time to time standing to the credit of the Deposit Account;

**“Disposal”**

the transfer of the Landlord’s interest in the Premises or the grant of a lease out of that interest that takes effect subject to the terms of the Lease;

**“Event of Default”**

one or more of the following events:

1. the disclaimer of the Lease by the Crown or by a liquidator or trustee in bankruptcy of the Tenant;
2. if the Tenant is a company, the Tenant is struck off the register of companies or otherwise ceases to exist; and
3. the forfeiture of the Lease;

**[“Interest Date”**

[DATE] in each year;][[2]](#footnote-2)

**“Lease”**

a lease of the Premises dated [[DATE]][the same date as this Deed] made between (1) [PARTY 1] and (2) [PARTY 2] [and (3) [PARTY 3]] and any document supplemental to it;

**“Minimum Balance”**

[NUMBER] months’ yearly rent reserved by the Lease [and a sum equivalent to VAT on that amount];

**“Premises”**

the premises known as [ADDRESS OF PREMISES] described in more detail in the Lease;

**[“Release Date”**

the date calculated in accordance with **Schedule 1**;][[3]](#footnote-3)

**“Repayment Date”**

the [earlier][earliest] of:

1. the date on which the Tenant lawfully assigns the Lease; [and]
2. the first date on which the following conditions are satisfied:
   1. the Lease has come to an end, other than by an Event of Default; and
   2. the Tenant gives back the Premises with vacant possession, except to the extent that any permitted undertenant has the right to the statutory continuation of its underlease under the 1954 Act; [and]
3. [the [NUMBER] anniversary of the date of this Deed; and]
4. [the Release Date;]

**“Secured Liabilities”**

the payment of all sums required for one or more of the following:

1. to make good any loss or damage to the Landlord arising from any breach by the Tenant of the Covenants;
2. to make good any loss or damage to the Landlord arising from an Event of Default, including any sums for which the Landlord is entitled to prove in the winding up or bankruptcy of the Tenant whether or not following a disclaimer of the Lease; and

**“Successor”**

the person who becomes the immediate landlord of the Tenant following a Disposal.

1. Interpretation
   1. All headings in this Deed are for ease of reference only and will not affect its construction or interpretation.
   2. In this Deed, “includes”, “including” and similar words are used without limitation or qualification to the subject matter of the relevant provision.
   3. In this Deed:
      1. “notice” means any notice, notification or request given or made under it; and
      2. a notice must be given or made in writing.
   4. References in this Deed to:
      1. the Landlord include its successors in title;
      2. an Act are to that Act as amended from time to time and to any Act that replaces it;
      3. the singular include the plural and vice versa, and one gender includes any other;
      4. clauses and Schedules are to the clauses of and Schedules to this Deed and references to paragraphs are to the paragraphs of the Schedule in which the references are made; and
      5. any sums being payable on demand or when demanded mean being payable when demanded in writing.
   5. Obligations in this Deed:
      1. owed by or to more than one person are owed by or to them jointly and severally;
      2. to do something include an obligation not to waive any obligation of another person to do it; and
      3. not to do something include an obligation not to permit or allow another person to do it.
   6. Where the Tenant is obliged to pay any costs that the Landlord incurs (or any proportion of them) under this Deed, those costs must be reasonable and proper and reasonably and properly incurred.
   7. If any provision or part of any provision of this Deed is held to be illegal, invalid or unenforceable, that provision or part will apply with such modification as may be necessary to make it legal, valid and enforceable. If modification is not possible, that provision or part will be deemed to be deleted. The legality, validity or enforceability of the remainder of this Deed will not be affected.
2. Deposit Account
   1. If it has not already done so, the Landlord must open the Deposit Account as soon as reasonably practicable after the date of this Deed.[[4]](#footnote-4)
   2. The Tenant must provide all information about the Tenant required by the Bank to open and maintain the Deposit Account including any details of the directors and shareholders of the Tenant and evidence of their identity required by the Bank.[[5]](#footnote-5)
   3. The Bank’s costs for opening and operating the Deposit Account will be deducted from any interest earned on the Deposit Account and any balance of those costs must be paid by the Tenant within 10 Business Days of demand.[[6]](#footnote-6)
3. Charge
   1. The Landlord acknowledges receipt of the Deposit from the Tenant and must pay it into the Deposit Account.
   2. The Tenant must pay and discharge the Secured Liabilities on demand when they are due to the Landlord.
   3. The Tenant with full title guarantee and as continuing security for the Secured Liabilities charges the Deposit Balance by way of first fixed charge to the Landlord.
   4. [The charge created by clause **4.3** is a “a charge in favour of a landlord on a cash deposit given as security in connection with the lease of land” for the purposes of section 859A(6)(a) Companies Act 2006.][[7]](#footnote-7)
   5. The Tenant warrants to the Landlord that:
      1. no person having any charge or other form of security over the assets of the Tenant is required to consent to the Tenant entering into this Deed or has the benefit of any covenant preventing the Tenant entering into this Deed; and
      2. the Deposit is, and any further sums paid into the Deposit Account will be, free from any charge, lien or incumbrance in favour of any third party, whether legal or equitable.[[8]](#footnote-8)
   6. The Tenant must not create any other legal or equitable charge (whether fixed or floating), lien or encumbrance over the Deposit Balance ranking in priority to the security created by this Deed.
   7. The Tenant must promptly and at its own cost execute any document and take any action that the Landlord at any time reasonably requires in order to protect and preserve the security created by this Deed and for the priority of that security.
   8. The security created by this Deed is in addition to and is not to merge with, prejudice or affect any other security interest of the Landlord in relation to the Tenant.
4. Deposit Balance
   1. The Landlord acknowledges that:
      1. the Deposit Balance is and remains beneficially the property of the Tenant subject to the charge created by clause **4.3** and the Bank has been notified in writing of this fact; and[[9]](#footnote-9)
      2. it must not make any withdrawals from the Deposit Account except on the terms of this Deed.
   2. The Tenant acknowledges that the Landlord is entitled to make withdrawals from the Deposit Account on the terms of this Deed and that any money so withdrawn will become the property of the Landlord.
   3. The Landlord may notify the Tenant that the Deposit Balance is to be reduced by such sum as may be specified to settle any of the Secured Liabilities. If the Tenant does not pay to the Landlord the sums specified within 5 Business Days after being notified, the Landlord may withdraw those sums from the Deposit Account.
   4. The Tenant must pay to the Landlord on demand such further sums as may be required to ensure that the Deposit Balance is at all times equal to the Minimum Balance, including following any increase in the Minimum Balance after a review of the yearly rent.[[10]](#footnote-10)
   5. The Landlord must pay any sums received from the Tenant under clause **5.4** into the Deposit Account and they will form part of the Deposit Balance.
   6. Interest earned on the Deposit Account must be credited to the Deposit Account. It will form part of the Deposit Balance until paid to the Tenant in accordance with [**clause 6** or] clause **7**.[[11]](#footnote-11)
5. [Payment of interest
   1. Subject to clause **6.2**, on each Interest Date the Landlord must pay to the Tenant the interest earned on the Deposit Account net of tax deducted by the Bank and after deducting any costs charged by the Bank for the operation of the Account.
   2. If, on an Interest Date, any sums are due from the Tenant under the Lease or this Deed or there is any dispute between the Landlord and the Tenant under the Lease or this Deed, the Interest Date will be deferred until the date on which the Tenant has paid those sums in full or the relevant dispute has been resolved, as the case may be.
   3. The Tenant must not set off interest due to it under this clause **6** against any sums due from the Tenant to the Landlord under the Lease or this Deed.][[12]](#footnote-12)
6. Repayment of the Deposit Balance
   1. Within 10 Business Days after the Repayment Date, the Landlord must pay to the Tenant an amount equal to the Deposit Balance on the Repayment Date and any interest up to the Repayment Date [but not paid under clause **6**] but after deducting:
      1. any outstanding Secured Liabilities at the Repayment Date; and
      2. any outstanding costs of the Bank, including any costs payable on the closure of the Deposit Account.
   2. If any Secured Liabilities are due at the Repayment Date but are unquantified at this date:
      1. the Landlord may deduct from the sums payable under clause **7.1** an amount equal to the Landlord’s reasonable estimate, to be made in good faith, of those Secured Liabilities;
      2. any sums so deducted must be held in the Deposit Account on the terms of this Deed until the relevant Secured Liabilities have been quantified;
      3. the Landlord must quantify the relevant Secured Liabilities as soon as reasonably practicable; and
      4. when the relevant Secured Liabilities have been quantified, the Landlord must deduct the amount of those Secured Liabilities from the Deposit Account and must pay any credit balance on the Deposit Account to the Tenant within 10 Business Days of the Secured Liabilities having been quantified.
   3. Following the repayment of the whole of the Deposit Balance, the Landlord must close the Deposit Account.
7. Disposals
   1. Following a Disposal the Landlord must:
      1. notify the Tenant of the name and address of its Successor; and
      2. either:
         1. give a mandate to the Bank authorising the Bank to accept its Successor as the signatory to the Deposit Account and the person entitled to operate the Deposit Account; or
         2. procure that the Successor opens a new Deposit Account and credits an amount equivalent to the Deposit Balance to it to be held on the terms of this Deed.
   2. Subject to the Landlord complying with clause **8.1**, the Landlord making the Disposal will not be liable for any breach of its obligations in this Deed arising after the date of the Disposal.
8. Legal effect
   1. This Deed is supplemental to the Lease. A breach of the terms of this Deed will be treated as a breach of the terms of the Lease and the Landlord will have the same rights and remedies in respect of that breach as it would have in respect of a breach of the terms of the Lease, including for the payment of interest on payments that are due under this Deed that are not paid within 10 Business Days of demand.
   2. This Deed takes effect and binds the parties with effect from the date of this Deed.

Release Date

* + 1. **Definitions**
       1. This Schedule uses the following definitions:

**“Accounting Period”**

the period in respect of which accounts are required to be drawn up for the Tenant which, for the purposes of this Deed, is not to be less than 12 months and not to be greater than 15 months in relation to each Accounting Period.

**“Calculation Date”**

the last day of the final Accounting Period in respect of the Tenant’s Accounts provided under paragraph **2.1**.

**“Rental Figure”**

the yearly rent payable under the Lease at the rate reserved at the Calculation Date, subject to adjustment in accordance with paragraph **2.2**, and an amount equal to VAT payable on that yearly rent.[[13]](#footnote-13)

**“Tenant’s Accounts”**

audited accounts of the Tenant, including a profit and loss account and balance sheet, drawn up in respect of an Accounting Period and:

1. in respect of a Tenant incorporated or resident in the United Kingdom:
   1. audited by an independent accountant duly registered as an auditor qualified to audit company accounts;
   2. prepared in accordance with accepted accounting principles in the United Kingdom, all applicable Statements of Standard Accounting Practice and financial reporting standards; and
   3. in respect of a Tenant who is a company, prepared in accordance with the provisions of the Companies Act 2006; and
2. in respect of a Tenant who is not incorporated or resident in the United Kingdom:
   1. audited by reputable accountants qualified to act as auditors in the country of incorporation or residence of the Tenant who have certified them to provide a true and fair view of the matters to which they relate;
   2. prepared in accordance with accepted accounting principles and statutory requirements applicable in that country; and
   3. that the Landlord, acting reasonably, accepts have been prepared and audited to standards reasonably comparable with those applying in the United Kingdom;

[“Tenant’s Assets”

in relation to each Accounting Period the assets of the Tenant for that Accounting Period:

1. excluding goodwill and other intangible assets;
2. excluding any consolidated assets and liabilities from subsidiary companies;
3. calculated at the current open market value of those assets; and
4. after deducting:
   1. current liabilities;
   2. long-term liabilities;
   3. deferred taxation; and
   4. any other liabilities on the balance sheet.]

**[“Tenant’s Profits”**

in relation to each Accounting Period the net trading profit of the Tenant arising from the Tenant’s normal trading activities as disclosed by the Tenant’s Accounts for that Accounting Period:

1. excluding any profit from the sale of fixed assets, investments and other extraordinary items;
2. excluding any consolidated profits and losses from subsidiary companies;
3. after deducting depreciation, interest charges and all other expenses and charges; and
4. [before][after] deduction of tax.]
   * 1. **Release Date**
        1. Subject to paragraph **2.2**, the Release Date will be the date [one month] after the Tenant provides to the Landlord copies of the Tenant’s Accounts:
           1. for [three] consecutive Accounting Periods;
           2. that expire on or after the [first] anniversary of the date of this Deed;
           3. with the date on which the final set of Tenant’s Accounts were audited being not more than [two] months before the date on which the Tenant provides the Tenant’s Accounts to the Landlord; [and]
           4. [disclosing Tenant’s Profits for each of the Accounting Periods equal to or greater than [three] times the Rental Figure[; and][.]]
           5. [disclosing Tenant’s Assets for each of the Accounting Periods equal to or greater than [five] times the Rental Figure.]
        2. If there is a current rent review under the Lease that has not been agreed or determined in accordance with the terms of the Lease at the date on which the Tenant provides the Tenant’s Accounts under paragraph **2.1**:
           1. the Release Date will be one month after the rent review has been agreed or determined; and
           2. the Rental Figure will be calculated by reference to the yearly rent agreed or determined as the reviewed rent in accordance with the terms of the rent review.
        3. This paragraph **2** will cease to apply in the case of an Event of Default and the definition of “Repayment Date” will be read as if the reference to “Release Date” was not included in the definition.

Executed as a deed by the Landlord acting by )

[a director and its secretary] or by [two directors]: )

Signature of Director

Signature of Director/Secretary

Executed as a deed by the Tenant acting by )

[a director and its secretary] or by [two directors]: )

Signature of Director

Signature of Director/Secretary

1. If VAT is payable on the rents due under the Lease, the amount of the Deposit should be the relevant proportion of the yearly rent **and a sum equivalent to VAT**. For instance if the yearly rent is £200,000 and the Tenant is to pay a 6 month rent deposit, the Deposit would be £100,000 + £20,000 (representing VAT on the rent). Note that the £20,000 is not actually VAT itself for which the Landlord has to account to HM Revenue and Customs. Because the Tenant remains the owner of the Deposit and it is held as security for the Tenant’s obligations under the Lease, the payment of the Deposit does not give rise to a tax point for which VAT has to be paid. The Tenant cannot therefore recover output VAT on the payment of the Deposit unless and to the extent that the Deposit is actually drawn down. [↑](#footnote-ref-1)
2. If interest earned on the Deposit Balance is to be retained until the Rent Deposit is returned to the Tenant, delete this definition and the provisions in **clause 6**. [↑](#footnote-ref-2)
3. The definition of Release Date here and in the definition of “Repayment Date” is required only where the rent deposit will be returnable to the Tenant if it is able to satisfy a profits or assets test. [↑](#footnote-ref-3)
4. Note that the Landlord will open the account in its own name with its bank. The Tenant does not need to produce mandate forms for the opening of the account as the Tenant has no control over it and it is not opened in the Tenant’s name. [↑](#footnote-ref-4)
5. As the money in the Deposit Account remains beneficially owned by the Tenant, the bank will require details of the Tenant to be produced to comply with money laundering regulations. Ideally, you should have ascertained the bank’s requirements and obtained the relevant information before completion of the Rent Deposit. However, if the bank asks for information after completion of the Rent Deposit, the Tenant must provide this information otherwise it will be impossible to open the Deposit Account. [↑](#footnote-ref-5)
6. In practice, the Bank is likely to deduct charges from the account itself and the Tenant will need to be invoiced for these costs to bring the Deposit Account back up to the required level where the level of the costs exceeds the amount of interest earned on the costs. [↑](#footnote-ref-6)
7. This clause can be deleted where the Tenant is not a company or LLP incorporated in UK. [↑](#footnote-ref-7)
8. The Landlord wants priority, so it is vital that the money paid by the Tenant is not subject to any other charges or encumbrances which might rank in priority to the Landlord’s security. For this reason, when dealing with companies, a company search should be obtained against the Tenant at an early stage so that, if the search reveals a fixed charge secured on book debts, a deed of priority can be obtained. If the search reveals a floating charge, a certificate of non‑crystallisation should be obtained. You must also check whether any prior charges or debentures prohibit, or require consent for, the creation of subsequent charges. [↑](#footnote-ref-8)
9. These statements are important ones for the Tenant. The Tenant will be concerned that it does not lose the Deposit if the Landlord become insolvent. Where the Landlord does not own the money, they cannot be attacked by a receiver or liquidator of the Landlord. The Bank needs to be notified that the money in the Deposit Account do not belong to the Landlord to prevent the Bank consolidating all the accounts which are in the Landlord’s name. Notice will prevent the Bank setting off a credit balance on the Deposit Account against the Landlord’s overdraft. [↑](#footnote-ref-9)
10. It may be necessary to top up the Deposit Account following a withdrawal by the Landlord of money from the account, a rent review under the Lease or the deduction by the Bank of bank charges. [↑](#footnote-ref-10)
11. Refer to **clause 6** where the Tenant will be paid interest earned on the Rent Deposit on an annual basis. Refer to **clause 7** where interest will be retained in the Deposit Account and repaid to the Tenant when the Rent Deposit comes to an end. [↑](#footnote-ref-11)
12. Delete this **clause 6** where interest will be retained on the Deposit Account until the Rent Deposit is repaid to the Tenant. [↑](#footnote-ref-12)
13. The definition of the Rental Figure will need to be amended where the Tenant pays a turnover rent. The use of a profits and assets test is not recommended in these circumstances. [↑](#footnote-ref-13)