|  |
| --- |
| Dated |
|  |
| [LANDLORD]and[TENANT]and[TENANT’S GUARANTOR]and[UNDERTENANT]and[UNDERTENANT’S GUARANTOR] |
|  |
| **LICENCE FOR ALTERATIONS IN UNDERLEASE**Relating to premises known as [DESCRIPTION] |
|  |
|  |

[NOTE: FOR USE ONLY WHERE THE ALTERATIONS ARE BEING CARRIED OUT INSIDE THE PREMISES]

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**LICENCE FOR ALTERATIONS**

**DATED**

**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] (the “**Landlord**”);

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**”); [and]

3. [[TENANT’S GUARANTOR] (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’s Guarantor**”); [and]]

4. [UNDERTENANT] (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 “**Undertenant**”); [and]

5. [[UNDERTENANT’S GUARANTOR] (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 “**Undertenant’s Guarantor**”)].

**BACKGROUND**

(A) This Licence relates to the Premises and is supplemental to the Lease and the Underlease.

(B) The Landlord [remains/is now] the landlord under the Lease, the Tenant [remains/is now] the tenant under the Lease and the Undertenant [remains/is now] the tenant under the Underlease.

(C) The Landlord and the Tenant have agreed to permit the Undertenant to carry out alterations to the Premises on the terms of this Licence.[[1]](#footnote-1)

**IT IS AGREED AS FOLLOWS**

1. Definitions

This Licence uses the following definitions:

**“CDM Regulations”**

the Construction (Design and Management) Regulations 2015;

**“Consents”**

all necessary permissions, licences and approvals for the Works under the Planning Acts, the building and fire regulations, and any other statute, bye law or regulation of any competent authority and under any covenants or provisions affecting the Premises and as otherwise required from owners, tenants or occupiers of any adjoining or neighbouring property;

**“EPC”**

an energy performance certificate and recommendation report as defined in the Energy Performance of Buildings (England and Wales) Regulations 2012;

**“Insured Risks”**

the Insured Risks defined in the Lease;

**“Lease”**

a lease dated [DATE] between (1) [the Landlord] and (2) [the Tenant] [and (3) [the Guarantor]] and any document supplemental to it;

**“Planning Acts”**

every act of Parliament and any delegated law made under them for the time being in force relating to the use, development, design, control and occupation of land and buildings;

**“Plans”**

the plans, drawings, specifications or other documents setting out details of the Works attached to this Licence;

**“Premises”**

the property let by the Underlease known as [ADDRESS];

**“Prohibited Materials”**

any products or materials that:

1. do not conform to relevant standards or codes of practice; or
2. are generally known within the construction industry at the time of specification to be deleterious to health and safety or the durability of buildings or structures in the particular circumstances in which they are specified for use;

**“Tenant’s Obligations”**

the tenant’s obligations in the Lease;

**“Term of the Lease”**

the term of the Lease [including where applicable any continuation of that period under the Landlord and Tenant Act 1954[[2]](#footnote-2)];

**“Term of the Underlease”**

the term of the Underlease [including where applicable any continuation of that period under the Landlord and Tenant Act 1954[[3]](#footnote-3)];

**“Underlease”**

an underlease dated [DATE] between (1) [the Tenant] and (2) [the Undertenant] [and (3) [NAME OF ORIGINAL GUARANTOR]] and any document supplemental to it; and

**“Undertenant’s Obligations”**

the tenant’s obligations in the Underlease; and

**“Works”**

the works to the Premises to be carried out by the Undertenant briefly described in **Schedule 1**.

1. Interpretation
	1. All headings in this Licence are for ease of reference only and will not affect its construction or interpretation.
	2. In this Licence, “includes”, “including” and similar words are used without limitation or qualification to the subject matter of the relevant provision.
	3. In this Licence:
		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 Licence to:
		1. the parties include references to their respective 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 Licence and references to paragraphs are to the paragraphs of the Schedule in which the references are made;
		5. the Landlord having a right of approval or consent mean a prior written approval or consent, which will not be unreasonably withheld or delayed except where this Licence specifies that the Landlord has absolute discretion;
		6. any sums being payable on demand or when demanded mean being payable when demanded in writing; and
		7. the provision of plans, drawings, specifications or other documents means their provision in hard copy or electronically in PDF format or in any other easily readable format as may be appropriate in the context of the purpose for which they are provided and the nature of the information that they contain, but not in a format that is proprietary to a particular computer system or program that cannot be imported into or easily read by another computer system or program.[[4]](#footnote-4)
	5. Obligations in this Licence:
		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 Licence, those costs must be reasonable and proper and reasonably and properly incurred.
	7. Where the Undertenant is obliged to pay any costs that the Landlord or the Tenant incur (or any proportion of them) under this Licence, those costs must be reasonable and proper and reasonably and properly incurred.
	8. If any provision or part of any provision of this Licence 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 Licence will not be affected.
2. Licence for alterations
	1. The Landlord and the Tenant permit the Undertenant to carry out the Works on the terms of this Licence.
3. Obligations before beginning the Works
	1. Before starting the Works the Undertenant must:
		1. obtain and provide the Landlord and the Tenant with copies of any Consents that are required before they are begun and, where required by the terms of the Underlease, obtain their approval to them;
		2. fulfil any conditions in the Consents required to be fulfilled before they are begun;
		3. assume liability for and pay any community infrastructure levy payable in respect of the Works pursuant to section 206 Planning Act 2008;
		4. notify the Landlord and the Tenant of the date on which the Undertenant intends to start the Works; and
		5. provide the Landlord with any information relating to the Works as may be required by its insurers and pay any additional insurance premiums payable due to the carrying out of the Works.
	2. If any variations to the Plans are required in order to obtain any of the Consents, the Undertenant must obtain the approval of the Landlord and the Tenant to those variations.
	3. The Undertenant must ensure that it or its building contractor has put in place public liability and employer’s liability insurance of at least £[5] million in respect of each claim and provide the Landlord and the Tenant with a summary of the main terms of the insurance policies and evidence that the premiums have been paid before starting the Works.
4. Obligations when carrying out the Works
	1. If it starts the Works, the Undertenant must carry out and complete them:
		1. as soon as reasonably practicable, and in any event within [six] months after the date of this Licence;
		2. in accordance with the Plans;
		3. in a good and workmanlike manner and with good quality materials;
		4. [in accordance with the reasonable principles, standards and guidelines set out in any relevant guide or handbook published by the Landlord at the date of this Licence for tenant’s works carried out at the Premises;]
		5. without using Prohibited Materials;
		6. [[during][outside] the hours of [TIME] to [TIME];[[5]](#footnote-5)]
		7. in compliance with the Consents and all Acts of Parliament (and any delegated legislation made under them) and with the requirements of the insurers of the Premises and (where applicable) of any competent authority or utility provider;
		8. without affecting the structural integrity of the Premises or any land or buildings of which they form a part; and
		9. with as little interference as reasonably practicable to the owners, tenants or occupiers of any adjoining or neighbouring property
	2. The Undertenant must make good immediately any physical damage caused by the carrying out of the Works.
	3. The Undertenant must permit the Landlord and the Tenant to inspect the progress of the Works at all reasonable times subject to them complying with any conditions relating to entry onto the Premises contained in the Underlease.
	4. All plant, equipment and materials used in connection with the Works must be stored securely.
	5. Until practical completion of the Works, the Undertenant must:
		1. insure the Works and any plant, equipment and loose materials for their full reinstatement cost (including professional fees) against loss or damage by the Insured Risks with reputable insurers and provide the Landlord and the Tenant with a summary of the main terms of the insurance policy and evidence that the premium has been paid; and
		2. reinstate any of the Works that are damaged or destroyed before their completion.
5. Obligations on completion of the Works
	1. As soon as reasonably practicable following completion of the Works the Undertenant must:
		1. notify the Landlord and the Tenant of their completion;
		2. obtain any Consents that are required on their completion;
		3. remove all debris and equipment used in carrying out the Works;
		4. notify the Landlord of the cost of the Works;
		5. permit the Landlord and the Tenant to inspect the completed Works at a reasonable time subject to them complying with any conditions relating to entry onto the Premises contained in the Underlease;
		6. [provide to the Landlord and the Tenant executed deeds of warranty from [any person involved in the design and construction of the Works] in the form of the attached deeds of warranty;[[6]](#footnote-6)]
		7. supply the Landlord and the Tenant with two complete sets of as-built Plans showing the Works; and
		8. ensure that the Landlord and the Tenant are able to use and reproduce the Plans for any lawful purpose in relation to the Premises.
	2. The Undertenant must pay to the Tenant as rent under the Underlease any increased insurance premiums payable resulting from the carrying out and retention of the Works on the Premises.
6. CDM Regulations
	1. If the CDM Regulations apply to the Works, the Undertenant must:
		1. comply with them and ensure that any person involved in the management, design and construction of the Works complies with their respective obligations under the CDM Regulations;
		2. if the Landlord or the Tenant would be treated as a client for the purposes of the CDM Regulations, agree to be treated as the only client in respect of the Works; and
		3. on completion of the Works provide the Landlord and the Tenant with a copy of any health and safety file relating to the Works and deliver the original file to the Tenant at the end of the Term of the Underlease.
	2. The Tenant must deliver the original health and safety file referred to in clause 7.1.3 to the Landlord at the end of the Term of the Lease.
7. Energy Performance Certificates
	1. If the Works invalidate or materially adversely affect an existing EPC or require the commissioning of an EPC, the Undertenant must (at the Landlord’s option):
		1. obtain an EPC from an assessor approved by the Landlord and give the Landlord and the Tenant written details of the unique reference number for that EPC; or
		2. pay the Landlord’s costs of obtaining an EPC.
8. Reinstatement
	1. The reinstatement provisions in the Underlease will apply to reinstatement of the Works.[[7]](#footnote-7)
9. Costs
	1. The Undertenant agrees with the Landlord and separately with the Tenant that it will pay within [ten] working days of demand all costs and expenses, and any value added tax on them that cannot otherwise be recovered, incurred by the Landlord, the Tenant [and any superior landlord and mortgagee] in connection with:
		1. the preparation, negotiation and completion of this Licence;
		2. the approval of the Plans, any variations to the Plans and the approval of the Consents or any other approvals or permissions given under this Licence;
		3. the monitoring and inspection of the Works; and
		4. the service of any notice, exercising of any rights and carrying out of any works under clause **11**.
10. Remedying breaches
	1. If the Landlord or the Tenant require the Undertenant to remedy any breach of the Undertenant’s obligations under this Licence then the Undertenant must comply with those requirements immediately in the case of an emergency or, in all other cases, begin to comply with those requirements within one month after being notified of them and diligently complete any works required.
	2. If the Undertenant does not comply with clause **11.1**, either the Landlord or the Tenant may enter the Premises and carry out any works required itself. The Undertenant must repay, as a debt on demand, all the costs the Landlord or the Tenant incur in so doing. The Landlord’s rights under the Lease and the Tenant’s rights under the Underlease will be unaffected.
11. Exclusion of warranties
	1. The Landlord and the Tenant give no express or implied warranty (and the Undertenant acknowledges that the Undertenant must satisfy itself):
		1. as to the suitability, safety, adequacy or quality of the design or method of construction of the Works;
		2. that the Works may lawfully be carried out;
		3. that the structure or fabric of the Premises is able to accommodate the Works; and
		4. that any of the services supplying the Premises will either have sufficient capacity for or otherwise not be adversely affected by the Works.
12. Agreements
	1. Nothing in this Licence will:
		1. be deemed to authorise any action other than expressly authorised in clause **3**;
		2. release or reduce any liability to the Landlord or the Tenant of the Undertenant or any guarantor or other party to the Underlease;
		3. waive or be deemed to waive any breach of the Tenant’s Obligations that may have occurred before the date of this Licence; or
		4. waive or be deemed to waive any breach of the Undertenant’s Obligations that may have occurred before the date of this Licence.
	2. The conditions for re-entry contained in the Underlease will be exercisable on any breach by the Undertenant of any provision in this Licence in the same way as if it were a provision contained in the Underlease.
	3. The conditions for re-entry contained in the Lease will be exercisable on any breach by the Tenant of any provision in this Licence in the same way as if it were a provision contained in the Lease.
	4. All sums payable by the Undertenant under this Licence will be recoverable as rent in arrear in accordance with the Underlease.
	5. The Tenant’s Obligations will extend to the Works and will apply to the Premises as altered by the Works as they now apply to the Premises as let by the Lease.
	6. The Undertenant’s Obligations will extend to the Works and will apply to the Premises as altered by the Works as they now apply to the Premises as let by the Underlease.
	7. The Undertenant acknowledges that:
		1. it has not served any notice under the Landlord and Tenant Act 1927 that would make the Works improvements for the purposes of that Act;
		2. neither this Licence nor any correspondence relating to the Works constitutes a notice for the purposes of that Act;
		3. the Works are being carried out by the Undertenant to suit its own requirements; and
		4. as a result, the Undertenant is not entitled to compensation in respect of the Works whether under the Landlord and Tenant Act 1927 or otherwise.
	8. Nothing in this Licence creates any rights benefiting any person under the Contracts (Rights of Third Parties) Act 1999.
13. Tenant’s obligations
	1. The Tenant must, at the request of the Landlord but at the cost of the Tenant, enforce the Undertenant’s obligations under this Licence.
	2. The Tenant must pay to the Landlord as rent under the Lease any increased insurance premiums payable resulting from the carrying out and retention of the Works on the Premises.
14. [Tenant’s Guarantor’s obligations
	1. The Tenant’s Guarantor agrees with the Landlord that:
		1. the guarantee given by it to the [Landlord][NAME] in clause [NUMBER] of the [Lease][Licence to Assign the Lease dated [DATE] made between [PARTIES]] is not released or varied by this Licence; and
		2. that guarantee extends to and will be exercisable by the Landlord on any breach by the Tenant of the terms of this Licence as well as on the breach of any of the Tenant’s Obligations.]
15. [Undertenant’s Guarantor’s obligations
	1. The Undertenant’s Guarantor agrees with the Landlord that:
		1. the guarantee given by it to the [Landlord][NAME] in clause [NUMBER] of the [Licence to Underlet][Licence to Assign the Underlease dated [DATE] made between [PARTIES]] is not released or varied by this Licence; and
		2. that guarantee extends to and will be exercisable by the Landlord on any breach by the Undertenant of the terms of this Licence as well as on the breach of any of the Undertenant’s Obligations.
	2. The Undertenant’s Guarantor agrees with the Tenant that:
		1. the guarantee given by it to the [Tenant][NAME] in clause [NUMBER] of the [Underlease][Licence to Assign the Underlease dated [DATE] made between [PARTIES]] is not released or varied by this Licence; and
		2. that guarantee extends to and will be exercisable by the Tenant on any breach by the Undertenant of the terms of this Licence as well as on the breach of any of the Undertenant’s Obligations.]
16. Notices
	1. Any notices to be served under this Licence will be validly served if served in accordance with [section 196 Law of Property Act 1925][the notice provisions in the Lease].
17. Jurisdiction
	1. This Licence and any non-contractual obligations arising out of or in connection with it will be governed by the law of England and Wales.
	2. Subject to clause **18.3**, the courts of England and Wales have exclusive jurisdiction to decide any dispute arising out of or in connection with this Licence, including in relation to any non-contractual obligations.
	3. Any party may seek to enforce an order of the courts of England and Wales arising out of or in connection with this Licence, including in relation to any non-contractual obligations, in any court of competent jurisdiction.
18. Legal effect
	1. This Licence takes effect and binds the parties with effect from the date set out at the beginning of this Licence.
19.

The Works

*Set out details of the alterations to be carried out by the Tenant.*

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

**[**Executed as a deed by the Guarantor acting by )

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

 Signature of Director

 Signature of Director/Secretary

1. Where the Landlord has covenanted with other tenants of the property to enforce the Tenant’s covenants in the Lease, remember to consider whether granting the Tenant permission to make alterations that are prohibited under the Lease would put the Landlord in breach of its covenants given to the other tenants – see *Duval v 11-13 Randolph Crescent Limited* [2020] UKSC 18. [↑](#footnote-ref-1)
2. Delete the wording in square brackets if the Lease is contracted out of the Landlord and Tenant Act 1954. [↑](#footnote-ref-2)
3. Delete the wording in square brackets if the Underlease is contracted out of the Landlord and Tenant Act 1954. [↑](#footnote-ref-3)
4. Where plans and specifications are provided to the Landlord and the Tenant, you should ensure that they have the right to use those plans and specifications – see **clause 6.1.8**. [↑](#footnote-ref-4)
5. Consider whether any restrictions need to be imposed by the Landlord or the Tenant on when the Works can be carried out. It may be appropriate to impose restrictions where the Landlord or the Tenant are concerned that there is no disruption to other users of the Landlord’s property. [↑](#footnote-ref-5)
6. This clause is required only where the Works involve substantial structural elements. [↑](#footnote-ref-6)
7. Take instructions on whether any variation to the reinstatement obligations in the Underlease will be required in relation to the Works. [↑](#footnote-ref-7)