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| --- |
| Dated |
|  |
| [LANDLORD]  and  [TENANT]  and  [GUARANTOR] |
|  |
| **RETROSPECTIVE LICENCE FOR ALTERATIONS**  Relating to premises known as [DESCRIPTION] |
|  |
|  |

[NOTE: FOR USE ONLY WHERE THE ALTERATIONS HAVE BEEN CARRIED OUT INSIDE THE PREMISES]

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**RETROSPECTIVE 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”); [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”); [and]

3. [[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 “Guarantor”)].

**BACKGROUND**

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

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

(C) The Tenant has carried out alterations to the Premises and the Landlord has agreed to grant retrospective consent to those alterations 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 [Landlord’s] Premises and as otherwise required from owners, tenants or occupiers of [the Landlord’s Premises or] any adjoining or neighbouring property;

**“Dutyholder Regulations”**

Part 2A of the Building Regulations 2010;

**“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;

**[“Landlord’s Premises”**

the Landlord’s [building][centre][estate] known as [ADDRESS];]

**“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 Lease 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; and

**“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)]; and

**“Works”**

the works to the Premises carried out by the Tenant 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 [but references to the Town and Country Planning (Use Classes) Order 1987 are to that order as in force at the date of the Lease];
      3. the singular include the plural and vice versa, and one gender includes any other;
      4. a person includes a natural person, corporate or unincorporated body (whether or not having separate legal personality);
      5. 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;
      6. [the Landlord’s Premises include the Premises;]
      7. 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;
      8. any sums being payable on demand or when demanded mean being payable when demanded in writing; and
      9. 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.[[3]](#footnote-3)
   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. 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 gives retrospective consent to the Works carried out by the Tenant.
3. Obligations before beginning the Works
   1. The Tenant confirms that before starting the Works
      1. it obtained any Consents that were required before the Works were begun;
      2. it fulfilled any conditions in the Consents required to be fulfilled before the Works were begun; and
      3. it or its building contractor put in place public liability and employer’s liability insurance of at least £[5] million in respect of each claim.
   2. [The Tenant confirms that it assumed liability for and paid any community infrastructure levy payable in respect of the Works pursuant to section 206 Planning Act 2008.]
4. Obligations when carrying out the Works
   1. The Tenant confirms that it carried out and complete the Works:
      1. in accordance with the Plans;
      2. in a good and workmanlike manner and with good quality materials;
      3. [in accordance with the reasonable principles, standards and guidelines set out in any relevant guide or handbook published by the Landlord for tenant’s works carried out at the Premises;]
      4. without using Prohibited Materials;
      5. 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 [Landlord’s] Premises and (where applicable) of any competent authority or utility provider;
      6. without affecting the structural integrity of the [Landlord’s] Premises;
      7. with as little interference as reasonably practicable to the owners, tenants or occupiers of [the Landlord’s Premises or] any adjoining or neighbouring property; and
      8. in compliance, to the extent applicable, with the CDM Regulations; and
      9. in compliance, to the extent applicable, with the Dutyholder Regulations.
   2. If it has not already done so, the Tenant must make good immediately any physical damage caused by the carrying out of the Works.
5. Obligations on completion of the Works
   1. If it has not already done so, the Tenant must:
      1. obtain any Consents that were required on completion of the Works;
      2. remove all debris and equipment used in carrying out the Works;
      3. notify the Landlord of the cost of the Works;
      4. permit the Landlord to inspect the completed Works at a reasonable time subject to the Landlord complying with any conditions relating to entry onto the Premises contained in the Lease;
      5. [give to the Landlord 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;[[4]](#footnote-4)]
      6. if reasonably required, give the Landlord information in sufficient detail for an accurate assessment to be made of the effect of the Works on:
         1. the consumption of energy and water, the generation and management of waste, greenhouse gas emissions and any other adverse environmental impacts arising out of the Works or the materials used in them;
         2. the energy performance rating (as defined in Regulation 11 of the Energy Performance of Buildings (England and Wales) Regulations 2012) shown on any existing EPC relating to the [Landlord’s] Premises;  and
      7. give the Landlord as-built plans, drawings and specifications showing the Works and ensure that the Landlord is able to use and reproduce them for any lawful purpose in relation to the [Landlord’s] Premises; and
      8. provide the Landlord with a copy of any health and safety file relating to the Works prepared under the CDM Regulations and deliver the original file to the Landlord at the end of the Term of the Lease.
   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.
6. Energy performance certificates
   1. If the Works invalidate or materially adversely affect an existing EPC or require the commissioning of an EPC, the Tenant must (at the Landlord’s option):
      1. obtain an EPC from an assessor approved by the Landlord and give the Landlord written details of the unique reference number for that EPC; or
      2. pay the Landlord’s costs of obtaining an EPC.
7. Reinstatement
   1. The reinstatement provisions in the Lease will apply to reinstatement of the Works.[[5]](#footnote-5)
8. Costs
   1. The Tenant must pay on the date of this Licence all costs and expenses, and any value added tax on them that cannot otherwise be recovered, incurred by the Landlord [and any superior landlord and mortgagee] in connection with the preparation, negotiation and completion of this Licence;
9. Exclusion of warranties
   1. The Landlord gives no express or implied warranty (and the Tenant acknowledges that the Tenant satisfied itself):
      1. as to the suitability, safety, adequacy or quality of the design or method of construction of the Works;
      2. that the Works were lawfully carried out;
      3. that the structure or fabric of the [Landlord’s] Premises is able to accommodate the Works; and
      4. that any of the services supplying the [Landlord’s] Premises either have sufficient capacity for or otherwise are not adversely affected by the Works.
10. 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 of the Tenant or any guarantor or other party to the Lease; or
       3. waive or be deemed to waive any breach of the Tenant’s Obligations that may have occurred before the date of this Licence.
    2. The conditions for re-entry contained in the Lease will be exercisable on any breach of any provision in this Licence in the same way as if it were a provision contained in the Lease.
    3. All sums payable by the Tenant under this Licence will be recoverable as rent in arrear in accordance with the Lease.
    4. 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.
    5. [The Works will be disregarded on any review of the annual rent payable under the Lease.][[6]](#footnote-6)
    6. The Tenant 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 Tenant to suit its own requirements; and
       4. as a result, the Tenant is not entitled to compensation in respect of the Works whether under the Landlord and Tenant Act 1927 or otherwise.
    7. Nothing in this Licence creates any rights benefiting any person under the Contracts (Rights of Third Parties) Act 1999.
11. [Guarantor’s obligations
    1. The 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.]
12. 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].
13. 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 14.3**, 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.
14. Legal effect
    1. This Licence takes effect and binds the parties with effect from the date set out at the beginning of this Licence.

The Works

*Set out details of the alterations 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. Where plans and specifications are provided to the Landlord, you should ensure that the Landlord has the right to use those plans and specifications – see **clause 6.1.7**. [↑](#footnote-ref-3)
4. This clause is required only where the Works involve substantial structural elements. [↑](#footnote-ref-4)
5. Take instructions from the landlord on whether any variation to the reinstatement obligations in the Lease will be required in relation to the Works. [↑](#footnote-ref-5)
6. If there is a rent review under the Lease, the wording of the rent review clause may disregard tenant’s works only if carried out with the *prior* consent of the Landlord. Therefore, it may be necessary to include a specific disregard of the Works in a retrospective licence to avoid arguments on rent review over whether or not the Works are to be taken into account when reviewing the rent. [↑](#footnote-ref-6)