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| --- |
| Dated |
|  |
| [LANDLORD]  and  [TENANT]  and  [TENANT’S GUARANTOR]  and  [ASSIGNEE]  and  [GUARANTOR] |
|  |
| **LICENCE TO ASSIGN AND CHANGE USE**  Relating to premises known as [DESCRIPTION] |
|  |
| (Old tenancy) |

**CONTENTS**

**Clause Page**

[1. Definitions 1](#_Toc6302060)

[2. Interpretation 2](#_Toc6302061)

[3. Licence to assign and change use 3](#_Toc6302062)

[4. Assignee’s obligations 4](#_Toc6302063)

[5. Tenant’s obligations 5](#_Toc6302064)

[6. Termination of this licence 5](#_Toc6302065)

[7. Agreements 5](#_Toc6302066)

[8. [Guarantor’s obligations 6](#_Toc6302067)

[9. [Tenant’s Guarantor 8](#_Toc6302068)

[10. Notices 8](#_Toc6302069)

[11. Jurisdiction 8](#_Toc6302070)

[12. Legal effect 9](#_Toc6302071)

[Schedule 1 10](#_Toc6302072)

[Variations to the Lease 10](#_Toc6302073)

**LICENCE TO ASSIGN**[[1]](#footnote-1)

**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. [[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][[2]](#footnote-2)]

4. [ASSIGNEE] (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 “**Assignee**”)[.][; and]

5. [[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 Landlord has agreed to permit the Assignment subject to the terms contained in this Licence.

**IT IS AGREED AS FOLLOWS**

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

[**“1986 Act”**

the Insolvency Act 1986;[[3]](#footnote-3)]

**“Assignment”**

the assignment permitted under **clause 3**;

**“Assignment Date”**

the date of the [deed of assignment][transfer] of the Lease to the Assignee;

**[“Business Day”**

a day (other than a Saturday, Sunday or public holiday) on which banks are usually open for business in England and Wales;[[4]](#footnote-4)]

**“Consents”**

all consents required to authorise the use of the Premises for the New Use from:

1. the local authority and any other public or statutory body; or
2. the insurers of the Premises;

**“Existing Use”**

the use of the Premises permitted under the Lease at the date of this Licence;

**“Lease”**

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

**“New Use”**

the use of the Premises as [DESCRIPTION OF NEW USE];

**“Premises”**

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

**“Rents”**

the rents reserved by the Lease;

**“Tenant’s Obligations”**

the tenant’s obligations in the Lease;

**“Term”**

the term of the Lease [including where applicable any continuation of that period under the Landlord and Tenant Act 1954[[5]](#footnote-5)].

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 [except as stated in **clause 3.2**[[6]](#footnote-6)**]**;
      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. 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; and
      6. any sums being payable on demand or when demanded mean being payable when demanded in writing.
   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 to assign and change use
   1. The Landlord permits the Tenant to assign the Lease to the Assignee on the terms of this Licence.
   2. The Landlord permits the Assignee to use the Premises for the New Use [in substitution for][in addition to] the Existing Use starting on the Assignment Date and [clause [NUMBER] of][the definition of [“Authorised Use”][“Permitted Use”] in] the Lease will be amended accordingly. [This permission is personal to the Assignee named in this Licence and will not benefit any successors in title to or undertenants of the Assignee.]
   3. [Starting on the Assignment Date, the variations to the Lease set out in **Schedule 1** will apply.[[7]](#footnote-7)]
3. Assignee’s obligations
   1. The Assignee must:
      1. starting on the Assignment Date comply with all of the Tenant’s Obligations throughout the remainder of the Term; and
      2. not occupy the Premises before the Assignment Date.

**[WHERE THE LEASE IS REGISTERED AT HM LAND REGISTRY]**

* 1. [The Assignee must:
     1. procure the registration of the Assignment by HM Land Registry as soon as reasonably practicable after the Assignment Date;
     2. [apply to HM Land Registry to note any variation of the terms of the Lease created by this Licence against the registered title to the Lease and against the Landlord’s title to the Premises. The Landlord consents to HM Land Registry noting those variations against its title to the Premises;][[8]](#footnote-8) and
     3. within one month of completion of the registration of the Assignment, produce to the Landlord’s solicitors an official copy of the register of title showing the Assignee as the registered proprietor of the Lease.][[9]](#footnote-9)

**[WHERE THE ASSIGNMENT OF THE LEASE WILL TRIGGER FIRST REGISTRATION AT HM LAND REGISTRY]**

* 1. [The Assignee must:
     1. procure the first registration of the Lease by HM Land Registry as soon as reasonably practicable after the Assignment Date;
     2. not submit to HM Land Registry any plan of the Premises (other than a plan attached to the Lease) without the prior written approval of the Landlord;
     3. [apply to HM Land Registry note any variation of the terms of Lease created by this Licence against the registered title to the Lease and against the Landlord’s title to the Premises. The Landlord consents to HM Land Registry noting those variations against its title to the Premises;][[10]](#footnote-10) and
     4. within one month of completion of the registration of the Lease, produce to the Landlord’s solicitors an official copy of the register of title and of the title plan showing the Assignee as the registered proprietor of the Lease.][[11]](#footnote-11)
  2. The Assignee must not use the Premises for the New Use unless and until:
     1. the Landlord has approved the Assignee’s application for the Consents in writing;
     2. it has obtained all Consents; and
     3. the Landlord has approved the Consents in writing.
  3. The Assignee must 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 [and any superior landlord and mortgagee] in connection with the approval of the Consents.
  4. Starting on the Assignment Date, the Assignee must:
     1. comply with the terms of the Consents and with all statutory provisions relating to the use of the Premises for the New Use;
     2. pay to the Landlord as additional rent under the terms of the Lease any increased insurance premium payable as a result of the use of the Premises for the New Use.

1. Tenant’s obligations
   1. The Tenant must:
      1. pay on completion 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 this Licence;
      2. not seek to enforce any of the landlord’s obligations under the Lease nor exercise any of the tenant’s rights under the Lease on or after the Assignment Date;
      3. within seven days from the Assignment Date, give notice to the Landlord of the name and address of the party to whom future rent demands should be sent;
      4. within one month from the Assignment Date (or such other period as may be specified in the Lease), produce to the Landlord’s solicitors a certified copy of the deed effecting the Assignment and pay any registration fee required by the Lease[; and][.]
      5. [produce to the Landlord before or as soon as practicable following the Assignment Date a copy of the current valid energy performance certificate and recommendation report (as defined in the Energy Performance Buildings (England and Wales) Regulations 2012) (the "EPC") that was provided to the Assignee in respect of the Premises, together with copies of all data, plans and specifications used to prepare the EPC (in a format that the Landlord can retain and use) and the Tenant consents to the Landlord using these data, plans and specifications.[[12]](#footnote-12)]
2. Termination of this licence
   1. The Landlord may terminate this Licence by written notice to the Tenant if the Assignment Date has not occurred within the period of three months starting on the date of this Licence.
   2. Any termination of this Licence under **clause 6.1** will be:
      1. without prejudice to any rights or remedies of any party to this Licence in respect of or arising from any previous breach by any other party to this Licence; and
      2. without liability on the part of the Landlord to refund any moneys paid in connection with this Licence.
3. 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. By granting this Licence or giving any approval or consent under this Licence, the Landlord makes no representation and gives no warranty that the Premises may lawfully be used for the New Use.
   3. All sums payable by the Tenant under this Licence will be recoverable as rent in arrear in accordance with the Lease.
   4. Where any sums become payable under the Lease after the Assignment Date that relate in whole or in part to the period before the Assignment Date, the Assignee will be liable for the whole of the sums payable.
   5. Any adverse effect on rent arising from the use of the Premises for the New Use will be disregarded on any review of the rent payable under the Lease.
   6. Nothing in this Licence creates any rights benefiting any person under the Contracts (Rights of Third Parties) Act 1999.
4. [Guarantor’s obligations
   1. The obligations in this **clause 8** start on the Assignment Date and continue throughout the term of the Lease.
   2. The Guarantor, as primary obligor, guarantees to the Landlord that:
      1. the Assignee will comply with all of the Tenant’s Obligations. If the Assignee defaults, the Guarantor will itself comply with those obligations and will indemnify the Landlord against all losses, costs, damages and expenses caused to the Landlord by that default; and
      2. it will indemnify the Landlord against all losses, costs, damages and expenses caused to the Landlord by the Assignee proposing or entering into any company voluntary arrangement, scheme of arrangement or other scheme having or purporting to have the effect of impairing, compromising or releasing any or all of the obligations of the Guarantor in this **clause 8**.
   3. If the Landlord in its absolute discretion notifies the Guarantor within three months after the date of any disclaimer or forfeiture of the Lease or the Assignee being struck off the register of companies, the Guarantor must, within ten Business Days, at the Landlord’s option either:
      1. at the Guarantor’s own cost (including payment of the Landlord’s costs) accept the grant of a lease of the Premises:
         1. for a term starting and taking effect on the date of the disclaimer or forfeiture of the Lease or the Assignee being struck off the register of companies;
         2. ending on the date when the Lease would have ended if the disclaimer, forfeiture or striking-off had not happened;
         3. at the same rent and other sums payable;
         4. containing a rent review date on the term commencement date of the new lease if there is a rent review under the Lease that falls before that term commencement date that has not been concluded (but with the rent being reviewed as at the date of the unconcluded rent review);
         5. containing rent review dates on each rent review date under the Lease that falls on or after the term commencement date of the new lease; and
         6. otherwise on the same obligations and conditions in the Lease;[[13]](#footnote-13) or
      2. pay the Landlord any arrears of the Rents, outgoings and any other sums payable under the Lease plus the amount equivalent to the total of those sums due that would have been payable for the period of 6 months following the disclaimer, forfeiture or striking-off had there been no such event.[[14]](#footnote-14)
   4. If **clause 8.3.2** applies then on receipt of the payment in full, the Landlord must release the Guarantor from its future obligations under this **clause 8** (but that will not affect the Landlord’s rights in relation to any prior breaches).
   5. The Guarantor’s liability will not be reduced or discharged by:
      1. any failure for any reason to enforce in full or any delay in enforcement of, any right against, or any concession allowed to the Assignee or any third party;
      2. any variation of the Lease (except that a surrender of part will end the Guarantor’s future liability in respect of the surrendered part);
      3. any right to set-off or counterclaim that the Assignee or the Guarantor may have;
      4. any death, incapacity, disability or change in the constitution or status of the Assignee, the Guarantor or of any other person who is liable or of the Landlord;
      5. any amalgamation or merger by any party with any other person, any restructuring or the acquisition of the whole or any part of the assets or undertaking of any party by any other person;
      6. the existence or occurrence of any matter referred to in **clause 8.6**; or
      7. anything else other than a release by the Landlord by deed.
   6. The matters referred to in **clause 8.5.6** are:
      1. any Law of Property Act 1925, administrative, court-appointed or other receiver or similar officer is appointed over the whole or any part of the assets of the Assignee or the Assignee enters into any scheme or arrangement with its creditors in satisfaction or composition of its debts under the 1986 Act;
      2. if the Assignee is a company or a limited liability partnership:
         1. the Assignee enters into liquidation within the meaning of section 247 of the 1986 Act;
         2. the Assignee is wound up or a petition for winding up is presented against the Assignee that is not dismissed or withdrawn within [NUMBER] days of being presented;
         3. a meeting of the Assignee’s creditors or any of them is summoned under Part I of the 1986 Act;
         4. a moratorium in respect of the Assignee comes into force under section 1(A) of and schedule A1 to the 1986 Act;
         5. an administrator is appointed to the Assignee; or
         6. the Assignee is struck off the register of companies;
      3. if the Assignee is a partnership, it is subject to an event similar to any listed in **clause 8.6.2** with appropriate modifications so as to relate to a partnership;
      4. if the Assignee is an individual:
         1. a receiving order is made against the Assignee;
         2. an interim receiver is appointed over or in relation to the Assignee’s property;
         3. the Assignee makes an application to be declared bankrupt, the Assignee is the subject of a bankruptcy petition or the Assignee becomes bankrupt;
         4. the Assignee applies for or becomes subject to a debt relief order or the Assignee proposes or becomes subject to a debt management plan; or
         5. an interim order is made against the Assignee under Part VIII of the 1986 Act or the Assignee otherwise proposes an individual voluntary arrangement;
      5. any event similar to any listed in **clauses 8.6.1 to 8.6.4** occurs in any jurisdiction (whether it be England and Wales, or elsewhere); and
      6. any event similar to any listed in **clauses 8.6.1 to 8.6.5** occurs in relation to the Guarantor.
   7. The Guarantor must not claim in competition with the Landlord in the insolvency of the Assignee and must not take any security, indemnity or guarantee from the Assignee in respect of the Tenant’s Obligations.
   8. Nothing in this **clause 8** may impose any liability on the Guarantor that exceeds the liability that it would have had were it the tenant of the Lease.
5. [Tenant’s Guarantor
   1. The Tenant’s Guarantor agrees with the Landlord that 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.]
6. 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].
   2. [[The e-mail addresses of [NAME OF ASSIGNEE] for the service of [formal] notices in accordance with clause [●] of the Lease is [E-MAIL ADDRESS].
   3. [The e-mail addresses of [NAME OF ASSIGNEE’S GUARANTOR] for the service of [formal] notices in accordance with clause [●] of the Lease is [E-MAIL ADDRESS].[[15]](#footnote-15)]
7. 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 11.3**, 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.
8. Legal effect
   1. This Licence takes effect and binds the parties with effect from the date set out at the beginning of this Licence.

Variations to the Lease

*Set out any variations to the terms of the Lease that are required in this Schedule.*

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 Tenant’s Guarantor acting by )

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

Signature of Director

Signature of Director/Secretary]

Executed as a deed by the Assignee 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. When drafting this Licence consider whether additional documents such as a rent deposit deed or licence to alter will be required on the assignment of the Lease. [↑](#footnote-ref-1)
2. Where there is a change of use that operates to vary the terms of the lease or new tenant’s obligations are being included in the Lease, the variation may have the effect of releasing the Tenant’s Guarantor from the terms of its guarantee. Where the lease is being varied you should therefore join the Tenant’s Guarantor as a party to the licence to confirm that its guarantee is not released by the variations. [↑](#footnote-ref-2)
3. Include this definition only where you are including the guarantee provisions in **clause 8**. [↑](#footnote-ref-3)
4. Include this definition only where you are including the guarantee provisions in **clause 8**. [↑](#footnote-ref-4)
5. Delete the wording in square brackets if the Lease is contracted out of the Landlord and Tenant Act 1954. [↑](#footnote-ref-5)
6. Include the words in square brackets where the change of use permitted by this Licence will be personal to the Assignee. [↑](#footnote-ref-6)
7. Consider whether the change of use requires other variations to the terms of the Lease. For example, if there is a change of use from A1 to A3/A4 or A5, you may need to include additional catering covenants in the Lease. [↑](#footnote-ref-7)
8. Not every change of use will create a variation of the terms of the Lease. A change of use personal to this Assignee will not vary the terms of the Lease. A change of use that falls within the permitted changes of use anticipated by the Lease will not create a variation of the terms of the Lease. [↑](#footnote-ref-8)
9. **Clause 4.2** will be required only where title to the Lease is already registered at HM Land Registry. [↑](#footnote-ref-9)
10. Not every change of use will create a variation of the terms of the Lease. A change of use personal to the Assignee will not vary the terms of the Lease. A change of use that falls within the permitted changes of use anticipated by the Lease will not create a variation of the terms of the Lease. [↑](#footnote-ref-10)
11. **Clause 4.3** will be required only where the Assignment will trigger an obligation for first registration of the Lease because the outstanding term of the Lease at the date of the Assignment exceeds 7 years. [↑](#footnote-ref-11)
12. If the EPC is one that was provided by the Landlord, this clause 5.1.5 will not be required. [↑](#footnote-ref-12)
13. No 1954 Act exclusion wording is included. Although technically this would be required to achieve 1954 Act exclusion of the new lease (if original lease is 1954 Act-excluded), new leases under these clauses are so rare that the cost of allowing for 1954 Act-exclusion is likely to outweigh the benefit. The Landlord can therefore choose between the grant of a lease within the 1954 Act and the payment of a lump sum. [↑](#footnote-ref-13)
14. There is no right to repayment if the Landlord subsequently re-lets the Premises during the six month period covered by this payment. [↑](#footnote-ref-14)
15. Include clause 10.2 and, if applicable clause 10.3, only where the Lease permits the service of notices by e-mail and the relevant parties agree to notices being served on them by e-mail. [↑](#footnote-ref-15)