|  |
| --- |
| Dated |
|  |
| [LANDLORD]  and  [TENANT]  and  [UNDERTENANT]  and  [UNDERTENANT’S GUARANTOR]  and  [ASSIGNEE]  and  [ASSIGNEE’S GUARANTOR] |
|  |
| **LICENCE TO ASSIGN UNDERLEASE**  Relating to premises known as [DESCRIPTION] |
|  |
| (New tenancy) |

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**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**”);

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**”);

3. [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**”);

4. [[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**”); [and]]

5. [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]

6. [[ASSIGNEE’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 “**Assignee’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 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;[[2]](#footnote-2)]

**“1995 Act”**

the Landlord and Tenant (Covenants) Act 1995;

**“Assignment”**

the assignment permitted under clause **3**;

**“Assignment Date”**

the date of the [deed of assignment][transfer] of the Underlease 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;[[3]](#footnote-3)]

**[“Guaranteed Party”**

the person whose obligations are guaranteed by a Guarantor;]

**[“Guarantor”**

any person who gives a Guarantee to the Tenant or the Landlord under this Licence;]

**“Lease”**

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

**“Liability Period”**

the period starting on the Assignment Date and ending on the date that the Assignee is released from the Undertenant’s Obligations under the 1995 Act;

**“Premises”**

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

**“Rents”**

the rents reserved by the Underlease;

**“Tenant’s Obligations”**

the tenant’s obligations in the Lease;

**“Term”**

the term of the Underlease [including where applicable any continuation of that period under the Landlord and Tenant Act 1954[[4]](#footnote-4)];

**“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.

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 or the Tenant 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 states that the Landlord or the Tenant have 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. 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 to assign
   1. The Landlord and the Tenant permit the Undertenant to assign the Underlease to the Assignee on the terms of this Licence.
3. Assignee’s obligations
   1. The Assignee must:
      1. comply with all of the Undertenant’s Obligations throughout the Liability Period; and
      2. not occupy the Premises before the Assignment Date.

**[WHERE THE UNDERLEASE 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; and
     2. within one month of completion of the registration of the Assignment, produce to the Landlord’s solicitors and the Tenant’s solicitors official copies of the register of title showing the Assignee as the registered proprietor of the Underlease.][[5]](#footnote-5)

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

* 1. [The Assignee must:
     1. procure the first registration of the Underlease 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 Underlease) without the prior written approval of the Landlord and the Tenant; and
     3. within one month of completion of the registration of the Lease, produce to the Landlord’s solicitors and the Tenant’s solicitors official copies of the register of title and of the title plan showing the Assignee as the registered proprietor of the Underlease.][[6]](#footnote-6)

1. Undertenant’s obligations
   1. The Undertenant 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 the Tenant [and any superior landlord and mortgagee] in connection with this Licence;
      2. not seek to enforce any of the landlord’s obligations under the Underlease nor exercise any of the tenant’s rights under the Underlease on or after the Assignment Date;
      3. within seven days from the Assignment Date, give notice to the Tenant 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 Underlease), produce to the Tenant’s solicitors a certified copy of the deed effecting the Assignment and pay any registration fee required by the Underlease[; and][.]
      5. [produce to the Landlord and the Tenant 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 and the Tenant can retain and use) and the Undertenant consents to the Landlord and the Tenant using these data, plans and specifications.[[7]](#footnote-7)]
   2. The Undertenant, as primary obligor, guarantees to the Tenant that, starting on the Assignment Date, the Assignee will comply with the Undertenant’s Obligations throughout the Liability Period. If the Assignee defaults, the Undertenant will itself comply with those obligations and will indemnify the Tenant against all losses, costs, damages and expenses caused to the Tenant by that default. This guarantee:
      1. incorporates the provisions of **Schedule 1**; and
      2. constitutes an authorised guarantee agreement for the purposes of section 16 of the 1995 Act.
2. [Assignee’s Guarantor
   1. The Assignee’s Guarantor, as primary obligor, guarantees to the Tenant [and separately to the Landlord] that, starting on the Assignment Date, the Assignee will comply with the Undertenant’s Obligations throughout the Liability Period. If the Assignee defaults, the Assignee’s Guarantor will itself comply with those obligations and will indemnify the Tenant [and the Landlord] against all losses, costs, damages and expenses caused to the Tenant [or the Landlord] by that default. This guarantee incorporates the provisions of **Schedule 1**.
   2. The Assignee’s Guarantor agrees with the Tenant that, if the Tenant asks it to do so, it will give the Tenant a guarantee of any authorised guarantee agreement given to the Tenant by the Assignee on an assignment of the Underlease, such guarantee to incorporate the provisions of **Schedule 1**.]
3. [Undertenant’s Guarantor
   1. The Undertenant’s Guarantor, as primary obligor, guarantees to the Tenant that, starting on the Assignment Date, the Undertenant will comply with its obligations under clause **5.2** throughout the Liability Period. If the Undertenant defaults, the Undertenant’s Guarantor will itself comply with those obligations and will indemnify the Tenant against all losses, costs, damages and expenses caused to the Tenant by that default. This guarantee incorporates the provisions of **Schedule 1**.]
4. Termination of this Licence
   1. Either the Landlord or the Tenant may terminate this Licence by written notice to the Undertenant 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 **8.1** 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 this Licence; and
      2. without liability on the part of the Landlord or the Tenant to refund any moneys paid in connection with this Licence.
5. 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;
      3. release or reduce any liability to the Landlord or the Tenant of the Undertenant or any guarantor or other party to the Underlease; or
      4. waive or be deemed to waive any breach of the Tenant’s Obligations or the Undertenant’s Obligations that may have occurred before the date of this Licence.
   2. All sums payable by the Undertenant under this Licence will be recoverable as rent in arrear in accordance with the Underlease.
   3. Where any sums become payable under the Underlease 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.
   4. Nothing in this Licence creates any rights benefiting any person under the Contracts (Rights of Third Parties) Act 1999.
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 Underlease 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 Underlease is [E-MAIL ADDRESS].[[8]](#footnote-8)]
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 determine 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.

Guarantee

* + 1. **Guarantor’s obligations**
       1. The Guarantor, as primary obligor, guarantees to the Tenant [and, where applicable, to the Landlord] that it will indemnify the Tenant [and, where applicable, the Landlord] against all losses, costs, damages and expenses caused to the Tenant [or, where applicable, Landlord] by the Guaranteed Party 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 Licence.
       2. If the Tenant in its absolute discretion notifies the Guarantor within three months after the date of any disclaimer of the Underlease, the Guarantor must, within ten Business Days, at the Tenant’s option either:
          1. at the Guarantor’s own cost (including payment of the Tenant’s costs) accept the grant of an underlease of the Premises:

for a term starting and taking effect on the date of the disclaimer of the Underlease;

ending on the date when the Underlease would have ended if the disclaimer had not happened;

at the same rent and other sums payable;

containing a rent review date on the term commencement date of the new lease if there is a rent review under the Underlease 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);

containing rent review dates on each rent review date under the Underlease that falls on or after the term commencement date of the new lease; and

otherwise on the same obligations and conditions in the Underlease;[[9]](#footnote-9) or

* + - * 1. pay the Tenant any arrears of the Rents, outgoings and any other sums payable under the Underlease 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 had there been no such disclaimer.[[10]](#footnote-10)
      1. Where the guarantee has been given by the Assignee’s Guarantor, references in paragraph **1.2** to the disclaimer of the Underlease will include references to the forfeiture of the Underlease and the Assignee being struck off the register of companies.
      2. If paragraph **1.2.2** applies then, on receipt of the payment in full, the Tenant must release the Guarantor from its future obligations to the Tenant under its guarantee (but that will not affect the Tenant’s rights in relation to any prior breaches[ or the rights of the Landlord]).
      3. 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 Guaranteed Party or any third party;
         2. any variation of the Underlease (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 Guaranteed Party or the Guarantor may have;
         4. any death, incapacity, disability or change in the constitution or status of any party to this Licence of any other person who is liable for the performance of the Undertenant’s Obligations;
         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 paragraph **1.6**; or
         7. anything else other than a release by the Tenant [and, if applicable, Landlord] by deed.
      4. The matters referred to in paragraph **1.5.6** 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 Guaranteed Party or the Guaranteed Party enters into any scheme or arrangement with its creditors in satisfaction or composition of its debts under the 1986 Act;
         2. if the Guaranteed Party is a company or a limited liability partnership:

the Guaranteed Party enters into liquidation within the meaning of section 247 of the 1986 Act;

the Guaranteed Party is wound up or a petition for winding up is presented against the Guaranteed Party that is not dismissed or withdrawn within [NUMBER] days of being presented;

a meeting of the Guaranteed Party’s creditors or any of them is summoned under Part I of the 1986 Act;

a moratorium in respect of the Guaranteed Party comes into force under section 1(A) of and schedule A1 to the 1986 Act;

an administrator is appointed to the Guaranteed Party; or

the Guaranteed Party is struck off the register of companies;

* + - * 1. if the Guaranteed Party is a partnership, it is subject to an event similar to any listed in paragraph **1.6.2** with appropriate modifications so as to relate to a partnership;
        2. if the Guaranteed Party is an individual:

a receiving order is made against the Guaranteed Party;

an interim receiver is appointed over or in relation to the Guaranteed Party’s property;

the Guaranteed Party makes an application to be declared bankrupt, the Guaranteed Party is the subject of a bankruptcy petition or the Guaranteed Party becomes bankrupt;

the Guaranteed Party applies for or becomes subject to a debt relief order or the Guaranteed Party proposes or becomes subject to a debt management plan; or

an interim order is made against the Guaranteed Party under Part VIII of the 1986 Act or the Guaranteed Party otherwise proposes an individual voluntary arrangement;

* + - * 1. any event similar to any listed in paragraphs **1.6.1 to 1.6.4** occurs in any jurisdiction (whether it be England and Wales, or elsewhere); and
        2. any event similar to any listed in paragraphs **1.6.1 to 1.6.5** occurs in relation to the Guarantor.
      1. The Guarantor must not claim in competition with the Tenant [or, if applicable, Landlord] in the insolvency of the Guaranteed Party and must not take any security, indemnity or guarantee from the Guaranteed Party in respect of the Undertenant’s Obligations.
      2. Nothing in this paragraph **1** may impose any liability on the Guarantor that exceeds the liability that it would have had were it the tenant of the Underlease.

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 Undertenant )

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 Assignee’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 Undertenant’s 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, licence to alter or licence to change use will be required on the assignment of the Underlease. [↑](#footnote-ref-1)
2. Include this definition only where you are including the guarantee provisions in **Schedule 1**. [↑](#footnote-ref-2)
3. Include this definition only where you are including the guarantee provisions in **Schedule 1**. [↑](#footnote-ref-3)
4. Delete the wording in square brackets if the Underlease is contracted out of the Landlord and Tenant Act 1954. [↑](#footnote-ref-4)
5. **Clause 4.2** will be required only where title to the Underlease is already registered at HM Land Registry. [↑](#footnote-ref-5)
6. **Clause 4.3** will be required only where the Assignment will trigger an obligation for first registration of the Underlease because the outstanding term of the Underlease at the date of the Assignment exceeds 7 years. [↑](#footnote-ref-6)
7. If the EPC is one that was provided by the Landlord or the Tenant, this clause 5.1.5 will not be required. [↑](#footnote-ref-7)
8. Include clause 10.2 and, if applicable clause 10.3, only where the Underlease permits the service of notices by e-mail and the relevant parties agree to notices being served on them by e-mail. [↑](#footnote-ref-8)
9. No 1954 Act exclusion wording 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-9)
10. There is no right to repayment if the Tenant subsequently re-lets the Premises during the six month period covered by this payment. [↑](#footnote-ref-10)