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| --- |
| Dated |
|  |
| [LANDLORD]  and  [TENANT]  and  [TENANT’S GUARANTOR]  and  [UNDERTENANT]  and  [GUARANTOR] |
|  |
| **LICENCE TO UNDERLET**  Relating to premises known as [DESCRIPTION] |
|  |
|  |

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**LICENCE TO UNDERLET**

**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][[1]](#footnote-1)]

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. [[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 Tenant to grant the Underlease 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)]

**“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;

**“Liability Period”**

the period starting on the Underletting Date and ending on the date that the Undertenant is released from its obligations to comply with the Undertenant’s Obligations by virtue of the Landlord and Tenant (Covenants) Act 1995;

**[“Order”**

the Regulatory Reform (Business Tenancies) (England and Wales) Order 2003;]

**“Premises”**

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

**“Tenant’s Obligations”**

the tenant’s obligations in the Lease;

**“Underlease”**

an underlease to be granted by the Tenant to the Undertenant [and to be guaranteed by the Guarantor] [in the form of the draft underlease attached to this Licence][in a form to be approved by the Landlord before it is granted[ and]][containing the provisions set out in **Schedule 1**];

**“Underlet Premises”**

the property forming [the whole of the Premises][those parts of the Premises shown for identification edged red on the plan attached to the [draft underlease][this Licence]];

**“Underletting Date”**

the date of the grant of the Underlease to the Undertenant; 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 specifies 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 underlet
   1. The Landlord permits the Tenant to grant the Underlease to the Undertenant on the terms of this Licence.
3. Undertenant’s obligations
   1. The Undertenant must:
      1. comply with all of the Undertenant’s Obligations throughout the Liability Period;
      2. not breach any of the Tenant’s Obligations (excluding payment of rents and other sums);
      3. not occupy the Underlet Premises before the Underletting Date;
      4. not assign, underlet, part with possession or share occupation of part only of the Underlet Premises [nor underlet the whole of the Underlet Premises];[[3]](#footnote-3)
      5. not assign, [underlet,] part with possession or share occupation of the whole of the Underlet Premises without consent of the Landlord and the consent of the Tenant in accordance with the terms of the Underlease; and[[4]](#footnote-4)
      6. on or before any assignment of the Underlease, procure that the assignee enters into a direct agreement with the Landlord on the same terms as this **clause 4.1**.
   2. [The Undertenant must:
      1. procure the first registration of the Underlease by HM Land Registry as soon as reasonably practicable after the Underletting Date;
      2. not submit to HM Land Registry any plan of the Underlet Premises (other than a plan attached to the Underlease) without approval of the Landlord; and
      3. within one month of completion of the registration of the Underlease, 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 Undertenant as the registered proprietor of the Underlease.][[5]](#footnote-5)
4. Tenant’s obligations
   1. The Tenant must not permit the Undertenant to occupy the Underlet Premises before the Underletting Date.
   2. [The Tenant must not complete the Underlease unless and until:[[6]](#footnote-6)
      1. a copy of the draft Underlease has been provided to and approved by the Landlord; [and]
      2. any amendments to the draft Underlease properly and reasonably required by the Landlord have been included in the draft Underlease.]
   3. [The Tenant must not complete the Underlease unless and until the Tenant and the Undertenant have complied with the requirements of Schedule 2 to the Order.]
   4. The Tenant must produce to the Landlord before or as soon as practicable following completion of the Underlease a copy of the current valid energy performance certificate and recommendation report, (as defined in the Energy Performance of Buildings (England and Wales) Regulations 2012 (the "EPC") that was provided to the Undertenant in respect of the Underlet 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 consents to the Landlord using these data, plans and specifications.
   5. From and including the Underletting Date the Tenant must:[[7]](#footnote-7)
      1. not waive any material breach of the Undertenant’s Obligations;
      2. not reduce, defer, accelerate or commute any rent payable under the Underlease;
      3. review the rent of the Underlease in compliance with its terms and;
         1. not agree the reviewed rent (or the appointment of any third party to decide it) without the Landlord’s approval;
         2. include in the Tenant’s representations to any third party any representations that the Landlord may require; and
         3. notify the Landlord what the reviewed rent is within two weeks of its agreement or resolution by a third party; and
      4. not vary the terms or accept any surrender of any Underlease without the Landlord’s approval.
   6. The Tenant must:
      1. pay on 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 this Licence;
      2. within one month from the Underletting Date (or such other period as may be specified in the Lease), produce a certified copy of the counterpart Underlease [and evidence that the requirements of Schedule 2 to the Order have been complied with] to the Landlord’s solicitors and pay any registration fee required by the Lease.
5. Termination of this Licence
   1. The Landlord may terminate this Licence by written notice to the Tenant if the Underletting 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.
6. 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. All sums payable by the Tenant under this Licence will be recoverable as rent in arrear in accordance with the Lease.
   3. Nothing in this Licence creates any rights benefiting any person under the Contracts (Rights of Third Parties) Act 1999.
7. [Guarantor’s obligations
   1. The obligations in this **clause 8** continue throughout the Liability Period.
   2. The Guarantor, as primary obligor, guarantees to the Landlord that:
      1. the Undertenant will comply with all of the Undertenant’s Obligations and will not breach any of the Tenant’s Obligations (excluding payment of rents and other sums). If the Undertenant 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 Undertenant 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. 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 Undertenant 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 Undertenant or the Guarantor may have;
      4. any death, incapacity, disability or change in the constitution or status of any party to this Licence or 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 **clause 8.4**; or
      7. anything else other than a release by the Landlord by deed.
   4. The matters referred to in **clause 8.3.6** 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 Undertenant or the Undertenant enters into any scheme or arrangement with its creditors in satisfaction or composition of its debts under the 1986 Act;
      2. if the Undertenant is a company or a limited liability partnership:
         1. the Undertenant enters into liquidation within the meaning of section 247 of the 1986 Act;
         2. the Undertenant is wound up or a petition for winding up is presented against the Undertenant that is not dismissed or withdrawn within [NUMBER] days of being presented;
         3. a meeting of the Undertenant’s creditors or any of them is summoned under Part I of the 1986 Act;
         4. a moratorium in respect of the Undertenant comes into force under section 1(A) of and schedule A1 to the 1986 Act;
         5. an administrator is appointed to the Undertenant; or
         6. the Undertenant is struck off the register of companies;
      3. if the Undertenant is a partnership, it is subject to an event similar to any listed in **clause 8.4.2** with appropriate modifications so as to relate to a partnership;
      4. if the Undertenant is an individual:
         1. a receiving order is made against the Undertenant;
         2. an interim receiver is appointed over or in relation to the Undertenant’s property;
         3. the Undertenant makes an application to be declared bankrupt, the Undertenant is the subject of a bankruptcy petition or the Undertenant becomes bankrupt;
         4. the Undertenant applies for or becomes subject to a debt relief order or the Undertenant proposes or becomes subject to a debt management plan; or
         5. an interim order is made against the Undertenant under Part VIII of the 1986 Act or the Undertenant otherwise proposes an individual voluntary arrangement;
      5. any event similar to any listed in **clauses 8.4.1 to 8.4.4** occurs in any jurisdiction (whether it be England and Wales, or elsewhere); and
      6. any event similar to any listed in **clauses 8.4.1 to 8.4.5** occurs in relation to the Guarantor.
   5. The Guarantor must not claim in competition with the Landlord in the insolvency of the Undertenant and must not take any security, indemnity or guarantee from the Undertenant in respect of the Undertenant’s Obligations.
   6. 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 Underlease.
8. [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.
9. 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].
10. 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.
11. Legal effect
    1. This Licence takes effect and binds the parties with effect from the date set out at the beginning of this Licence.

Terms of the Underlease

The Underlease will:

* + 1. be approved by the Landlord;
    2. be lawfully excluded from the security of tenure provisions of the Landlord and Tenant Act 1954;
    3. be granted without any premium being received by the Tenant;
    4. reserve a market rent, taking into account the terms of the underletting;
    5. contain provisions for rent review at five yearly intervals and otherwise on the same terms as in the Lease;
    6. contain provisions for change of use and alterations corresponding to those in the Lease;
    7. prohibit the assignment of part only of the Underlet Premises;
    8. allow assignment of the whole of the Underlet Premises with the prior consent of the Landlord and the Tenant and on terms corresponding to those in the Lease;
    9. [contain a covenant by the Undertenant not to create any sub-underlease of the whole or any part of the Underlet Premises] **OR** [contain a covenant by the Undertenant not to create any sub-underlease of the whole of the Underlet Premises without the prior written consent of the Landlord and the Tenant and a covenant by the Undertenant not to create any sub-underlease of any part of the Underlet Premises] **OR** [contain a covenant by the Undertenant not to create any sub-underlease of the whole or any part of the Underlet Premises without the prior written consent of the Landlord and the Tenant];[[8]](#footnote-8)
    10. [contain provisions requiring any sub-underlease to contain an absolute prohibition on the creation of further underleases of whole or part [except where the sub-underlease is of the whole of the Underlet Premises when the sub-underlease may contain provisions permitting the creation of further underleases on the same terms as **paragraph 9** but with the additional provision that no further underleases of whole or part will be created out of those further underleases];]
    11. [contain provisions requiring any sub-underlease to contain obligations by the sub-undertenant not to assign part of the premises let by the sub-underlease and not to assign the whole of the premises let by the sub-underlease without the prior written consent of the Landlord, the Tenant and the Undertenant;]
    12. contain provisions requiring the Undertenant to pay as additional rent [the whole] [a due proportion] of the insurance rent[, service charge] and other sums, excluding the principal rent, payable by the Tenant under the Lease; and
    13. [contain provisions requiring the Undertenant to pay a comprehensive service charge to cover the costs of repairing and maintaining the Premises and providing common services and amenities for the benefit of the tenants and occupiers of the Premises;]
    14. contain any other provisions [as may be reasonable having regard to the terms of the Lease and the nature of the proposed underletting][corresponding with those in the Lease].]

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 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 Tenant’s Guarantor )

acting by [a director and its secretary] or by )

[two directors]: )

Signature of Director

Signature of Director/Secretary]

1. You should only join the Tenant’s Guarantor as a party to this Licence where the Landlord is permitting the grant of an underlease in circumstances where the terms of the Lease do not permit the underletting and there is therefore a risk that the grant of the underlease could operate to release the Tenant’s Guarantor from its obligations under its guarantee. [↑](#footnote-ref-1)
2. Include this definition only where you are including the guarantee provisions in **clause 8**. [↑](#footnote-ref-2)
3. The wording in this clause will need to match the restrictions on alienation contained in the Underlease. [↑](#footnote-ref-3)
4. The wording in this clause will need to match the restrictions on alienation contained in the Underlease. [↑](#footnote-ref-4)
5. **Clause 4.2** will be required only where the grant of the Underlease will trigger an obligation for first registration of the Underlease because the term of the Underlease at the date of its grant exceeds 7 years. [↑](#footnote-ref-5)
6. Use this wording where the draft Underlease is not attached to the Licence and is to be approved by the Landlord after the Licence has been granted. [↑](#footnote-ref-6)
7. This clause includes a number of obligations given by the Tenant to the Landlord. You need to consider whether the Lease already contains these obligations. To the extent that it does, you do not need to repeat those obligations here. If the Lease does not contain these obligations, by virtue of the Landlord and Tenant Act 1988 you will be able to include them only to the extent that they are reasonable in the context of the particular underletting. [↑](#footnote-ref-7)
8. Take specific instruction on whether an undertenant should have the right to sub-underlet. **Paragraphs 10 and 11** will not be required if sub-underletting is prohibited. [↑](#footnote-ref-8)