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

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**LICENCE TO SUB-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**”);

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. [[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**”);[[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. [[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][[2]](#footnote-2)]

6. [SUB-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 “**Sub-Undertenant**”)[; and][.]

7. [[SUB-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 “**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 grant the Sub-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;[[3]](#footnote-3)]

**[“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)]

**“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 Sub-Undertenant is released from its obligations to comply with the Sub-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];

**“Sub-Underlease”**

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

**“Sub-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]];

**“Sub-Undertenant’s Obligations”**

the tenant’s obligations in the Sub-Underlease;

**“Tenant’s Obligations”**

the tenant obligations in the Lease;

**“Term”**

the term of the Lease;

**“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;

**“Underletting Date”**

the date of the grant of the Sub-Underlease to the Sub-Undertenant; and

**“Undertenant’s Obligations”**

the tenant 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, the Tenant or the Undertenant 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, the Tenant or the Undertenant 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. Where the Undertenant is obliged to pay any costs that the Landlord, the Tenant or the Undertenant incur (or any proportion of them) under this Licence, those costs must be reasonable and proper and reasonably and properly incurred.
   9. 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 and the Tenant permit the Undertenant to grant the Sub-Underlease to the Sub-Undertenant on the terms of this Licence.
3. Sub-undertenant’s obligations
   1. The Sub-Undertenant must:
      1. comply with all of the Sub-Undertenant’s Obligations throughout the Liability Period;
      2. not breach any of the Tenant’s Obligations or the Undertenant’s Obligations (excluding payment of rents and other sums); and
      3. not occupy the Sub-Underlet Premises before the Underletting Date;
      4. not assign, underlet, part with possession or share occupation of part only of the Sub-Underlet Premises [nor underlet the whole of the Sub-Underlet Premises];[[5]](#footnote-5)
      5. not assign [, underlet], part with possession or share occupation of the whole of the Sub-Underlet Premises without consent of the Landlord and the Tenant and consent of the Undertenant in accordance with the terms of the Sub-Underlease;[[6]](#footnote-6)
      6. on or before any assignment of the Sub-Underlease, procure that the assignee enters into a direct agreement with the Landlord and separately with the Tenant on the same terms as this **clause 4.1**.
   2. [The Sub-Undertenant must:
      1. procure the first registration of the Sub-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 Sub-Underlet Premises (other than a plan attached to the Sub-Underlease) without approval of the Landlord and the Tenant; and
      3. within one month of completion of the registration of the Sub-Underlease, produce to the Landlord’s solicitors, the Tenant’s solicitors and the Undertenant’s solicitors official copies of the register of title and of the title plan showing the Sub-Undertenant as the registered proprietor of the Sub-Underlease.][[7]](#footnote-7)
4. Undertenant’s obligations
   1. The Undertenant must not permit the Sub-Undertenant to occupy the Sub-Underlet Premises before the Underletting Date.
   2. [The Undertenant must not complete the Sub-Underlease unless and until:[[8]](#footnote-8)
      1. a copy of the draft Sub-Underlease has been provided to and approved by the Landlord and the Tenant; and
      2. any amendments to the draft Sub-Underlease properly and reasonably required by the Landlord or the Tenant have been included in the draft Sub-Underlease.]
   3. [The Undertenant must not complete the Sub-Underlease unless and until the Undertenant and the Sub-Undertenant have complied with the requirements of Schedule 2 to the Order.]
   4. The Undertenant must produce to the Landlord and the Tenant before or as soon as practicable following completion of the Sub-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 Sub-Undertenant in respect of the Sub-Underlet 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 consents to the Landlord and the Tenant using these data, plans and specifications.
   5. From and including the Underletting Date the Undertenant must:[[9]](#footnote-9)
      1. not waive any material breach of the Sub-Undertenant’s Obligations;
      2. not reduce, defer, accelerate or commute any rent payable under the Sub-Underlease;
      3. review the rent of Sub-Underlease in compliance with its terms;
      4. not agree the reviewed rent (or the appointment of any third party to decide it) without the Landlord’s approval and the Tenant’s approval;
      5. include in the Undertenant’s representations to any third party any representations that the Landlord or the Tenant may require;
      6. notify the Landlord and the Tenant what the reviewed rent is within two weeks of its agreement or resolution by a third party; and
      7. not vary the terms or accept any surrender of the Sub-Underlease without the Landlord’s approval and the Tenant’s approval.
   6. The Undertenant 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, the Tenant [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 Tenant’s solicitors and pay any registration fee required by the Underlease.
5. Termination of this Licence
   1. The Landlord or the Tenant may terminate this Licence by written notice to the Undertenant 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 or the Tenant to refund any monies 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 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. All sums payable by the Undertenant under this Licence will be recoverable as rent in arrear in accordance with the Underlease.
   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 and separately to the Tenant that:
      1. the Sub-Undertenant will comply with all of the Sub-Undertenant’s Obligations and will not breach any of the Tenant’s Obligations or the Undertenant’s Obligations (excluding payment of rents and other sums). If the Sub-Undertenant defaults, the Guarantor will itself comply with those obligations and will indemnify the Landlord and the Tenant against all losses, costs, damages and expenses caused to them by that default; and
      2. it will indemnify the Landlord and separately the Tenant against all losses, costs, damages and expenses caused to them by the Sub-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 Sub-Undertenant or any third party;
      2. any variation of the Sub-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 Sub-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 any other person liable to comply with the Sub-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 and the Tenant 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 Sub-Undertenant or the Sub-Undertenant enters into any scheme or arrangement with its creditors in satisfaction or composition of its debts under the 1986 Act;
      2. if the Sub-Undertenant is a company or a limited liability partnership:
         1. the Sub-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 Sub-Undertenant that is not dismissed or withdrawn within [NUMBER] days of being presented;
         3. a meeting of the Sub-Undertenant’s creditors or any of them is summoned under Part I of the 1986 Act;
         4. a moratorium in respect of the Sub-Undertenant comes into force under section 1(A) of and schedule A1 to the 1986 Act;
         5. an administrator is appointed to the Sub-Undertenant; or
         6. the Sub-Undertenant is struck off the register of companies;
      3. if the Sub-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 Sub-Undertenant is an individual:
         1. a receiving order is made against the Sub-Undertenant;
         2. an interim receiver is appointed over or in relation to the Sub-Undertenant’s property;
         3. the Sub-Undertenant makes an application to be declared bankrupt, the Sub-Undertenant is the subject of a bankruptcy petition or the Sub-Undertenant becomes bankrupt;
         4. the Sub-Undertenant applies for or becomes subject to a debt relief order or the Sub-Undertenant proposes or becomes subject to a debt management plan; or
         5. an interim order is made against the Sub-Undertenant under Part VIII of the 1986 Act or the Sub-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 or the Tenant in the insolvency of the Sub-Undertenant and must take any security, indemnity or guarantee from the Sub-Undertenant in respect of the Sub-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 Sub-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. [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.]
10. 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].
11. 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 12.3**, 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.
12. 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 Sub-Underlease will:

* + 1. be approved by the Landlord and the Tenant;
    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 Undertenant;
    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 Underlease;
    6. contain provisions for change of use and alterations corresponding to those in the Underlease;
    7. prohibit the assignment of part only of the Sub-Underlet Premises;
    8. allow assignment of the whole of the Sub-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 Sub-Undertenant not to create any sub-sub-underlease of the whole or any part of the Sub-Underlet premises] **OR** [contain a covenant by the Sub-Undertenant not to create any sub-sub-underlease of the whole of the Sub-Underlet Premises without the prior written consent of the Landlord, the Tenant and the Undertenant and a covenant by the Sub-Undertenant not to create any sub-sub-underlease of any part of the Sub-Underlet Premises] **OR** [contain a covenant by the Sub-Undertenant not to create any sub-sub-underlease of the whole or any part of the Sub-Underlet Premises without the prior written consent of the Landlord, the Tenant and the Undertenant];[[10]](#footnote-10)
    10. [contain provisions requiring any sub-sub-underlease to contain an absolute prohibition on the creation of further underleases of whole or part [except where the sub-sub-underlease is of the whole of the Sub-Underlet Premises when the sub-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-sub-underlease to contain obligations by the sub-sub-undertenant not to assign part of the premises let by the sub-sub-underlease and not to assign the whole of the premises let by the sub-sub-underlease without the prior written consent of the Landlord, the Tenant, the Undertenant and the Sub-Undertenant;]
    12. contain provisions requiring the Sub-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 Undertenant under the Underlease;
    13. [contain provisions requiring the Sub-Undertenant to pay a comprehensive service charge to cover the costs of repairing and maintaining the Underlet Premises and providing common services and amenities for the benefit of the tenants and occupiers of the Underlet Premises; and]
    14. contain any other provisions [as may be reasonable having regard to the terms of the Underlease and the nature of the proposed underletting][corresponding with those in 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 Sub-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]

[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. You should only join the Tenant’s Guarantor as a party to this Licence where the Landlord is permitting the grant of a sub-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. You should only join the Undertenant’s Guarantor as a party to this Licence where the Landlord and the Tenant are permitting the grant of a sub-underlease in circumstances where the terms of the Underlease do not permit the underletting and there is therefore a risk that the grant of the sub-underlease could operate to release the Undertenant’s Guarantor from its obligations under its guarantees given to the Tenant or to the Landlord. [↑](#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. The wording in this clause will need to match the restrictions on alienation contained in the Sub-Underlease. [↑](#footnote-ref-5)
6. The wording in this clause will need to match the restrictions on alienation contained in the Sub-Underlease. [↑](#footnote-ref-6)
7. **Clause 4.2** will be required only where the grant of the Sub-Underlease will trigger an obligation for first registration of the Sub-Underlease because the term of the Sub-Underlease at the date of its grant exceeds 7 years. [↑](#footnote-ref-7)
8. 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-8)
9. This clause includes a number of obligations given by the Undertenant to the Landlord and the Tenant. You need to consider whether the Underlease already contains these obligations. To the extent that it does, you do not need to repeat those obligations here. If the Underlease 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 sub-underletting. [↑](#footnote-ref-9)
10. Take specific instruction on whether a sub-undertenant should have the right to sub-sub-underlet. **Paragraphs 10 and 11** will not be required if sub-underletting is prohibited. [↑](#footnote-ref-10)