|  |
| --- |
| Dated |
|  |
| [LANDLORD]  and  [TENANT]  and  [UNDERTENANT]  and  [GUARANTOR] |
|  |
| **LICENCE TO CHANGE USE IN AN UNDERLEASE**  Relating to premises known as [DESCRIPTION] |
|  |
|  |

**CONTENTS**

**Clause Page**

[1. Definitions 1](#_Toc4582592)

[2. Interpretation 2](#_Toc4582593)

[3. Licence to change use 3](#_Toc4582594)

[4. Undertenant’s obligations 3](#_Toc4582595)

[5. Tenant’s obligations 4](#_Toc4582596)

[6. Termination of this Licence 4](#_Toc4582597)

[7. Agreements 4](#_Toc4582598)

[8. [Guarantor’s obligations 4](#_Toc4582599)

[9. Notices 5](#_Toc4582600)

[10. Jurisdiction 5](#_Toc4582601)

[11. Legal effect 5](#_Toc4582602)

[Schedule 1 6](#_Toc4582603)

[Variations to the Underlease 6](#_Toc4582604)

**LICENCE TO CHANGE USE**

**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. [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][.]

4. [[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 a change of use of the Premises subject to the terms contained in this Licence.

**IT IS AGREED AS FOLLOWS**

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

**“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 Underlease 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 Underlease known as [ADDRESS];

**“Tenant’s Obligations”**

the tenant’s obligations in 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; 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 [but references to the Undertenant do not include its successors in title[[1]](#footnote-1)];
      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 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 change use
   1. The Landlord and the Tenant permit the Undertenant to use the Premises for the New Use [in substitution for][in addition to] the Existing Use and [clause [NUMBER] of][the definition of [“Authorised Use”][“Permitted Use”] in] the Underlease will be amended accordingly. [This permission is personal to the Undertenant named in this Licence and will not benefit any successors in title to or sub-undertenants of the Undertenant.][[2]](#footnote-2)
   2. [The variations to the Underlease set out in **Schedule 1** will apply from the date of this Licence.[[3]](#footnote-3)]
3. Undertenant’s obligations
   1. The Undertenant must not use the Premises for the New Use unless and until:
      1. the Landlord and the Tenant have approved the Undertenant’s application for the Consents in writing;
      2. it has obtained all Consents; and
      3. the Landlord and the Tenant have approved the Consents in writing.
   2. The Undertenant 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 Tenant as additional rent under the terms of the Underlease any increased insurance premium payable as a result of the use of the Premises for the New Use.
   3. The Undertenant must pay on demand 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 and the approval of the Consents.
   4. [The Undertenant must apply to HM Land Registry as soon as reasonably practicable after the date of this Licence to note the variations to the Underlease made by this Licence against the registered title to the Underlease and the Tenant’s title to the Lease. The Tenant consents to HM Land Registry noting those variations against its title to the Lease.[[4]](#footnote-4)]
4. Tenant’s obligations
   1. The Tenant must 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.
5. Termination of this Licence
   1. The Landlord or the Tenant may terminate this Licence by written notice to the Undertenant if the use of the Premises for the New Use has not started 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 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 or the Tenant of the Undertenant or any guarantor or other party to the Lease;
      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. By granting this Licence or giving any approval or consent under this Licence, neither the Landlord nor the Tenant make any representation or give any warranty that the Premises may lawfully be used for the New Use.
   3. All sums payable by the Undertenant under this Licence will be recoverable as rent in arrear in accordance with the Underlease.
   4. 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 Underlease.
   5. 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 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 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.
8. 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].
9. 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 10.3**, 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.
10. 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 Underlease

*Set out any variations to the terms of the Underlease 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 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]

1. Include the words in square brackets where the change of use permitted by this Licence will be personal to the Undertenant. [↑](#footnote-ref-1)
2. Any corresponding change to the user provisions required in the Lease should be dealt with by a separate licence to change use for the Lease. [↑](#footnote-ref-2)
3. 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-3)
4. Not every change of use will create a variation of the terms of the Underlease. A change of use personal to the Undertenant will not vary the terms of the Underlease. A change of use that falls within the permitted changes of use anticipated by the Underlease will not create a variation of the terms of the Lease. [↑](#footnote-ref-4)