

**DATED**

**2015**

**LEASE**

relating to

**PUBLIC CONVENIENCES AT [< >]**

between

**THE CORNWALL COUNCIL**

and

**[< >]**

**NOTE:**

**The inclusion of this lease in the tender pack is to provide interested parties with sufficient details on the terms of the lease in order to put together their tender.**

**The lease will require amendments to fit the terms of the success tender and the specific requirements of the property.**

**PRESCRIBED CLAUSES<sup>1</sup>**

**LR1. Date of lease**

2015

**LR2. Title number(s)**

**LR2.1 Landlord's title number(s)**

[ < > ]

**LR2.2 Other title numbers**

[ < > OR None ]

**LR3. Parties to this lease**

**Landlord**

The Cornwall Council of New County Hall, Treyew Road, Truro TR1 3AY

**Tenant**

[ < > ]

**Other parties<sup>2</sup>**

[ < > OR None ]

**LR4. Property**

**In the case of a conflict between this clause and the remainder of this lease then, for the purposes of registration, this clause shall prevail.**

See the definition of "Property" in clause 1.1 of this lease.

**LR5. Prescribed statements etc.**

**LR5.1 Statements prescribed under rules 179 (dispositions in favour of a charity), 180 (dispositions by a charity) or 196 (leases under the Leasehold Reform, Housing and Urban Development Act 1993) of the Land Registration Rules 2003.**

None.

**LR5.2 This lease is made under, or by reference to, provisions of:**

None.

**LR6. Term for which the Property is leased**

The term as specified in this lease at clause 1.1 in the definition of "Contractual Term".

**LR7. Premium**

[ < > OR None. ]

**LR8. Prohibitions or restrictions on disposing of this lease**

This lease contains a provision that prohibits or restricts dispositions.

**LR9. Rights of acquisition etc.**

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<sup>1</sup> Prescribed Clauses are only required for leases over 7 years in duration

<sup>2</sup> Only relevant if a guarantor is offered

**LR9.1 Tenant's contractual rights to renew this lease, to acquire the reversion or another lease of the Property, or to acquire an interest in other land**

None.

**LR9.2 Tenant's covenant to (or offer to) surrender this lease**

None.

**LR9.3 Landlord's contractual rights to acquire this lease**

See clause < >.

**LR10. Restrictive covenants given in this lease by the Landlord in respect of land other than the Property**

None.

**LR11. Easements**

**LR11.1 Easements granted by this lease for the benefit of the Property**

[None] OR [The easements as specified in clause 4.2 of this lease].

**LR11.2 Easements granted or reserved by this lease over the Property for the benefit of other property**

The easements as specified in clause 5 of this lease.

**LR12. Estate rentcharge burdening the Property**

None.

**LR13. Application for standard form of restriction**

None.

**LR14. Declaration of trust where there is more than one person comprising the Tenant<sup>3</sup>**

[The Tenant is more than one person. They are to hold the Property on trust for themselves as joint tenants.]

[The Tenant is more than one person. They are to hold the Property on trust for themselves as tenants in common in equal shares.]

[The Tenant is more than one person. They are to hold the Property on trust [COMPLETE AS NECESSARY].]

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<sup>3</sup> Omit all unnecessary statements.

**THIS LEASE** is dated

2015

**PARTIES**

- (1) The Cornwall Council of New County Hall, Treyew Road, Truro TR1 3AY (**Landlord**).
- (2) [ $<$   $>$ ] (**Tenant**).

**AGREED TERMS**

**1. INTERPRETATION**

The following definitions and rules of interpretation apply in this lease.

**1.1 Definitions:**

**Act of Insolvency:**

- (a) the taking of any step in connection with any voluntary arrangement or any other compromise or arrangement for the benefit of any creditors of the Tenant or any guarantor;
- (b) the making of an application for an administration order or the making of an administration order in relation to the Tenant or any guarantor;
- (c) the giving of any notice of intention to appoint an administrator, or the filing at court of the prescribed documents in connection with the appointment of an administrator, or the appointment of an administrator, in any case in relation to the Tenant or any guarantor;
- (d) the appointment of a receiver or manager or an administrative receiver in relation to any property or income of the Tenant or any guarantor;
- (e) the commencement of a voluntary winding-up in respect of the Tenant or any guarantor, except a winding-up for the purpose of amalgamation or reconstruction of a solvent company in respect of which a statutory declaration of solvency has been filed with the Registrar of Companies;
- (f) the making of a petition for a winding-up order or a winding-up order in respect of the Tenant or any guarantor;
- (g) the striking-off of the Tenant or any guarantor from the Register of Companies or the making of an application for the Tenant or any guarantor to be struck-off;
- (h) the Tenant or any guarantor otherwise ceasing to exist (but excluding where the Tenant or any guarantor dies); or
- (i) the presentation of a petition for a bankruptcy order or the making of a bankruptcy order against the Tenant or any guarantor.

The paragraphs above shall apply in relation to a partnership or limited partnership (as defined in the Partnership Act 1890 and the Limited Partnerships Act 1907 respectively) subject to the modifications referred to in the Insolvent Partnerships Order 1994 (as amended), and a limited liability partnership (as defined in the Limited Liability Partnerships Act

2000) subject to the modifications referred to in the Limited Liability Partnerships Regulations 2001 (as amended).

Act of Insolvency includes any analogous proceedings or events that may be taken pursuant to the legislation of another jurisdiction in relation to a tenant or guarantor incorporated or domiciled in such relevant jurisdiction.

**Annual Rent:** rent at an initial rate of £[< >] per annum [and then as revised pursuant to Schedule 2].

**[Building:** [<DESCRIPTION OF BUILDING>] shown edged [blue] on Plan 2.]

**Contractual Term<sup>4</sup>:** a term of years beginning on, and including 26 October 2015 and ending on, and including [< >].

**CDM Regulations:** the Construction (Design and Management) Regulations 2015.

**Default Interest Rate:** 4 % per annum above the Interest Rate.

**Insured Risks:** means fire, storm or vandalism and any other risks against which the Landlord acting reasonably requests the Tenant to insure against from time to time and **Insured Risk** means any one of the Insured Risks.

**Interest Rate:** the base rate from time to time of National Westminster Bank plc, or if that base rate stops being used or published then a comparable commercial rate reasonably determined by the Landlord.

**Landlord's Neighbouring Property:** each and every part of the adjoining and neighbouring property in which the Landlord has an interest known as [<DESCRIPTION/ADDRESS OF THE LANDLORD'S NEIGHBOURING PROPERTY>] registered at HM Land Registry with title number [< >] shown edged [blue] on the attached plan marked [< >].

**LTA 1954:** Landlord and Tenant Act 1954.

**Permitted Use:** public conveniences for use by members of the public and [<INSERT DETAILS<sup>5</sup>>] or such other use as the Landlord may agree from time to time, provided that public convenience provision is maintained in accordance with clause 3.

**Public Conveniences:** that part of the Property shown edged and hatched in [yellow] on Plan 1 being the area made available for public conveniences for use by members of the public.

**Property:** the property described in Schedule 1.

**[Rent Commencement Date<sup>6</sup>:** [< >].]

**Rent Payment Dates:** [25 March, 24 June, 29 September and 25 December **OR** <SPECIFY ALTERNATIVE RENT PAYMENT DATES>].

**Reservations:** all of the rights excepted, reserved and granted to the Landlord by this lease.

**Review Date:** every fifth anniversary of the date of this lease.

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<sup>4</sup> Length of term to be determined as part of the tender

<sup>5</sup> Insert additional use as proposed in the tender bid.

<sup>6</sup> Relevant if a rent free period has been agreed, in all other cases annual rent is payable on the commencement of the lease.

**Service Media:** all media for the supply or removal of heat, electricity, gas, water, sewage, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.

**Third Party Rights:** all rights, covenants and restrictions affecting the Property including the matters referred to at the date of this lease in the property register and the charges register of [<TITLE NUMBER>].

**VAT:** value added tax chargeable under the VATA 1994 and any similar replacement tax and any similar additional tax.

**VATA 1994:** Value Added Tax Act 1994.

- 1.2 A reference to this **lease**, except a reference to the date of this lease or to the grant of the lease, is a reference to this deed and any deed, licence, consent, approval or other instrument supplemental to it.
- 1.3 A reference to the **Landlord** includes a reference to the person entitled to the immediate reversion to this lease. A reference to the **Tenant** includes a reference to its successors in title and assigns. A reference to a **guarantor** is to any guarantor of the tenant covenants of this lease including a guarantor who has entered into an authorised guarantee agreement.
- 1.4 In relation to any payment, a reference to a **fair proportion** is to a fair proportion of the total amount payable, determined conclusively (except as to questions of law) by the Landlord.
- 1.5 The expressions **landlord covenant** and **tenant covenant** each has the meaning given to it by the Landlord and Tenant (Covenants) Act 1995.
- 1.6 Unless the context otherwise requires, a reference to the **Property** is to the whole and any part of it.
- 1.7 A reference to the **term** is to the Contractual Term.
- 1.8 A reference to the **end of the term** is to the end of the term however it ends.
- 1.9 References to the **consent** of the Landlord are to the consent of the Landlord given in accordance with clause 40.5 and references to the **approval** of the Landlord are to the approval of the Landlord given in accordance with clause 40.6.
- 1.10 A **working day** is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.
- 1.11 A reference to laws in general is a reference to all local, national and directly applicable supra-national laws as amended, extended or re-enacted from time to time and shall include all subordinate laws made from time to time under them and all orders, notices, codes of practice and guidance made under them.
- 1.12 Unless otherwise specified, a reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time and shall include all subordinate legislation made from time to time under that statute or statutory provision and all orders, notices, codes of practice and guidance made under it.
- 1.13 Any obligation on the Tenant not to do something includes an obligation not to allow that thing to be done and an obligation to use best endeavours to prevent that thing being done by another person.

- 1.14 Unless the context otherwise requires, any words following the terms **including, include, in particular, for example** or any similar expression shall be construed as illustrative and shall not limit the sense of the words, description, definition, phrase or term preceding those terms.
- 1.15 A **person** includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.16 A reference to **writing** or **written** does not include fax or email.
- 1.17 Unless the context otherwise requires, references to clauses and Schedules are to the clauses and Schedules of this lease and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.18 Clause, Schedule and paragraph headings shall not affect the interpretation of this lease.
- 1.19 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.20 Unless the context otherwise requires, words in the singular shall include the plural and in the plural include the singular.
- 1.21 The Cornwall Council enters into this lease solely in its capacity as a landowner in respect of the Property and not in any other capacity. Nothing in this lease shall restrict The Cornwall Council's powers or rights as a local authority, local planning authority or statutory body to perform any of its statutory functions.

## **2. GRANT**

- 2.1 The Landlord with limited title guarantee lets the Property to the Tenant for the Contractual Term.
- 2.2 The grant is made [together with the ancillary rights set out in clause 3,] excepting and reserving to the Landlord the rights set out in clause 5, and subject to the Third Party Rights.
- 2.3 The grant is made with the Tenant paying the following as rent to the Landlord:
- (a) the Annual Rent and all VAT in respect of it;
  - (b) [the Insurance Rent]<sup>7</sup>;
  - (c) all interest payable under this lease; and
  - (d) all other sums due under this lease.

## **3. PUBLIC CONVENIENCE PROVISION**

- 3.1 The Tenant shall keep the Public Conveniences open to the public for such hours and on such days or times of the year as set out in Schedule 3, or such other hours, days or times as agreed by the Landlord and Tenant (acting reasonably) from time to time. The Tenant shall not be required to open the Public Conveniences in any period during which:
- (a) the Tenant is carrying out authorised alterations to the Property and in the Landlord's reasonable opinion alternative public convenience facilities can not be provided; or
  - (b) it is not possible to provide the Public Conveniences due to damage or destruction by an Insured Risk; or

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<sup>7</sup> Where the Landlord insures and reclaims from the Tenant

- (c) the occupation or provision of the Public Conveniences would result in a breach of any other provision of this lease.
- 3.2 The Tenant must ensure that the Public Conveniences are maintained to a standard equal to that set out in Schedule 3, or such other standard as notified to the Tenant by the Landlord (acting reasonably) from time to time.
- 3.3 The Tenant must ensure that adequate signs are displayed at the Property providing a name and contact number for the general public to contact in case of any complaint in relation to the provision of the Public Conveniences.
- 3.4 [The Tenant must ensure that the Public Conveniences are made available for use free of charge by the employees or volunteers of the Royal National Lifeboat Institute at all times when the Public Conveniences are open in accordance with clause 3.1.]<sup>8</sup>
- 3.5 If the Tenant breaches clause 3.1, the Landlord may serve a notice on the Tenant requiring the Public Conveniences to be made available for use by the public immediately and issuing a fine of £[100] for each day or part day the Public Conveniences are not available for use by the public. The fine shall be a debt due from the Tenant to the Landlord and payable upon demand. Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 37.
- 3.6 The Tenant may charge the general public to use the Public Conveniences provided that any charge, cost, fine or levy is no more than £1 per person per use (subject to an increased from 1 April each year inline with the Consumer Price Index) without the consent of the Landlord.

#### **4. ANCILLARY RIGHTS<sup>9</sup>**

- 4.1 [Except as mentioned in clause 4.2, neither/Neither] the grant of this lease nor anything in it confers any right over neighbouring property nor is to be taken to show that the Tenant may have any right over neighbouring property, and section 62 of the LPA 1925 does not apply to this lease.
- 4.2 [<SET OUT ANY SPECIFIC RIGHTS NEEDED>]

#### **5. RIGHTS EXCEPTED AND RESERVED**

- 5.1 [The following rights are excepted and reserved from this lease to the Landlord for the benefit of the Landlord's Neighbouring Property<sup>10</sup>:
- (a) rights of light, air, support and protection to the extent those rights are capable of being enjoyed at any time during the term;
  - (b) the right to use and to connect into Service Media at the Property which are in existence at the date of this lease or which are installed or constructed during the period of [<term of lease>] years from the commencement of the Contractual Term;

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<sup>8</sup> Certain beach locations must provide toilet facilities for the RNLI. The tender pack will indicate if a location must include this right.

<sup>9</sup> This clause will need to be adapted for individual properties to ensure the tenant is granted all necessary rights to access and use the property.

<sup>10</sup> This clause will need to be adapter for individual properties depending on what rights the landlord needs for the benefit of any retained land.



- (c) at any time during the term, the full and free right to develop the Landlord's Neighbouring Property as the Landlord may think fit;
- (d) the right to erect scaffolding at the Property and attach it to any building or structure on the Property in connection with any of the Reservations;
- (e) the right to build on or into any boundary wall of the Property in connection with any of the Reservations;
- (f) the right to re-route any Service Media at or serving the Property or re-route any means of access to or egress from the Property; and
- (g) [<ANY OTHER SPECIFIC RIGHTS THAT NEED TO BE RESERVED>];

notwithstanding that the exercise of any of the Reservations or the works carried out pursuant to them result in a reduction in the flow of light or air to the Property or loss of amenity for the Property provided that they do not materially affect the use and enjoyment of the Property for the Permitted Use.]

- 5.2 The Landlord reserves the right to enter the Property:
- (a) to repair, maintain or replace any Service Media or structure relating to any of the Reservations; and
  - (b) for any other purpose mentioned in or connected with:
    - (i) this lease;
    - (ii) the Reservations; and
    - (iii) the Landlord's interest in the Property.
- 5.3 The Reservations may be exercised by the Landlord and by anyone else who is or becomes entitled to exercise them, and by anyone authorised by the Landlord.
- 5.4 The Tenant shall allow all those entitled to exercise any right to enter the Property, to do so with their workers, contractors, agents and professional advisors, and to enter the Property at any reasonable time (whether or not during usual business hours) and, except in the case of an emergency, after having given reasonable notice (which need not be in writing) to the Tenant.
- 5.5 No party exercising any of the Reservations, nor its workers, contractors, agents and professional advisors, shall be liable to the Tenant or to any undertenant or other occupier of or person at the Property for any loss, damage, injury, nuisance or inconvenience arising by reason of its exercising any of those Reservations except for:
- (a) physical damage to the Property; or
  - (b) any loss, damage, injury, nuisance or inconvenience in relation to which the law prevents the Landlord from excluding liability.

## **6. THIRD PARTY RIGHTS**

- 6.1 The Tenant shall comply with all obligations on the Landlord relating to the Third Party Rights (insofar as those obligations relate to the Property) and shall not do anything (even if otherwise permitted by this lease) that may interfere with any Third Party Right.
- 6.2 The Tenant shall allow the Landlord and any other person authorised by the terms of the Third Party Right to enter the Property in accordance with its terms.

**7. THE ANNUAL RENT**

- 7.1 The Tenant shall pay the Annual Rent and any VAT in respect of it by four equal instalments in advance on or before the Rent Payment Dates. The payments shall be made by banker's standing order or by any other method that the Landlord requires at any time by giving notice to the Tenant.
- 7.2 The first instalment of the Annual Rent and any VAT in respect of it shall be made on [the date of this lease and shall be the proportion, calculated on a daily basis, in respect of the period beginning on the date of this lease until the day before the next Rent Payment Date] **OR** [the Rent Commencement Date and shall be the proportion, calculated on a daily basis, in respect of the period beginning on the Rent Commencement Date until the day before the next Rent Payment Date].

**8. INSURANCE<sup>11</sup> (TENANT)**

- 8.1 The Tenant shall keep the Property insured against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account) including costs of demolition, site clearance, site protection and shoring-up, professionals' and statutory fees and incidental expenses, the cost of any work which may be required under any law and VAT in respect of all those costs, fees and expenses. The Landlord shall not be obliged to insure any part of the Property installed by the Tenant.
- 8.2 The Tenant shall effect the insurance with a substantial and reputable insurance office or underwriters.
- 8.3 The Tenant shall procure public liability insurance and employers liability insurance with an insurance company to be previously approved in writing by the Landlord in a sum in each respect not being less than £5,000,000 for any one claim or series of claims arising out of one event.
- 8.4 The Tenant shall:
- (a) produce to the Landlord within 5 days of the date of this lease a copy of the insurance policy or policies;
  - (b) produce to the Landlord on demand a copy of the current insurance policy or policies and last renewal receipt;
  - (c) make all payments necessary to effect and maintain the insurance within 5 working days after they become due;
  - (d) arrange for the Landlord's interest to be noted on the current insurance policy and all renewals;
  - (e) give the Landlord notice immediately if any matter occurs in relation to the Tenant or the Property that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Property;
  - (f) not do or omit anything as a result of which any policy of insurance of the Property or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld;

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<sup>11</sup> This clause is for where the Tenant is responsible for insuring. If the property is a stand alone building, the tenant will be required to take insuring responsibility.

- (g) comply at all times with the requirements and recommendations of the insurers relating to the Property; and
  - (h) give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Property.
- 8.5 The Tenant shall use all insurance money received in connection with any damage to the Property to repair the damage for which the money has been received or (as the case may be) in rebuilding the Property.
- 8.6 Following damage to or destruction of the Property, the Tenant shall place all money received in connection with any damage to the Property in a bank account in the joint names of the Landlord and the Tenant to be operated by both signatures only at a bank approved by the Landlord, whose approval may not be unreasonably withheld or delayed. The money may be withdrawn as necessary to pay for rebuilding and reinstating the Property as and when work is proved to have been done by architect's certificate or other evidence reasonably acceptable to the Landlord.
- 8.7 The Tenant shall use all reasonable endeavours to obtain planning permission and any other permits and consents to enable the Property to be rebuilt and reinstated in accordance with the original plans, elevations and details, with any variations the Landlord agrees to, having regard for the statutory provisions affecting the Property.
- 8.8 As soon as reasonably practicable after all necessary permissions, permits and consents have been obtained, the Tenant shall rebuild and reinstate the Property in accordance with them using new, good, sound and substantial materials that are to be subject to inspection and approval by the Landlord, whose approval shall not be unreasonably withheld or delayed.
- 8.9 The Tenant must make up out of his own money any difference between the cost of rebuilding and reinstating and the money received from the insurance policy.

**OR**

**9. INSURANCE<sup>12</sup> (LANDLORD)**

- 9.1 Subject to clause 9.2, the Landlord shall keep the Building other than any plate glass insured against loss or damage by the Insured Risks for the sum which the Landlord considers to be its full reinstatement cost (taking inflation of building costs into account). The Landlord shall not be obliged to insure any part of the Property installed by the Tenant.
- 9.2 The obligation of the Landlord to insure is subject to:
- (a) any exclusions, limitations, excesses and conditions that may be imposed by the insurers; and
  - (b) insurance being available in the London insurance market on reasonable terms acceptable to the Landlord.
- 9.3 The Tenant shall pay to the Landlord on demand:
- (a) the Insurance Rent;

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<sup>12</sup> This clause is for where the Landlord is responsible for insuring. Where the property forms part of a building the Landlord is retaining, the Landlord will retain responsibility for insurance and re-charge the cost of insurance to the Tenant.

- (b) any amount that is deducted or disallowed by the insurers pursuant to any excess provision in the insurance policy; and
- (c) a fair proportion of any costs that the Landlord incurs in obtaining a valuation of the Building for insurance purposes.

9.4 The Tenant shall:

- (a) procure public liability insurance and (if applicable) employees liability insurance with an insurance company to be previously approved in writing by the Landlord in a sum in each respect not being less than £5,000,000 for any one claim or series of claims arising out of one event;
- (b) provide the Landlord with such evidence as the Landlord may reasonably request in order to assess the Tenant's compliance with clause (a) within 5 working days of a request by the Landlord;
- (c) give the Landlord notice immediately if any matter occurs in relation to the Tenant or the Property that any insurer or underwriter may treat as material in deciding whether or on what terms to insure or to continue to insure the Building;
- (d) not do or omit anything as a result of which any policy of insurance of the Building or any neighbouring property may become void or voidable or otherwise prejudiced, or the payment of any policy money may be withheld, nor (unless the Tenant has previously notified the Landlord and has paid any increased or additional premium) anything as a result of which any increased or additional insurance premium may become payable;
- (e) comply at all times with the requirements and recommendations of the insurers relating to the Property and the use by the Tenant of the Common Parts;
- (f) give the Landlord immediate notice of the occurrence of any damage or loss relating to the Property arising from an Insured Risk or of any other event that might affect any insurance policy relating to the Property;
- (g) not effect any insurance of the Property (except any plate glass at the Property), but if it becomes entitled to the benefit of any insurance proceeds in respect of the Property (other than in respect of plate glass) pay those proceeds or cause them to be paid to the Landlord; and
- (h) pay the Landlord an amount equal to any insurance money that the insurers of the Building refuse to pay (in relation to the Building) by reason of any act or omission of the Tenant or any undertenant, their workers, contractors or agents or any person at the Property or the Common Parts with the actual or implied authority of any of them.

9.5 The Landlord shall, subject to obtaining all necessary planning and other consents, use all insurance money received (other than for loss of rent) in connection with any damage to the Building to repair the damage for which the money has been received or (as the case may be) in rebuilding the Building. The Landlord shall not be obliged to:

- (a) provide accommodation or facilities identical in layout or design so long as accommodation reasonably equivalent to that previously

at the Property and its access, services and amenities is provided;  
or

- (b) repair or rebuild if the Tenant has failed to pay any of the Insurance Rent; or
- (c) repair or rebuild the Building after a notice has been served pursuant to clause 9.7 or clause 9.8.

9.6 If the Property is damaged or destroyed by an Insured Risk so as to be unfit for occupation and use or if the Common Parts are damaged or destroyed by an Insured Risk so as to make the Property inaccessible or unusable then, unless the policy of insurance in relation to the Property or the Common Parts has been vitiated in whole or in part in consequence of any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property or the Common Parts with the actual or implied authority of any of them, payment of the Annual Rent, or a fair proportion of it according to the nature and extent of the damage, shall be suspended until the Property has been reinstated and made fit for occupation and use or the Common Parts have been reinstated so as to make the Property accessible or useable (as the case may be), or until the end of three years from the date of damage or destruction, if sooner.

9.7 If, following damage to or destruction of the Building, the Landlord considers that it is impossible, impractical or economically unviable to reinstate the Building, the Landlord may terminate this lease by giving notice to the Tenant. On giving notice this lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the tenant covenants of this lease. Any proceeds of the insurance (other than any insurance for plate glass) shall belong to the Landlord.

9.8 Provided that the Tenant has complied with its obligations in this clause, the Tenant may terminate this lease by giving notice to the Landlord if, following damage or destruction of the Property or the Common Parts by an Insured Risk, the Property has not been reinstated so as to be fit for occupation and use or the Common Parts have not been reinstated so as to make the Property accessible or useable within three years after the date of damage or destruction. On giving this notice this lease shall determine but this shall be without prejudice to any right or remedy of the Landlord in respect of any breach of the tenant covenants of this lease. Any proceeds of the insurance (other than any insurance for plate glass) shall belong to the Landlord.

## **10. RATES AND TAXES**

10.1 The Tenant shall pay all present and future rates, taxes and other impositions and outgoings payable in respect of the Property, its use and any works carried out there, except:

- (a) any taxes payable by the Landlord in connection with any dealing with or disposition of the reversion to this lease; or
- (b) any taxes, other than VAT and insurance premium tax, payable by the Landlord by reason of the receipt of any of the rents due under this lease.

10.2 If any rates, taxes or other impositions and outgoings are payable in respect of the Property together with other property, the Tenant shall pay a fair proportion of the amount payable.

10.3 The Tenant shall not make any proposal to alter the rateable value of the Property or that value as it appears on any draft rating list, without the approval of the Landlord.

10.4 If, after the end of the term, the Landlord loses rating relief (or any similar relief or exemption) because it has been allowed to the Tenant, then the Tenant shall pay the Landlord an amount equal to the relief or exemption that the Landlord has lost.

**11. UTILITIES**

11.1 The Tenant shall pay all costs in connection with the supply and removal of electricity, gas, water, sewage, telecommunications, data and other services and utilities to or from the Property.

11.2 If any of those costs are payable in relation to the Property together with other property, the Tenant shall pay a fair proportion of all those costs.

11.3 The Tenant shall comply with all laws and with any recommendations of the relevant suppliers relating to the use of those services and utilities.

**12. COMMON ITEMS**

12.1 The Tenant shall pay the Landlord on demand a fair proportion of all costs payable for the maintenance, repair, lighting, cleaning and renewal of all Service Media, structures and other items used or capable of being used by the Property in common with other property.

12.2 The Tenant shall comply with all reasonable regulations the Landlord may make from time to time in connection with the use of any of those Service Media, structures or other items.

**13. VAT**

13.1 All sums payable by the Tenant are exclusive of any VAT that may be chargeable. The Tenant shall pay VAT in respect of all taxable supplies made to it in connection with this lease on the due date for making any payment or, if earlier, the date on which that supply is made for VAT purposes.

13.2 Every obligation on the Tenant, under or in connection with this lease, to pay the Landlord or any other person any sum by way of a refund or indemnity, shall include an obligation to pay an amount equal to any VAT incurred on that sum by the Landlord or other person, except to the extent that the Landlord or other person obtains credit for such VAT under the Value Added Tax Act 1994.

**14. DEFAULT INTEREST AND INTEREST**

14.1 If any Annual Rent or any other money payable under this lease has not been paid by the date it is due, whether it has been formally demanded or not, the Tenant shall pay the Landlord interest on that amount at the Default Interest Rate (both before and after any judgment). Such interest shall accrue on a daily basis for the period beginning on the due date to and including the date of payment.

14.2 If the Landlord does not demand or accept any Annual Rent or other money due or tendered under this lease because the Landlord reasonably believes that the Tenant is in breach of any of the tenant covenants of this lease, then the Tenant shall, when that amount is accepted by the Landlord, also pay interest at the Interest Rate on that amount for the period beginning on the date the amount (or each part of it) became due until the date it is accepted by the Landlord.

**15. COSTS**

15.1 The Tenant shall pay the costs and expenses of the Landlord including any solicitors' or other professionals' costs and expenses incurred (both during and after the end of the term) in connection with or in contemplation of any of the following:

- (a) the enforcement of the tenant covenants of this lease;
- (b) serving any notice in connection with this lease under section 146 or 147 of the Law of Property Act 1925 or taking any proceedings under either of those sections, notwithstanding that forfeiture is avoided otherwise than by relief granted by the court;
- (c) serving any notice in connection with this lease under section 17 of the Landlord and Tenant (Covenants) Act 1995;
- (d) the preparation and service of a schedule of dilapidations in connection with this lease; or
- (e) any consent or approval applied for under this lease, whether or not it is granted (unless the consent or approval is unreasonably withheld by the Landlord in circumstances where the Landlord is not unreasonably to withhold it ).

15.2 Where the Tenant is obliged to pay or indemnify the Landlord against any solicitors' or other professionals' costs and expenses (whether under this or any other clause of this lease) that obligation extends to those costs and expenses assessed on a full indemnity basis.

**16. COMPENSATION ON VACATING**

Any right of the Tenant or anyone deriving title under the Tenant to claim compensation from the Landlord on leaving the Property under the LTA 1954 is excluded, except to the extent that the legislation prevents that right being excluded.

**17. SET-OFF**

The Annual Rent and all other amounts due under this lease shall be paid by the Tenant or any guarantor (as the case may be) in full without any set-off, counterclaim, deduction or withholding (other than any deduction or withholding of tax as required by law).

**18. [REGISTRATION OF THIS LEASE]<sup>13</sup>**

18.1 Promptly following the grant of this lease, the Tenant shall apply to register this lease at HM Land Registry. The Tenant shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly. Within one month after completion of the registration, the Tenant shall send the Landlord official copies of its title.

18.2 The Tenant shall not:

- (a) apply to HM Land Registry to designate this lease as an exempt information document;
- (b) object to an application by the Landlord to HM Land Registry to designate this lease as an exempt information document; or
- (c) apply for an official copy of any exempt information document version of this lease.

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<sup>13</sup> This clause is only required for leases over 7 years

- 18.3 Immediately after the end of the term (and notwithstanding that the term has ended), the Tenant shall make an application to close the registered title of this lease and shall ensure that any requisitions raised by HM Land Registry in connection with that application are dealt with promptly and properly; the Tenant shall keep the Landlord informed of the progress and completion of its application.]

**19. ASSIGNMENTS**

- 19.1 The Tenant shall not assign the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld.
- 19.2 The Tenant shall not assign part only of this lease.
- 19.3 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may give its consent to an assignment subject to all or any of the following conditions:
- (a) a condition that the assignor enters into an authorised guarantee agreement which:
    - (i) is in respect of all the tenant covenants of this lease;
    - (ii) is in respect of the period beginning with the date the assignee becomes bound by those covenants and ending on the date when the assignee is released from those covenants by virtue of section 5 of the Landlord and Tenant (Covenants) Act 1995;
    - (iii) imposes principal debtor liability on the assignor;
    - (iv) requires (in the event of a disclaimer of liability under this lease) the assignor to enter into a new tenancy for a term equal to the unexpired residue of the Contractual Term; and
    - (v) is otherwise in a form reasonably required by the Landlord;
  - (b) a condition that a person of financial standing acceptable to the Landlord enters into a guarantee and indemnity of the tenant covenants of this lease in such form as the Landlord may reasonably require;
  - (c) a condition that the Tenant pays to the Landlord all rents and other sums which have fallen due under this lease prior to assignment;
  - (d) a condition for the provision (at no cost of the Landlord) of a satisfactory credit appraisal;
  - (e) a condition for the provision (at no cost to the Landlord) of a satisfactory reference from a current or former landlord;
  - (f) a condition for the provision (at no cost to the Landlord) of a Disclosure and Barring Service check (or such other check as may replace the DBS check from time to time);
  - (g) a condition regarding remedial works required by the Landlord;
  - (h) a condition that if at any time prior to assignment any of the circumstances in clause 19.4 apply the Landlord may revoke its consent by written notice to the Tenant.
- 19.4 The Landlord and the Tenant agree that for the purposes of section 19(1A) of the Landlord and Tenant Act 1927 the Landlord may refuse its consent



to an assignment if any of the following circumstances exist at the date of the Tenant's application for consent to assign this lease:

- (a) the Annual Rent or any other money due under this lease is outstanding or there has been a material breach of covenant by the Tenant that has not been remedied;
- (b) in the Landlord's reasonable opinion the assignee is not of sufficient financial standing to enable it to comply with the Tenant's covenants and conditions contained in the lease; or
- (c) in the Landlord's reasonable opinion the assignee is unlikely to comply clause 3;
- (d) the assignee and the Tenant are group companies within the meaning of section 42 of the LTA 1954.

19.5 Nothing in this clause shall prevent the Landlord from giving consent subject to any other reasonable condition, nor from refusing consent to an assignment in any other circumstance where it is reasonable to do so.

## **20. UNDERLETTINGS**

20.1 The Tenant shall not underlet the whole of the Property except in accordance with this clause nor without the consent of the Landlord, such consent not to be unreasonably withheld.

20.2 The Tenant shall not underlet part only of the Property.<sup>14</sup>

20.3 The Tenant shall not underlet the Property:

- (a) together with any property or any right over property that is not included within this lease;
- (b) at a fine or premium or reverse premium; nor
- (c) allowing any rent free period to the undertenant that exceeds the period as is then usual in the open market in respect of such a letting.

20.4 The Tenant shall not underlet the Property unless, before the underlease is granted, the Tenant has given the Landlord:

- (a) a certified copy of the notice served on the undertenant, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy to be created by the underlease; and
- (b) a certified copy of the declaration or statutory declaration made by the undertenant in accordance with the requirements of section 38A(3)(b) of the LTA 1954.

20.5 Any underletting by the Tenant shall be by deed and shall include:

- (a) an agreement between the Tenant and the undertenant that the provisions of sections 24 to 28 of the LTA 1954 are excluded from applying to the tenancy created by the underlease;
- (b) the reservation of a rent which is not less than the full open market rental value of the Property at the date the Property is underlet and which is payable at the same times as the Annual Rent under this lease (but this shall not prevent an underlease providing for a rent-free period of a length permitted by clause 20.3(c));

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<sup>14</sup> Underletting of part may be permitted if the layout of the property lends itself to subdivision.

- (c) provisions for the review of rent at the same dates and on the same basis as the review of rent in this lease, unless the term of the underlease does not extend beyond the next Review Date;
- (d) a covenant by the undertenant, enforceable by and expressed to be enforceable by the Landlord (as superior landlord at the date of grant) and its successors in title in their own right, to observe and perform the tenant covenants in the underlease and any document that is supplemental or collateral to it and the tenant covenants in this lease, except the covenants to pay the rents reserved by this lease; and
- (e) provisions requiring the consent of the Landlord to be obtained in respect of any matter for which the consent of the Landlord is required under this lease,

and shall otherwise be consistent with and include tenant covenants no less onerous (other than as to the Annual Rent) than those in this lease and in a form approved by the Landlord, such approval not to be unreasonably withheld.

20.6 In relation to any underlease granted by the Tenant, the Tenant shall:

- (a) not vary the terms of the underlease nor accept a surrender of the underlease without the consent of the Landlord, such consent not to be unreasonably withheld;
- (b) enforce the tenant covenants in the underlease and not waive any of them nor allow any reduction in the rent payable under the underlease; and
- (c) ensure that in relation to any rent review the revised rent is not agreed without the approval of the Landlord, such approval not to be unreasonably withheld.

## **21. SHARING OCCUPATION**

The Tenant may share occupation of the Property with any company that is a member of the same group (within the meaning of section 42 of the LTA 1954) as the Tenant for as long as that company remains within that group and provided that no relationship of landlord and tenant is established by that arrangement.

## **22. CHARGING**

22.1 The Tenant shall not charge the whole of this lease without the consent of the Landlord, such consent not to be unreasonably withheld.

22.2 The Tenant shall not charge part only of this lease.

## **23. PROHIBITION OF OTHER DEALINGS**

Except as expressly permitted by this lease, the Tenant shall not assign, underlet, charge, part with or share possession or share occupation of this lease or the Property or hold the lease on trust for any person (except pending registration of a dealing permitted by this lease at HM Land Registry or by reason only of joint legal ownership).

## **24. REGISTRATION AND NOTIFICATION OF DEALINGS AND OCCUPATION**

24.1 In this clause a **Transaction** is:

- (a) any dealing with this lease or the devolution or transmission of, or parting with possession of any interest in it;

- (b) the creation of any underlease or other interest out of this lease, or out of any interest, underlease derived from it, and any dealing, devolution or transmission of, or parting with possession of any such interest or underlease; or
  - (c) the making of any other arrangement for the occupation of the Property.
- 24.2 In respect of every Transaction that is registrable at HM Land Registry, the Tenant shall promptly following completion of the Transaction apply to register it (or procure that the relevant person so applies). The Tenant shall (or shall procure that) any requisitions raised by HM Land Registry in connection with an application to register a Transaction are dealt with promptly and properly. Within one month of completion of the registration, the Tenant shall send the Landlord official copies of its title (and where applicable of the undertenant's title).
- 24.3 No later than one month after a Transaction the Tenant shall:
  - (a) give the Landlord's solicitors notice of the Transaction;
  - (b) deliver two certified copies of any document effecting the Transaction to the Landlord's solicitors; and
  - (c) pay the Landlord's solicitors a registration fee of £50 (plus VAT)].
- 24.4 If the Landlord so requests, the Tenant shall promptly supply the Landlord with full details of the occupiers of the Property and the terms upon which they occupy it.

## **25. REPAIRS**

- 25.1 The Tenant shall:
  - (a) keep the Property clean and tidy and in good repair and condition PROVIDED THAT the Tenant shall be under no obligation to maintain the Property in any better state of repair and condition as evidenced by the attached Schedule of Condition and shall ensure that any Service Media within and exclusively serving the Property is kept in good working order;
  - (b) keep any part of the Property not built upon adequately surfaced in a good condition;
  - (c) [keep any charging mechanisms installed at the Property in good working order]<sup>15</sup>;
  - (d) keep the Property free from weeds (including invasive species) and all landscaped areas forming part of the Property properly cultivated
- 25.2 [The Tenant must empty when necessary, maintain, repair and renew the septic tank serving the Property and the pipes connecting the septic tank to the Property. The Tenant must ensure the septic tank does not overflow onto or cause an actionable nuisance to the Landlord or any owner or occupier of any neighbouring property.]<sup>16</sup>
- 25.3 The Tenant must keep a maintenance and compliance programme for the upkeep of the Property and a written record of all structural, annual and other inspections undertaken as part of the maintenance and compliance

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<sup>15</sup> Only effects those toilets which currently have charging mechanisms installed.

<sup>16</sup> Relevant to public conveniences served by septic tanks only.

programme and provide a copy of all inspections or reports to the Landlord within 5 working days of request.

- 25.4 The Tenant must ensure that all inspections and works are carried by suitably qualified professionals.

**26. DECORATION AND CLEANING**

- 26.1 The Tenant shall decorate the outside and the inside of the Property as often as is reasonably necessary and also in the last three months before the end of the term.

- 26.2 All decoration shall be carried out in a good and proper manner using good quality materials that are appropriate to the Property and the Permitted Use and shall include all appropriate preparatory work.

- 26.3 All decoration carried out in the last three months of the term shall also be carried out to the satisfaction of the Landlord and using materials, designs and colours approved by the Landlord.

**27. ALTERATIONS**

- 27.1 The Tenant shall not make any external or structural alteration or addition to the Property without the consent of the Landlord, such consent not to be unreasonably withheld where the Tenant maintains an adequate provision of public conveniences within the Property.

- 27.2 The Tenant shall not install any Service Media on the exterior of the Property nor alter the route of any Service Media at the Property without the consent of the Landlord, such consent not to be unreasonably withheld.

**28. SIGNS**

- 28.1 In this clause **Signs** include signs, fascia, placards, boards, posters and advertisements.

- 28.2 The Tenant shall not attach any Signs to the exterior of the Property or display any inside the Property so as to be seen from the outside except Signs of a design, size and number and in a position that are appropriate to the Property and the Permitted Use.

- 28.3 Before the end of the term, the Tenant shall remove any Signs placed by it at the Property and shall make good any damage caused to the Property by that removal.

**29. RETURNING THE PROPERTY TO THE LANDLORD**

- 29.1 At the end of the term the Tenant shall return the Property to the Landlord in the repair and condition required by this lease.

- 29.2 If the Landlord gives the Tenant notice no later than three months before the end of the term, the Tenant shall remove items it has fixed to the Property, remove any alterations it has made to the Property and make good any damage caused to the Property by that removal.

- 29.3 At the end of the term, the Tenant shall remove from the Property all chattels belonging to or used by it.

- 29.4 The Tenant irrevocably appoints the Landlord to be the Tenant's agent to store or dispose of any chattels or items it has fixed to the Property and which have been left by the Tenant on the Property for more than ten working days after the end of the term. The Landlord shall not be liable to the Tenant by reason of that storage or disposal. The Tenant shall indemnify the Landlord in respect of any claim made by a third party in relation to that storage or disposal.

- 29.5 If the Tenant does not comply with its obligations in this clause, then, without prejudice to any other right or remedy of the Landlord, the Tenant shall pay the Landlord an amount equal to the Annual Rent at the rate reserved immediately before the end of the term for the period that it would reasonably take to put the Property into the condition it would have been in had the Tenant performed its obligations under this clause. The amount shall be a debt due on demand from the Tenant to the Landlord.

**30. USE**

- 30.1 The Tenant shall not use the Property for any purpose other than the Permitted Use.
- 30.2 The Tenant shall observe all regulations made from time to time by the Landlord in accordance with the principles of good estate management relating to the use of the Property.
- 30.3 The Tenant shall not use the Property for any illegal purpose nor for any purpose or in a manner that would cause loss, damage, injury, nuisance or inconvenience to the Landlord, its other tenants or any other owner or occupier of neighbouring property.
- 30.4 The Tenant shall not overload any structural part of the Property nor any machinery or equipment at the Property nor any Service Media at or serving the Property.
- 30.5 The Tenant shall not use the Property for any purpose or in a manner that could lead to people being drawn into terrorism (as defined in section 35 of the Counter Terrorism and Security Act 2015).

**31. COMPLIANCE WITH LAWS**

- 31.1 The Tenant shall comply with all laws relating to:
- (a) the Property and the occupation and use of the Property by the Tenant;
  - (b) the use or operation of all Service Media and machinery and equipment at or serving the Property whether or not used or operated, and shall, where necessary, replace or convert such Service Media within or exclusively serving the Property so that it is capable of lawful use or operation;
  - (c) any works carried out at the Property; and
  - (d) all materials kept at or disposed from the Property.
- 31.2 Without prejudice to any obligation on the Tenant to obtain any consent or approval under this lease, the Tenant shall carry out all works that are required under any law to be carried out at the Property whether by the owner or the occupier.
- 31.3 Within five working days after receipt of any notice or other communication affecting the Property (and whether or not served pursuant to any law) the Tenant shall:
- (a) send a copy of the relevant document to the Landlord; and
  - (b) take all steps necessary to comply with the notice or other communication and take any other action in connection with it as the Landlord may require.
- 31.4 The Tenant shall not apply for any planning permission for the Property without the Landlord's consent not to be unreasonably withheld.

- 31.5 The Tenant shall comply with its obligations under the CDM Regulations, including all requirements in relation to the provision and maintenance of a health and safety file. The Tenant shall maintain the health and safety file for the Property in accordance with the CDM Regulations and shall give it to the Landlord at the end of the term.
- 31.6 The Tenant shall supply all information to the Landlord that the Landlord reasonably requires from time to time to comply with the Landlord's obligations under the CDM Regulations.
- 31.7 As soon as the Tenant becomes aware of any defect in the Property, it shall give the Landlord notice of it. The Tenant shall indemnify the Landlord against any liability under the Defective Premises Act 1972 in relation to the Property by reason of any failure of the Tenant to comply with any of the tenant covenants in this lease.
- 31.8 The Tenant shall keep the Property equipped with all fire prevention, detection and fighting machinery and equipment and fire alarms which are required under all relevant laws or required by the insurers of the Property or reasonably recommended by them or reasonably required by the Landlord and shall keep that machinery, equipment and alarms properly maintained and available for inspection.
- 31.9 The Tenant shall not commission an Energy Performance Certificate for the Property without the consent of the Landlord, such consent not to be unreasonably withheld.
- 31.10 The Tenant shall provide the Landlord with details of any employees to whom the Transfer of Undertakings (Protection of Employment) Regulations 2006 may apply should the term come to an end and the Landlord continue to provide a public convenience from the Property.

**32. ENCROACHMENTS, OBSTRUCTIONS AND ACQUISITION OF RIGHTS**

- 32.1 The Tenant shall not grant any right or licence over the Property to a third party.
- 32.2 If a third party makes or attempts to make any encroachment over the Property or takes any action by which a right may be acquired over the Property, the Tenant shall:
- (a) immediately inform the Landlord and shall give the Landlord notice of that encroachment or action; and
  - (b) take all steps (including any proceedings) the Landlord reasonably requires to prevent or license the continuation of that encroachment or action.
- 32.3 The Tenant shall not obstruct the flow of light or air to the Property nor obstruct any means of access to the Property.
- 32.4 The Tenant shall not make any acknowledgement that the flow of light or air to the Property or that the means of access to the Property is enjoyed with the consent of any third party.
- 32.5 If any person takes or threatens to take any action to obstruct the flow of light or air to the Property or obstruct the means of access to the Property, the Tenant shall:
- (a) immediately inform the Landlord and shall give the Landlord notice of that action; and
  - (b) take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the obstruction.

- 32.6 If any invasive plant species encroaches or threatens to encroach upon any part of the Property the Tenant shall:
- (a) immediately notify the Landlord; and
  - (b) take all steps (including proceedings) the Landlord reasonably requires to prevent or secure the removal of the encroachment.

**33. BREACH OF REPAIR AND MAINTENANCE OBLIGATION**

- 33.1 The Landlord may enter the Property to inspect its condition and state of repair and may give the Tenant a notice of any breach of any of the tenant covenants in this lease relating to the condition or repair of the Property.
- 33.2 If the Tenant has not begun any works needed to remedy that breach within two months following that notice (or if works are required as a matter of emergency, then immediately) or if the Tenant is not carrying out the works with all due speed, then the Landlord may enter the Property and carry out the works needed.
- 33.3 The costs incurred by the Landlord in carrying out any works pursuant to this clause (and any professional fees and any VAT in respect of those costs) shall be a debt due from the Tenant to the Landlord and payable on demand.
- 33.4 Any action taken by the Landlord pursuant to this clause shall be without prejudice to the Landlord's other rights, including those under clause 37.

**34. INDEMNITY**

The Tenant shall keep the Landlord indemnified against all liabilities, expenses, costs (including but not limited to any solicitors' or other professionals' costs and expenses), claims, damages and losses (including but not limited to any diminution in the value of the Landlord's interest in the Property and loss of amenity of the Property) suffered or incurred by the Landlord arising out of or in connection with any breach of any tenant covenants in this lease, or any act or omission of the Tenant, any undertenant or their respective workers, contractors or agents or any other person on the Property with the actual or implied authority of any of them.

**35. LANDLORD'S COVENANT FOR QUIET ENJOYMENT**

The Landlord covenants with the Tenant, that, so long as the Tenant pays the rents reserved by and complies with its obligations in this lease, the Tenant shall have quiet enjoyment of the Property without any interruption by the Landlord or any person claiming under the Landlord except as otherwise permitted by this lease.

**36. [GUARANTEE AND INDEMNITY<sup>17</sup>**

- 36.1 [If an Act of Insolvency occurs in relation to a guarantor, or if any guarantor (being an individual) dies or becomes incapable of managing his affairs the Tenant shall, if the Landlord requests, procure that a person of standing acceptable to the Landlord, within 30 working days of that request, enters into a replacement or additional guarantee and indemnity of the tenant covenants of this lease in the same form as that entered into by the former guarantor.
- 36.2 Clause 36.1 shall not apply in the case of a person who is guarantor by reason of having entered into an authorised guarantee agreement.

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<sup>17</sup> Only required where the tenant has provided a guarantor.

- 36.3 For so long as any guarantor remains liable to the Landlord, the Tenant shall, if the Landlord requests, procure that that guarantor joins in any consent or approval required under this lease and consents to any variation of the tenant covenants of this lease.

**37. RE-ENTRY AND FORFEITURE**

- 37.1 The Landlord may re-enter the Property (or any part of the Property in the name of the whole) at any time after any of the following occurs:
- (a) any rent is unpaid 21 days after becoming payable whether it has been formally demanded or not;
  - (b) any breach of any condition of, or tenant covenant in, this lease;
  - (c) an Act of Insolvency.
- 37.2 If the Landlord re-enters the Property (or any part of the Property in the name of the whole) pursuant to this clause, this lease shall immediately end, but without prejudice to any right or remedy of the Landlord in respect of any breach of covenant by the Tenant or any guarantor.
- 37.3 Before commencing any proceedings for forfeiture of this lease, the Landlord shall<sup>18</sup>:
- (a) Give notice of the breach complained of to any mortgagee of this lease of whom the Landlord has received notice; and
  - (b) if the mortgagee confirms in writing to the Landlord within 28 days of the notice that it wishes to remedy the breach, allow the mortgagee 28 days (or such longer time as may be reasonable in view of the nature of the breach) to remedy the breach.

**38. JOINT AND SEVERAL LIABILITY**

- 38.1 Where the Tenant comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of the Tenant arising under this lease. The Landlord may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.
- 38.2 Where a guarantor comprises more than one person, those persons shall be jointly and severally liable for the obligations and liabilities of a guarantor arising under this lease. The Landlord may take action against, or release or compromise the liability of, or grant time or other indulgence to, any one of those persons without affecting the liability of any other of them.
- 38.3 The obligations of the Tenant and any guarantor arising by virtue of this lease are owed to the Landlord and the obligations of the Landlord are owed to the Tenant.
- 38.4 The Landlord shall not be liable to the Tenant for any failure of the Landlord to perform any landlord covenant in this lease, unless and until the Tenant has given the Landlord notice of the failure and the Landlord has not remedied the failure within a reasonable time of service of that notice.

**39. ENTIRE AGREEMENT**

- 39.1 This lease constitutes the whole agreement between the parties and supersedes all previous discussions, correspondence, negotiations,

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<sup>18</sup> This clause is relevant for terms over 50 years where finance may be secured on the property.



arrangements, understandings and agreements between them relating to its subject matter.

- 39.2 Each party acknowledges that in entering into this lease and any documents annexed to it it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) other than those contained in any written replies that the Landlord's solicitors have given to any written enquiries raised by the Tenant's solicitors before the date of this lease and IT IS HEREBY AGREED AND DECLARED that in light of the decision in *William Sindall plc v Cambridgeshire County Council* (1993) the replies given by the Landlord's solicitor to any preliminary enquiries raised by the Tenant or the Tenant's solicitor are provided from the Property Services records and deeds of the Landlord and not from any other records that may be held by other services or departments of the Landlord. Neither the Landlord nor the Landlord's solicitor have made any further enquiries into such matters and such replies are given on this basis. The Tenant must therefore rely on its own direct enquiries with other services or departments of the Landlord.
- 39.3 Nothing in this lease constitutes or shall constitute a representation or warranty that the Property may lawfully be used for any purpose allowed by this lease.
- 39.4 Nothing in this clause shall limit or exclude any liability for fraud.

**40. NOTICES, CONSENTS AND APPROVALS**

- 40.1 Except where this lease specifically states that a notice need not be in writing, any notice given under or in connection with this lease shall be:
- (a) in writing and for the purposes of this clause a fax or an e-mail are not in writing; and
  - (b) give by hand or by pre-paid first-class post or other next working day delivery service at the party's registered office address (if the party is a company) or (in any other case) at the party's principal place of business.
- 40.2 If a notice complies with the criteria in clause 40.1, whether or not this lease requires that notice to be in writing, it shall be deemed to have been received:
- (a) if delivered by hand, at the time the notice is left at the proper address;
  - (b) if sent by pre-paid first-class post or other next working day delivery service, on the second working day after posting.
- 40.3 This clause does not apply to the service of any proceedings or other documents in any legal action or, where applicable, any arbitration or other method of dispute resolution.
- 40.4 Section 196 of the Law of Property Act 1925 shall otherwise apply to notices given under this lease.
- 40.5 Where the consent of the Landlord is required under this lease, a consent shall only be valid if it is given by deed, unless:
- (a) it is given in writing and signed by the Landlord or a person duly authorised on its behalf; and
  - (b) it expressly states that the Landlord waives the requirement for a deed in that particular case.

If a waiver is given, it shall not affect the requirement for a deed for any other consent.

40.6 Where the approval of the Landlord is required under this lease, an approval shall only be valid if it is in writing and signed by or on behalf of the Landlord, unless:

- (a) the approval is being given in a case of emergency; or
- (b) this lease expressly states that the approval need not be in writing.

40.7 If the Landlord gives a consent or approval under this lease, the giving of that consent or approval shall not imply that any consent or approval required from a third party has been obtained, nor shall it obviate the need to obtain any consent or approval from a third party.

**41. GOVERNING LAW**

This lease and any dispute or claim arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) shall be governed by and construed in accordance with the law of England and Wales.

**42. JURISDICTION**

Each party irrevocably agrees that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim arising out of or in connection with this lease or its subject matter or formation (including non-contractual disputes or claims).

**43. EXCLUSION OF SECTIONS 24-28 OF THE LTA 1954**

43.1 The parties confirm that:

- (a) the Landlord served a notice on the Tenant, as required by section 38A(3)(a) of the LTA 1954, applying to the tenancy created by this lease, not less than 14 days before this lease was entered into;
- (b) [the Tenant/< >] who was duly authorised by the Tenant to do so] made a declaration dated 2015 in accordance with the requirements of section 38A(3)(b) of the LTA 1954; and
- (c) there is no agreement for lease to which this lease gives effect.

43.2 The parties agree that the provisions of sections 24 to 28 of the LTA 1954 are excluded in relation to the tenancy created by this lease.

**44. CONTRACTS (RIGHTS OF THIRD PARTIES) ACT 1999**

A person who is not a party to this lease shall not have any rights under the Contracts (Rights of Third Parties) Act 1999 to enforce any term of this lease. This does not affect any right or remedy of a third party which exists, or is available, apart from that Act.

This document has been executed as a deed and is delivered and takes effect on the date stated at the beginning of it.

## **Schedule 1 The Property**

### **Option 1:<sup>19</sup>**

The land and buildings known as the public conveniences at [< >] shown edged red on the Plan

### **Option 2:<sup>20</sup>**

The land and buildings known as the public conveniences at [< >] shown edged red on the Plan but excluding any Service Media in, on, under or over the building (whether in existence at the date of this lease or installed in the future) that are used by the building in common with any other part of the Landlord's Neighbouring Property.

### **Option 3:<sup>21</sup>**

The public conveniences on the ground floor of the Building (the floor plan of which is shown edged red on the Plan) bounded by and including:

- (a) the floor screed;
- (b) the plasterwork of the ceiling;
- (c) the interior plasterwork and finishes of exterior walls and columns;
- (d) the plasterwork and finishes of the interior structural walls and columns that adjoin the internal parts of the Building;
- (e) one half of the thickness of the interior, non-structural walls and columns that adjoin the internal parts of the Building;
- (f) the doors and windows and their frames and fittings;

but excluding all Service Media within that part of the Building but which do not exclusively serve that part of the Building

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<sup>19</sup> Where the lease is for the whole of the Landlord's ownership

<sup>20</sup> Where the lease is for a stand alone until within the Landlord's wider land ownership

<sup>21</sup> Where the lease is for a unit within a building

## **Schedule 2 Rent Review**

### **1. INTERPRETATION**

In this Schedule, the following words and expressions have the following meanings:

**Gross Turnover:** the amount calculated in accordance with paragraph 3 of this Schedule.

**Records:** all accounts, documents, records, books, ledgers, cash till receipts, bank statements, tapes, discs, files, folders, vouchers, VAT returns, computer data or other evidence that the Tenant keeps, or should reasonably keep, for the purpose of accurately ascertaining and demonstrating the Gross Turnover.

**Turnover Certificate:** a certificate signed by a professionally qualified independent auditor or accountant appointed by the Tenant accurately certifying:

- (a) the Gross Turnover for the relevant Turnover Period;
- (b) the number of Trading Days in that Turnover Period; and
- (c) the number of Trading Days on which the Property was open for trade during that Turnover Period.

**Turnover Period:** the month months immediately prior to the relevant Review Date.

**Turnover Rent Percentage:** 5%

### **2. RENT REVIEW**

The Annual Rent shall be reviewed on each Review Date to equal:

- (a) the Annual Rent payable immediately before that Review Date (or which would then be payable but for any abatement or suspension of the Annual Rent or restriction on the right to collect it); or, if greater,
- (b) 5% of the Gross Turnover for the Turnover Period.

### **3. GROSS TURNOVER**

3.1 The Gross Turnover shall be the total amount of all sums of money and the value of any other consideration received or receivable for all:

- (a) goods sold, hired, leased or otherwise disposed of;
- (b) services sold or performed; and
- (c) business of whatever nature carried out;

in whole or in part at, in or from the Property by the Tenant or any other person.

3.2 For the avoidance of doubt, the amounts specified in paragraph 3.1 shall include those from:

- (a) orders accepted, received or processed at, or originating from the Property whether in person, by post, telephone, e-mail, internet or any other means including:
  - (i) those wholly or partly fulfilled or performed at, or from, another location;

- (ii) those where payment is made in whole or in part to a person other than the Tenant;
    - (iii) those obtained or taken at another location by persons based at, or operating from the Property; and
    - (iv) those made by vending machines and electronic or mechanical devices situated at the Property.
  - (b) deposits not refunded to customers;
  - (c) charges made by the Tenant for delivery, insurance or postal services in relation to an order;
  - (d) sales of service contracts, guarantees and extended warranties;
  - (e) the full sale price of any goods or services sold:
    - (i) where payment is made fully or partly in kind or by way of exchange of goods;
    - (ii) to an employee or employee's family, disregarding any discount that may be allowed by the Tenant; and
    - (iii) on a credit, instalment, hire purchase or lease purchase basis, even though the Tenant may not yet have received full payment.
- 3.3 The following sums shall not be included in the Gross Turnover referred to in paragraph 3.1:
- (a) all VAT and excise or sales tax directly imposed on and paid or accounted for by the Tenant in relation to the supply of goods and services at, in, or from the Property; and
  - (b) any cash refund or credit given to a customer in respect of returned goods or unsatisfactory services to the extent only that the amount of the cash refund or credit does not exceed the amount included in the Gross Turnover in respect of the sale of those goods or services.
- 3.4 If the Property is closed for trading on a Trading Day during a Turnover Period, the Gross Turnover for that day shall be deemed to be equivalent to the average daily Gross Turnover for those days that the Property was open for trading during that Turnover Period.

#### **4. TENANT TO KEEP RECORDS**

- 4.1 The Tenant shall keep the Records throughout the Term.
- 4.2 The Tenant shall make the Records available for inspection upon reasonable request at any time by the Landlord, its accountants or authorised agents.
- 4.3 The Landlord may, in its discretion, arrange for the Records in respect of any Turnover Period to be audited by a professionally qualified independent auditor or accountant appointed by the Landlord.

#### **5. CONFIDENTIALITY**

- 5.1 The Landlord undertakes that it shall not disclose to any person any confidential information concerning the business, affairs, customers, clients or suppliers of the Tenant, except as permitted by paragraph 5.2.
- 5.2 The Landlord may disclose the Tenant's confidential information:

- (a) to the Landlord's employees, officers, representatives or advisers who need to know such information for the purposes of carrying out the Landlord's rights and obligations under this lease;
  - (b) as may be required by law, court order or any governmental or regulatory authority; and
  - (c) to such extent as may be necessary in connection with a proposed disposition of the Landlord's interest in the Building.
- 5.3 The Landlord shall not otherwise use the Tenant's confidential information for any purpose other than to perform the Landlord's rights and obligations under this lease.

**6. DISPUTES**

If any question or dispute shall arise between the parties as to the amount of the Gross Turnover that is due, the question or dispute shall be referred to an arbitrator appointed jointly by the parties. If the parties cannot agree on the arbitrator's identity, the arbitrator shall be appointed on either party's request by the President of the Institute of Chartered Accountants in England and Wales. The arbitrator shall act in accordance with the Arbitration Act 1996 and the costs of the arbitration shall be payable by the parties in the proportions determined by the arbitrator (or if the arbitrator makes no direction, then equally).

**Schedule 3 Public Conveniences Management**

*Insert details from the business case submitted to cover:*

- *Opening patterns*
- *Cleaning and management*
- *Health & Safety*