

## LICENCE TO OCCUPY DRAFT

THIS LICENCE is dated

### PARTIES

(1) Nimbuscare Ltd (company registration number 09604277) whose registered office is at 2 Oak Rise, York, England, YO24 4LJ ("Licensor")

(2) The Council of the City of York of West Offices, Station Rise, York, YO1 6GA ("Licensee")

### Relating To

The Mental Health Hub at Acomb Garth Community Care Centre

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## AGREED TERMS

### 1. Interpretation

1.1 The definitions and rules of interpretation in this clause apply in this agreement:

- **Building:** All land and buildings known as Acomb Garth Community Care Centre, 2 Oak Rise, Acomb, York YO24 4LJ.
- **Lease:** a lease dated 1 July 2022 between NHS Property Services Limited and Nimbuscare Limited registered at HM Land Registry with title number NYK496856 and all documents supplemental to it.
- **Licence Fee Commencement Date:**
- **Necessary Consents:** all planning permissions and all other consents, licences, permissions, certificates, authorisations and approvals whether of a public or private nature which shall be required by any Competent Authority for the Permitted Use;
- **Property:** The part of the Building known as the mental health hub shown edged red on the attached plan (comprising 130m2) which shall include all fixtures and fittings and plant and machinery therein.
- **Permitted Hours:** The Licensee is permitted 24 hour access to the Property 7 days a week.
- **Licence Fee:** The amount of £75,000 (exclusive of VAT) per annum
- **Permitted Use:** Healthcare and clinical services within Use Class E(e) of the Town and Country Planning (Use Classes) Order 1987 as at the date this licence is granted

provided that the use of any part of the Property as a retail and/or dispensing pharmacy shall be prohibited.

- **Licence Period:** the period from and including {●} 2025 until this licence is terminated in accordance with clause 5.
  - **Common Parts:** such roads, paths, entrance halls, corridors, lifts, staircases, landing and other means of access in or upon the Building the use of which is reasonably required for obtaining access to and egress from the Property and other parts of the Building which the Licensee has the right to access under the terms of this licence.
  - **Plan 1:** the Plan attached to this licence marked “Plan 1”.
  - **Plan 2:** the Plan attached to this licence marked “Plan 2”.
  - **Plan 3:** the Plan attached to this licence marked “Plan 3”.
  - **Service Media:** all media for the supply or removal of heat, electricity, gas, water, sewage, air conditioning, energy, telecommunications, data and all other services and utilities and all structures, machinery and equipment ancillary to those media.
  - **Superior Landlord:** the landlord under the Lease.
- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this licence.
- 1.3 A “**person**” includes a natural person, corporate or unincorporated body (whether or not having separate legal personality).
- 1.4 The schedule forms part of this licence and shall have effect as if set out in full in the body of this licence. Any reference to this licence includes the schedule.
- 1.5 Unless the context otherwise requires, words in the singular shall include the plural and in the plural shall include the singular.
- 1.6 Unless the context otherwise requires, a reference to one gender shall include a reference to the other genders.
- 1.7 Unless expressly provided otherwise in this agreement, a reference to legislation or a legislative provision is a reference to it as amended, extended or re-enacted from time to time.
- 1.8 Unless expressly otherwise in this agreement, a reference to legislation or a legislative provision shall include all subordinate legislation made from time to time under that legislation or legislative provision.
- 1.9 A reference to “**writing**” or “**written**” excludes fax and email.
- 1.10 Any obligation on a party not to do something includes an obligation not to allow that thing to be done and an obligation to use reasonable endeavours to prevent that thing being done by another person.

- 1.11 References to clauses and Schedules are to the clauses and Schedules of this licence and references to paragraphs are to paragraphs of the relevant Schedule.
- 1.12 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.
- 1.13 A “**working day**” is any day which is not a Saturday, a Sunday, a bank holiday or a public holiday in England.

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## 2. Licence to Occupy

- 2.1 Subject to clause 3 and clause 4 of this licence, the Licenser permits the Licensee to:
- 2.1.1 occupy the Property for the Permitted Use for the Licence Period during the Permitted Hours; and
- 2.1.2 access and use the Common Parts as reasonably required for the Permitted Use in common with the Licenser and all others authorised by the Licenser (so far as not inconsistent with the rights given to the Licensee) to use the Property for the Permitted Use together with the rights mentioned in this licence.

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### 2.2 No Landlord-Tenant Relationship:

The Licensee acknowledges and agrees that:

- 2.2.1 the Licensee shall occupy the Property as a licensee and that no relationship of landlord and tenant is created between the Licenser and the Licensee by this licence;
- 2.2.2 the Licenser retains control, possession and management of the Property and the Licensee has no right to exclude the Licenser from the Property;
- 2.2.3 the licence to occupy granted by this agreement is not personal to the Licensee and the Licensee may share occupation of the Property with Tees Esk and Wear Valleys NHS Foundation Trust, York Mind, York Carers Centre and any other GPs, private organisations and associated health personnel who are supporting the Licensee in delivering services at the Property (“Licensee’s Partners”) and the rights given by this clause 2 can be exercised by the Licensee, its employees and the Licensee’s Partners ;

### 2.3 Hosting and Regulated Activities:

Hosting occurs when one provider makes facilities available to another provider to enable it to carry on a regulated activity. In some cases, this may also include support staff such as reception, catering, and housekeeping.

- 2.3.1 The provider (Licensee) carrying on the regulated activity must register as a provider. The host (Licensor) is not required to register for the regulated activity.
- 2.3.2 The Licensor may request assurance on the Licensee's regulated activity in form a due diligence checklist

CQC regulated activities will not be carried out under the Licensor's CQC's regulation. The Licensee is solely responsible for ensuring that all activities carried out under this Licence comply with applicable Care Quality Commission (CQC) regulations. The Licensee must provide the Licensor with evidence of its CQC registration and compliance upon request. Any failure by the Licensee to maintain proper registration, or any investigation by CQC related to non-compliance, must be reported to the Licensor within 7 days of the Licensee becoming aware of such issue. The Licensor reserves the right to terminate this Licence immediately if the Licensee's non-compliance with CQC regulations presents a risk to the Licensor or the wider operation of the premises.

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### **3. Licensee's Responsibilities**

- 3.1 The Licensee agrees and undertakes to pay to the Licensor the Licence Fee payable without any deduction in advance on the each quarter date (1 January, 1 April, 1 July and 1 October) and proportionately for any period of less than a month the first such payment being for the period from and including the Licence Fee Commencement Date to the end of the quarter following such date to be made on the date of this licence together with such VAT as may be chargeable on the licence fee.
- 3.2 The Licence Fee is inclusive of all outgoings, insurance, utilities, telecommunications, data and other services and utilities in respect of the Property (including for the avoidance of doubt any services provided by the Licensor and/or the Superior Landlord).
- 3.3 Use and Maintenance
  - 3.3.1 To keep the Property in a clean and, tidy condition and clear of rubbish.
  - 3.3.2 To use the Property solely for the Permitted Use.
  - 3.3.3 To comply with all relevant laws, regulations, and professional standards applicable to the Permitted Use.
  - 3.3.4 Report any damage or faults in the Property, or Common Parts or Building to the Licensor as soon as reasonably practicable.
- 3.4 Prohibited Activities
  - 3.4.1 Not to do or permit to be done on the Property anything which is illegal or which may be or become a nuisance (whether actionable or not), annoyance, inconvenience or disturbance to the Licensor or to other tenants or occupiers of the Building or any owner or occupier of neighbouring property.

- 3.4.2 Not to cause or permit to be caused any damage to:
- 3.4.2.1 the Property, Building or any neighbouring property; or
  - 3.4.2.2 any property of the owners or occupiers of the Property, Building or any neighbouring property.
- 3.4.3 Not obstruct the Common Parts make them dirty, untidy or leave any rubbish on them.
- 3.4.4 Not to do anything that will or might constitute a breach of any Necessary Consents affecting the Property or which will or might vitiate in whole or in part any insurance effected by the Licensor in respect of the Property and Building from time to time.
- 3.5 Not apply for planning permission or other consents related to the Property.
- 3.6 The Licensee must ensure that all equipment provided is used in accordance with manufacturer's instructions and any fault / damage /injury incurred as a consequence of misuse or deliberate destruction will not be the responsibility or liability of the Licensor.
- 3.7 All equipment faults must be reported to building management as soon as reasonably practicable.
- 3.8 Insurance and Liability
- 3.8.1 The Licensee must obtain and maintain at all times appropriate insurance for the Licensee's contents, professional indemnity, and third-party liability. The Licensee shall provide the Licensor with a valid certificate of insurance upon commencement of this Licence and thereafter on an annual basis, or upon request by the Licensor (but not more than once a year).
  - 3.8.2 To indemnify the Licensor and keep the Licensor indemnified against all losses, claims, demands, actions, proceedings, damages, costs, expenses or other liability in any way arising from:
    - 3.8.2.1 this licence;
    - 3.8.2.2 any breach of the Licensee's undertakings contained in this Licence; and/or
    - 3.8.2.3 the exercise of any rights given in this Licence
- provided that this indemnity shall not cover the Licensor to the extent that such loss, claim, demand, action, proceedings, damage, cost, expense or liability under it results from the Licensor's act, omission or default [(or the act, omission or default of anyone else in the Building)].
- 3.8.3 Not to do anything on or in relation to the Property that would or might cause the Licensor to be in breach of the tenant's covenants and the conditions contained in the Lease.

- 3.8.4 To observe any reasonable rules and regulations the Licensor makes and notifies to the Licensee in writing from time to time governing the Licensee's use of the Property and the Common Parts.

### **3.9 Security and Confidentiality**

- 3.9.1 Ensure all keys or access devices are safeguarded and promptly report any loss.
- 3.9.2 All keys/key fobs giving access to the Building must be kept safe and not distributed to anyone who is not an employee of the Licensee or one of the Licensee's Partners. The Licensee will be responsible for any costs to the Licensor arising from misuse, loss or theft. The Licensee is not permitted to produce new key copies.
- 3.9.3 Comply with the Licensor's confidentiality agreements, fire safety, and health and safety policies which are provided to the Licensee in writing.

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## **4. Licensor's Rights and Responsibilities**

- 4.1 Subject to clause 4.1.1, the Licensor is not liable for:
  - 4.1.1 the death of, or injury to the Licensee, its employees, customers or invitees to the Property; or
  - 4.1.2 damage to any property of the Licensee or that of the Licensee's employees, customers or other invitees to the Property; or
  - 4.1.3 any losses, claims, demands, actions, proceedings, damages, costs or expenses or other liability incurred by Licensee or the Licensee's employees, customers or other invitees to the Property in the exercise or purported exercise of the rights granted by clause 2.
- 4.2 Nothing in clause 4.1 shall limit or exclude the Licensor's liability for:
  - 4.2.1 death or personal injury or damage to property caused by an act, omission or default on the part of the Licensor or its employees or agents; or
  - 4.2.2 any matter in respect of which it would be unlawful for the Licensor to exclude or restrict liability.

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## **5. Termination**

- 5.1 This Licence shall terminate on the earliest of:
  - 5.1.1 [Insert the day before the fourth anniversary of the licence date] ; and

- 5.1.2 the expiry of not less than [3 months'] written notice operable on or after 31 March 2027 by the licensee to the licensor;
  - 5.1.3 on the expiry of any notice given by the Licensor to the Licensee at any time on material breach of any licensee's obligations of this Licence notified and not remedied within one calendar month; and
  - 5.1.4 the termination of the Lease however it may end.
  - 5.2 If the Licensee ceases to use the Property for two consecutive months, abandonment will be presumed and either party may then terminate this Licence immediately.
  - 5.3 Upon termination (however it may end) of the Licence, the Licensee must vacate the Property, leaving it in a clean and tidy condition, and remove the Licensee's furniture, equipment and goods from the Property.
  - 5.5 Termination of this licence shall not affect the rights of either party in connection with any breach of any obligations under this licence which existed at or before the date of termination.
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## **6. General Provisions**

### **6.1 Notices:**

- 6.1.1 Any notice or other communication given under this licence shall be in writing and shall be delivered by hand or sent by pre-paid first class post or other next working day delivery service to the relevant party as follows:
  - 6.1.1.1 to the Licensor at: 2 Oak Rise, York, England, YO24 4LJ and marked for the attention of the Director of Commercial and Business Development }; and
  - 6.1.1.2 to the Licensee at: West Offices, Station Rise, York YO1 6GA and marked for the attention of Director of Adults Safeguarding ,or as otherwise specified by the relevant party by notice in writing to each other party.
- 6.1.2 Any notice or other communication given in accordance with clause 6.1 will be deemed to have been received:
  - 6.1.2.1 if delivered by hand, on signature of a delivery receipt or at the time the notice or other communication is left at the proper address; or
  - 6.1.2.2 if sent by pre paid first class post or other next working day delivery service, at 9.00am on the second working day after posting.
- 6.1.3 A notice or other communication given under this licence shall not be validly given if sent by email.

6.1.4 This clause 6 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.

6.2 Entire Agreement:

This Licence constitutes the entire agreement between the parties and supersedes any prior discussions or arrangements.

6.3 Governing Law and Jurisdiction:

This licence 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. 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 licence or its subject matter or formation (including non contractual disputes or claims).

6.4 Rights of Third Parties:

No third party shall have any rights to enforce the terms of this Licence under the Contracts (Rights of Third Parties) Act 1999.

6.5 No Warranties for use or Condition:

6.5.1 The Licensor gives no warranty that the Property possesses the Necessary Consents for the Permitted Use.

6.5.2 The Licensor gives no warranty that the Property is physically fit for the purposes specified in this licence.

6.5.3 The Licensee acknowledges that it does not rely on, and shall have no remedies in respect of, any representation or warranty (whether made innocently or negligently) that may have been made by or on behalf of the Licensor before the date of this licence as to any of the matters mentioned in clause 6.5.1 or clause 6.5.2.

6.5.4 Nothing in this clause 6 shall limit or exclude any liability for fraud.

7. Exclusion of Section s 24 to 28 of the LTA 1954

7.1 The parties:

7.1.1 confirm that:

7.1.1.1 the Licensor served a notice on the Licensee, as required by section 38A(3)(a) of the LTA 1954, applying to the occupation created by this licence, not less than 14 days before this licence was entered into;



7.1.1.2                      who was duly authorised by the Licensee to do  
so made a statutory declaration dated                      in accordance  
with the requirements of section 38A(3)(b) of the LTA 1954;

## Schedule 1

### Rights Granted to Licensee

1. The right for the Licensee during the Permitted Hours:
  - 1.1 To use such parts of the Common Parts for the purpose of access to and egress from the Property as shall from time to time be reasonably designated by the Licensor for such purpose;
  - 1.2 To use the Service Media serving the Property.
  - 1.3 To use the washrooms, accessible washrooms, courtyard, lavatories, and kitchens within the Building as reasonably designated by the Licensor (from time to time) as joint facilities for use by the occupiers of the Building.
  - 1.4 To park private, pool and hire motor vehicles within the car park (if any) subject to availability of space and subject to any car parking charges which the Licensor may seek to impose on the car park from time to time in accordance with its parking policies which apply from time to time. Licensee's employees and Licensee's Partners are required to park in staff parking zone as marked out with white lining. For the avoidance of doubt consideration is given to patients of the Building receiving priority parking over Licensee's usage. The electricity charging points cannot be used by the Licensee.
  - 1.5 To use those areas provided by the Licensor and designated from time to time for the use of the Licensee for the disposal of rubbish provided that the Licensee shall comply with any reasonable requirements or regulations of the Licensor in this regard.

**EXECUTED** as a **DEED** by  
**NIMBUSCARE LTD** acting by  
**Zulf Ali** , a director in the presence of:

.....  
Director

Witness Signature: .....

Witness Name: .....

Witness Address: .....

.....

Witness Occupation: .....

Executed as a Deed by affixing The Common Seal of  
The Council of the City of York in the presence of:

.....

Authorised Signatory for Director of Governance

Print Name:

## Plan 1 – Designated space



Acomb Garth room ID	CAD plan room ID
Frailty Hub	00/059
Storeroom	00/032
Community Café	00/029
Café kitchenette	00/026b



DRAFT